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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

DÁIL ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Wednesday, 23 *February* 2005.

DÁIL ÉIREANN

Dé Céadaoin, 23 *Feabhra* 2005.
Wednesday, 23 *February* 2005.

Chuaigh an Ceann Comhairle i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Leaders' Questions.

Mr. Kenny: I am sure the Taoiseach will agree that at a time of great sensitivity in respect of the Good Friday Agreement and the peace process, it is fundamentally important that the Government of which he is Taoiseach should speak with one voice on these matters. On two occasions in the recent past I asked the Minister for Justice, Equality and Law Reform whether he was prepared to publish the names of the people he believed to be members of the provisional IRA army council. The Minister said that was not appropriate. However, last weekend on a Sunday morning chat show he chose to name three individuals as being members of the army council of the Provisional IRA. The Minister for Foreign Affairs, the Minister for Enterprise, Trade and Employment and the Taoiseach did not go that far and said they did not have the extent of evidence available from security briefings that the Minister for Justice, Equality and Law Reform has.

Does the Taoiseach share the view of a Fianna Fáil councillor who yesterday called for the resignation of the Minister for Justice, Equality and Law Reform, Deputy McDowell? Is that Fianna Fáil policy? Is there now a split within the Government, which is essentially causing a sideshow and an unwarranted distraction from focusing on the main issue, which is the web of criminality recently exposed by Garda Commissioner Conroy and his gardaí, which seems to reach right to the inner sanctums of Irish business and which affects the economy and goes to the heart of our democratic system?

Does the Taoiseach believe it would be appropriate for him to be fully briefed by the Minister for Justice, Equality and Law Reform when he speaks on issues such as this on behalf of Government? Does the Taoiseach not believe it is fundamental that the Government speaks with one voice? These matters have of course been denied by the Sinn Féin leadership, who seem to again follow the old Sinn Féin motto that those who know do not tell and those who tell do not know. What is the position of the Government in respect of this matter?

Mr. Rabbitte: Are they or are they not?

The Taoiseach: As I have mentioned a number of times outside the House and I repeat it inside the House, there are no differences between the Minister for Justice, Equality and Law Reform and me on this issue whatsoever. I get detailed briefings on security issues, but they are broad briefings. I do not get detailed intelligence reports every day like the Minister for Justice, Equality and Law Reform receives, nor do I or have I ever looked for the detailed security briefs from different regions of the Garda and the kind of information the Minister gets.

Deputy Kenny is right, but that is a sideshow. It is really nothing to do with the main matter. I am the one who is at least credited with the phrase of Sinn Féin and the IRA being opposite sides of the one coin. Who attends meetings and what is its formation have nothing to do with the issues. I agree fully with that point. The fundamental issue here is that we are trying to move to get a clear position on three questions. We have made considerable progress on perhaps two of those questions. The fundamental issues are the putting arms beyond use — decommissioning; the issue of criminality in all its respects; and the end of paramilitarism. Who is or is not in some group is not the issue. All the Government's attention and efforts are to reach that position.

As I have said many times the reason for that is simple. We have spent two full years on this phase of the peace process. In all that has happened in recent weeks, nobody should forget the enormous strides that have been made in all the other phases of the peace process. However, since the end of 2002 we have moved to the phase of acts of completion for the outstanding issues. That is the phase we have been in. We made substantial progress in March 2003, but failed because of these issues. At the end of 2003 we made progress, but failed again because of these issues. Again in 2004 we failed because of these issues and some other issues — the clarity around decommissioning.

We are trying to bring an end to this phase. I will restate the reason for this as it cannot be said often enough. We cannot implement the wish of the people, which is the implementation of the Good Friday Agreement because we cannot get trust and confidence on the part of all the parties, never mind the two Governments, to move forward until we get clarity on these issues. This is why it is so important. This is the fundamental issue. Anything else is a sideshow. When we met Sinn Féin representatives some weeks ago we made these points clear to them. We are awaiting a response on those points and I hope we will be able to move on successfully when we get those responses. We have not got them as yet.

Mr. Kenny: The Taoiseach did not respond to the question as to whether his party shared the view of some of his councillors about the Minister for Justice, Equality and Law Reform. In recent days, we have heard some pious pronouncements from members of the Sinn Féin Party about republicanism and criminality. It has been suggested that Sinn Féin and its supporters have no part in any criminal activity. Such statements have been made by the same people who denied responsibility for the murder of Detective Garda Jerry McCabe, denied any involvement in the Northern Bank raid and refused to agree that the abduction and execution of Jean McConville was a crime.

I listened to the sisters of Robert McCartney, who was murdered in Belfast recently, speaking on RTE radio this morning. Their fundamental point was that comments made on radio and television and in newspapers by the leadership of Sinn Féin, principally that party's president, Mr. Gerry Adams, have no impact on the ground, because "that is the way they are". I listened yesterday to Deputy Ó Caoláin, who made a different kind of speech in the presence of the Tánaiste. Does the Taoiseach agree that if Deputy Ó Caoláin and his party, particularly his party's president, want to make hard decisions and to dissociate themselves from criminality, they could in the first instance speak to the IRA person in Belfast of republican leanings who issued the instruction to murder Robert McCartney, who was an innocent man? If Sinn Féin wants to demonstrate that it is serious about the ways of democracy and the path of peace, it should take the hard decision. Does the Taoiseach share the view that Sinn Féin should at least dissociate itself from the killers of Robert McCartney, for example by expelling them from the republican movement?

Will the Taoiseach confirm that a blind eye was turned to criminality in this jurisdiction in recent years, as the Minister for Defence stated the other night? Has that eye been opened and is it now fully focused? Will the full resources of the State, which are available to the Minister for Justice, Equality and Law Reform and the Garda Commissioner, be used to stamp out criminality in this jurisdiction, in all its forms? Fine Gael would support such action.

Deputies: Hear, hear.

The Taoiseach: Deputy Kenny asked me three questions. I dissociate myself totally from any derogatory remarks about the Minister for Justice, Equality and Law Reform made by any Fianna Fáil councillor.

Mr. J. Breen: Will the Taoiseach expel the person?

The Taoiseach: It is obvious that the person in question does not know what she is talking about.

Mr. Neville: Hear, hear.

Ms Burton: She spoke about the matter at length.

Ms O'Sullivan: I am interested to hear the Taoiseach's comments.

The Taoiseach: The Minister for Justice, Equality and Law Reform and I have spent more hours working on these issues than we would want, particularly over the last two years. I recall weekends when we sat around, mostly waiting for people to get back to us on certain issues. I think we spent approximately 30 hours working on these issues, waiting for briefing notes etc., over the course of one weekend, during one of the failed attempts to reach agreement. I could mention many other things, but there is no point in going into them. Many people who have spoken about the peace process in recent days are so badly informed about it that it is upsetting to listen to them. I would rather leave such things go, however, because the people in question are not involved in the detail and do not understand all aspects of the matter.

The second issue raised by Deputy Kenny was a comment made by the Minister for Defence, Deputy O'Dea. The Minister's statement was correct, of course. All such issues were mentioned in paragraph 11 of the joint declaration because acts of criminality were ongoing at that time. The British Prime Minister, Mr. Blair, and I said such issues would have to be dealt with when we spelt out in detail the necessary acts of completion at the end of 2002. Quite frankly, our immediate concern at that time was to see an end to the daily killings, bombings and attacks.

We should not forget we have seen the end of a significant number of problems, which I hope will never come back again. It is too easy for people to say that it has all been a waste of time. I heard somebody say that the other day, but it is obvious that the person in question does not remember how bad it was in the past. People need to take stock and to consider what it was like. Deputy Kenny is right — we have to finish the process. One cannot go on, ten years on. We are now talking about criminality and fraud. People are trying to raise and use money that was gained through illegal activity for political purposes. We want to bring an end to such issues. That is the position.

Deputy Kenny also spoke about the brave family of Robert McCartney, some members of which are in Dublin today. The Minister will do all he can to help them. They have suffered in the worst possible way at the hands of those engaged in thuggery and criminality — they have lost a family member to murder. We have to try to help them in every way we can.

I was not in the House yesterday when Deputy Ó Caoláin made his point. I wish to state clearly that we are listening closely to the comments of Sinn Féin's representatives. We are waiting for a

response to a meeting attended by the Ministers for Foreign Affairs and Justice, Equality and Law Reform some weeks ago. In light of everything that has happened, I think Sinn Féin will understand if we reserve judgment. Its members have to accept that their words cannot easily be accepted at face value. It will take much more than words to rebuild trust, but we are listening. We all know what must be done. We all know what we want Sinn Féin and the IRA to do. Their actions have to be capable of being understood in clear terms by the people of this island. We have said we want no ambiguity, no fudge and no messing. Let us be straight and let us get to the bottom line.

I welcome what Deputy Ó Caoláin said yesterday, but what we want and what must happen is an end to paramilitary and criminal activity by the IRA and the decommissioning of IRA arms. We can try to restart the process if that is achieved. We will not be able to do so if that is not achieved. I do not want to make the same points every day, but I reiterate that we have to achieve the aims I have mentioned. Having received a security briefing yesterday, however, I am aware that these aims are not being achieved, unfortunately. In effect, large amounts of money are being hauled around the Republic of Ireland by various people. It is being laundered for the Provisional IRA. That is what we saw last week. I heard what the Deputy said yesterday. We have to reach a position from which we can move on. That is all I want to achieve. I am not interested in arguing about Sinn Féin's mandate or demonising that party — I just want to make progress and to get these things finished.

Deputies: Hear, hear.

The Taoiseach: In the last two years — it is almost March again — I have been doing almost nothing other than trying to deal with this. That is not a good idea for me or the Government. We need to get to an end to this. Everyone in this country understands what the Ministers, Deputies Dermot Ahern, Cowen and McDowell, and I have been doing for the last two years. They all understand it now. We should just get on with it. It is not impossible to do it. Deputy Ó Caoláin and I know the relevant group of people. It is not rocket science to get to an end to this. If we can move on, we can move on. If we move backwards, that would be terrible for the entire island. I want to move forward. If Sinn Féin is saying it wants to move forward, we should try to do so.

Deputies: Hear, hear.

Mr. Rabbitte: Will the Taoiseach state more clearly the level of credibility he attaches to Deputy Ó Caoláin's statement yesterday that "Sinn Féin is a party that rejects criminality of any kind"? Can the Taoiseach provide clarity in that regard? I acknowledge the statement and welcome it in so far as it goes, but I do not know what credibility to attach to it. Given that Sinn Féin's members cannot acknowledge that the murders of Jean McConville, Tom Oliver and Detective Garda Jerry McCabe were crimes, it seems that serious difficulties must attach to any statement of the kind made yesterday by Deputy Ó Caoláin. As the republican movement does not believe that any criminal act carried out in the course of its "duty" is a crime, it seems our difficulty is that we are on two different planets. Therefore, we do not know whether any credibility can be attached to Deputy Ó Caoláin's statement.

The Taoiseach has said that he, Deputy McDowell and the rest of the members of the Government are *ad idem* and of one mind about this matter, and that everybody knows now what he has been concerned about for the last two years. It seems, however, that everybody does not know that. If one traces back the statements, one will realise that it is not only now that there are contradictions within Government but that there have been inconsistencies regarding the criminality issue over the months leading up to 8 December. Rather than throwing our hands up in horror over the failed peace process, we should regard it is good that some of the ambiguity that surrounded it is now out it the open. It seems good that criminality is now the focus of debate among ordinary people in this jurisdiction and, one suspects, in Northern Ireland. That is a positive development. If it brings the Sinn Féin leadership to its senses, so much the better. However, I do not see the merit in the Minister for Foreign Affairs, Dermot Ahern, fully supporting the Minister for Justice, Equality and Law Reform, Deputy McDowell, on Sunday and issuing a statement on Monday night censuring him over what he said in public.

The Government needs to speak with one voice but this is not happening. It seems that we do not want to exclude anyone to the point where we are again prepared to fudge. We did not exclude anyone, the republican movement excluded itself by its actions. As I stated yesterday, I do not support the Taoiseach's view that exclusion brought us 30 years of murder and mayhem. Thirty years of murder and mayhem brought us exclusion.

The Taoiseach: I do not want to get into political points but I hope Deputy Rabbitte is not saying Government confusion was responsible for the bank robbery by way of nit-picking statements made by the Government over the course of two years, thus trying to find contradictions suggesting it has changed its line. The Government has been at one for years on this issue. I remind Members of the House, including Deputy Rabbitte, that we worked on the draft of the joint declaration in 2001. It was in 2001 when, at Weston Park, we had come to what was in paragraph 11, which I think was published in 2002. Paragraph 11 informed the entire discussion. The Deputy is correct that people were not really

[The Taoiseach.]

interested in paragraph 11. I made many speeches in Northern Ireland and paragraph 11 was appearing on page 18. In recent weeks it has been appearing on page 1, but I should not be blamed for that.

In March 2003, October 2003 and from October 2004 to December 2004, the discussion was on paragraph 11. Certainly from September 2004 — colleagues can correct me if I am wrong — we focused on one sentence. We spoke for weeks about the rights and safety of others and the issue of criminality. Nothing else was being discussed at the time. Therefore, the criminality issue was central to why we did not complete the issues in spring and autumn of 2003 and in 2004. That is the position.

On yesterday's comments and the question asked by Deputy Rabbitte, we are listening very closely to what Sinn Féin is saying. We have asked Sinn Féin in the frankest terms to reflect on its position. I have repeated this morning, in a reply to Deputy Kenny, the nature of the issues in question, namely, that there be an end to paramilitary and criminal activity by the IRA and decommissioning of its weapons. We need deeds as well as words. Like the Deputy, I obviously welcome what was said yesterday but we must see these words transferred into implementation and a real act. We are not seeing this at present and have not done so in recent weeks. A changed position is required.

On the last point, Deputy Rabbitte should note that we are trying to deal with a very serious issue. His statement that the Minister for Foreign Affairs, Dermot Ahern, rebuked the Minister for Justice, Equality and Law Reform, Deputy McDowell, is just nonsense. I have heard what they have all said and it is not appropriate to take a word here and a word there. A position cannot be determined by doing so. The only difference is that every morning Deputy McDowell, as Minister for Justice, Equality and Law Reform, receives detailed intelligence reports, as do all Ministers responsible for justice.

If I came into the House saying I, as Taoiseach, looked at such reports every day, I know what Members would say. I was here long enough to remember what they used to say about Taoisigh who used to take an interest in such matters. I do not take those kinds of briefings. I receive from the Minister for Justice, Equality and Law Reform briefings on broad issues and assessments on a regular basis. Meetings are held with the Commissioner several times per year, although irregularly, and he gives broad assessments. I am not made aware of every detail, such as who was at a particular meeting. Quite frankly, it does not matter who was at what meeting. What matters is that we know how the system works and the nature of the broad operation. The broad issue is that the leadership of Sinn Féin and the IRA are extremely close. What we want to get done is important and it determines the agenda.

Mr. Rabbitte: I, too, am long enough here to know that when Taoisigh were being criticised for reading transcripts, it was not concerning the security of the State. I do not want to retrace this territory but the Minister for Foreign Affairs said only a few weeks ago that he foresaw Sinn Féin in Government, probably with Fianna Fáil, sooner than people realised. The Taoiseach stated last weekend that "Sinn Féin could not be excluded from the Belfast Agreement, despite the discovery of the IRA's recent criminality". In fact, paragraph 25 of the Agreement states: "Those who hold office should use only democratic, non-violent means, and those who do not should be excluded or removed from office under these provisions." This is black and white.

Should the acid test of Deputy Ó Caoláin's statement yesterday, which presumably arose from the Sinn Féin executive meeting on Saturday, not be the willingness of the leadership of that party to instruct its members to turn in the killers of Robert McCartney? This should be the acid test if there is to be any credibility attached to the statement. Deputy Kenny has referred to hearing the sisters of Robert McCartney on radio this morning as they described the gruesome, mafia-style killing and the swagger of those bully boys who dominate working class nationalist communities through terror, fear and punishment beatings. I am fearful that we will drift back into a position whereby we do not exclude for the sake of not doing so and engage in the same creative ambiguity and confusion as before. It is important that this issue be clarified once and for all. We should regard this as an opportunity to do so rather than as a betrayal of the peace process.

The Taoiseach: I do not disagree with Deputy Rabbitte on that point. This is an opportunity, two and a half years on, to bring this phase of the process to an end. We have brought other parts to an end. Let us not forget that. We do not have the kinds of statistics and problems that obtained before, which were all bad news.

The Deputy is correct regarding the McCartney family. There are people who can resolve the McCartney murder very quickly. Not only were these people present at the scene of the crime — this is known — but they also had the audacity to go back to the scene of the crime to sweep the place clean. It is bad enough killing people but to do that is horrendous. It does not add up to people trying to say they were under the influence or something like that. It is unlikely considering the way they acted. I do not believe any of that stuff, and people can help.

I strongly believe that dealing properly with the PSNI is ultimately the only way we will stop who Deputy Rabbitte has described as the bully boys and thugs. We had made a lot of progress in this regard in December. Until there is proper policing in all parts of Northern Ireland, we will continue to have people who can become little heroes in their own areas through engaging in

criminal activity. Policing is essential in addressing this.

If at some stage I believe I am wasting my time trying to achieve the inclusive process we thought we had achieved under the Good Friday Agreement, I will be the first to say it. However, I would be very slow to give up eight years' work and I do not want to do so. I do not believe we are at that stage. Yesterday I listened to everybody talking about the past four or five years in the Middle East. Mr. Sharon and Mr. Abbas say there is a chance of having an inclusive process and moving forward after five years of mayhem, killing, and houses being rolled over every day. Now everybody is at one, and the European Union and the United States back the inclusive process. I read about what is happening in Sudan and Darfur, and in the Democratic Republic of Congo where people say they need an inclusive process. It is the same in Uganda, Sri Lanka and all over the world. One must try to get the people who cause problems in to try to change them, otherwise one will not resolve the problems.

For the last decade we have tried to get people in to the process by giving them the time and the chance to do so. Admittedly, it has taken a long time and involved risks. In this House we have all agreed on the things we do not like. I accept that. I am not saying we did not have to bite our tongues. Of course we did. I have admitted as much in replies to questions about murderers getting out of prison. However, there is a chance to complete this project. If people do not do that they will lose an enormous opportunity.

11 o'clock

We should not give up. I spoke about this to the Prime Minister, Mr. Blair, yesterday. The easiest thing to do would be to go off and deal with another problem. There are always enough problems. I would rather finish this and that is why I believe in an inclusive process.

Mr. J. Higgins: Does the Taoiseach acknowledge that the great majority of residents of the Short Strand area in Belfast are horrified to have criminal butchers in their midst, hiding under the political banner of provisional republicanism, and that revulsion at the bestial murder of Robert McCartney, and the heroic quest for justice by his family, are challenging in an unprecedented way the insidious control of the IRA in many Catholic areas in Northern Ireland? Does the Taoiseach agree that we must categorise as vacuous doublespeak the words about Robert McCartney's murder by the leaders of republicanism such as Messrs. Kelly, Adams and McGuinness? The reality behind the seemingly sincere words of republican leaders is the screaming silence of the 50 witnesses who are terrified to speak out to bring the murderers to justice because of the intimidation coming from the very associates of those leaders who say they want justice for the family of Robert McCartney.

Every week members of the IRA in Belfast visit medieval barbarities on dysfunctional youths. They claim to know what is going on. It would be extraordinary if the republican leaders did not know exactly who butchered a man in front of 70 people, all the more so since a unit of the IRA was responsible.

Mr. Adams said this morning he has a problem going to the police. Does he have a problem in going to the Short Strand unit of the provisional IRA — call it the local SS unit for short — and demanding that it present itself to justice? According to the McCartney family this morning, Mr. Gerry Kelly refused to call a public meeting in the Short Strand to give the community confidence.

I urge the community, in conjunction with the McCartney family, to convene its own independent mass meeting, give mass protection to the witnesses to this bestial murder, and mobilise community power to break the grip of intimidation and remove the killers from its midst by securing their trial and conviction. Those for whom the Sinn Féin leaders in Northern Ireland claim to speak should themselves speak with their own voices in mass action because it is very clear that they repudiate absolutely this type of barbarity in their communities.

The Taoiseach: Deputy Joe Higgins is right. I can only add that the names are known. The names of those people involved are freely spoken about. I will not mention names but I have talked to several people who told me who was involved. It is well known; there is no mystery about it. The issue is to get people who were there to cooperate with the PSNI to have these people charged. This recalls other cases that happened a year ago. For example, the Tohill case was a similar incident. There have been interesting developments in that area in the year since but I will not go into them now.

These are the issues which the Minister for Foreign Affairs is discussing with the family of Robert McCartney at the meeting that has just commenced. They are a brave family, who have stood up for their rights and we will give them every support we possibly can.

This case typifies issues which I will not go through again. I have raised several of the issues that Deputy Joe Higgins raised about things that happened to young people. These were regular incidents over the Christmas period, and at other times. They did not happen for many months then they began to occur again.

We must move on from that and the only way to do so is for the two Governments to get unambiguous, straight answers on the issues we have put forward. We need this not only in writing or reports but in action. We know from last year that we can see it in action as there was a total end to such incidents during the negotiating period. They can be stopped. There is no doubt that people have control and authority. I am convinced that people can stop these activities when they want and we can get to that end position.

[The Taoiseach.]

I think I referred to paragraph 11 in reply to Deputy Rabbitte when of course I should have said paragraph 13 of the joint declaration. That is the one we are talking about and focused on. There are other outstanding issues on which we must make progress but the central one is paragraph 13 which deals with paramilitarism, thuggery and criminality. When we achieve progress on that we can move on.

Mr. J. Higgins: How genuine are this Government and the British Government in outing criminal intimidation when they tolerated it for so long? Years ago, the Minister for Justice, Equality and Law Reform spoke about things he knew happened but we have seen action only recently. The Taoiseach blew the issue out of the water in recent weeks because the political landscape changed.

Calling the murderers of Robert McCartney to account is a matter of justice for him and his family. More than this, it is a test in present circumstances of whether a working class community is allowed to live in an atmosphere where democratic, human and political rights are respected and guaranteed. Bringing these murderers to account also challenges in a very real way the political control of Catholic working class communities by republican paramilitaries. Loyalist paramilitaries visit the same intimidation on Protestant working class communities. The reluctance to dissolve the IRA is not because a resumption of the paramilitary campaign against the British State is contemplated — that disaster ran into the sand long ago. It is retained as an enforcer for the political domination of the republican movement in the Catholic working class communities. It plays the same role as the loyalist paramilitary organisations.

I call on the real power in Northern Ireland, the salt of the earth, working class people to mobilise independently, throw the sectarians aside and in this way deliver justice for Robert McCartney and his family. This will also lay the basis for an alternative society where their real needs are met rather than being subjected to sectarian monsters.

The Taoiseach: The barbarity of punishment beatings is well-known and this is not the first time we have talked about them. Last year, there was the Tohill case and the previous year people were shot. There have been many cases, and this has even led to suicide among young people who have been threatened. The focus on it arose before now.

That is why paragraph 13 is in the declaration. It is still the outstanding issue. Criminality and bully boy control of an area is not just about sectarianism. It is related to the proceeds of crime and other related issues. While it is not as simple as the Deputy stated, his sentiments are correct. We want an end to that.

People have been focussing on it in recent months and we have an opportunity to achieve finality. The Government will do all it can. I spoke to the Prime Minister, Mr. Blair, about that yesterday. I will probably speak to him about it on the telephone tonight or tomorrow. We will continue our efforts to make progress.

Ceisteanna — Questions.

Tribunals of Inquiry.

1. **Mr. Kenny** asked the Taoiseach the costs which accrued to his Department during 2004 in respect of the Moriarty tribunal; and if he will make a statement on the matter. [34100/04]

2. **Mr. Rabbitte** asked the Taoiseach the costs which accrued to his Department during 2004 in respect of tribunals of inquiry; the anticipated amount for 2005; and if he will make a statement on the matter. [3498/05]

3. **Caoimhghín Ó Caoláin** asked the Taoiseach the cost to his Department of the Moriarty tribunal during 2004; and if he will make a statement on the matter. [3626/05]

4. **Mr. Sargent** asked the Taoiseach the costs to his Department during 2004 in relation to the Moriarty tribunal; and if he will make a statement on the matter. [4484/05]

The Taoiseach: I propose to take Questions Nos. 1 to 4, inclusive, together.

The costs incurred by my Department during 2004 in respect of the Moriarty tribunal amounted to €3,607,418. The estimated costs for the tribunal for 2005 amounts to €4 million. However, provision of an additional €6.5 million has been made to cover costs such as report publication and some element of award of legal costs in the event that the tribunal completes its work in 2005. The overall estimate for 2005 is, therefore, €10,583,000.

The total costs incurred by my Department since 1997 is €18,640,000. This includes fees paid to counsel for the tribunal and administration costs incurred to date since the establishment of the tribunal. The total payment made to the legal team was €13,613,544 up to 31 December 2004.

Mr. Kenny: I thank the Taoiseach for his reply. Last July, a member of the Government indicated to the spokesman on justice from this side of the House that the Moriarty tribunal would end in six to nine months. Unlike any other, this tribunal is a creature of the Houses of the Oireachtas. It was commissioned by the House and, as such, we have a right to know where the tribunal is at in terms of its current workload and when it is expected to finish.

To think that it was established in 1997, has now cost €18 million, and that no interim report has been produced is simply beyond belief. The Flood and Mahon tribunal has published four

interim reports, the most recent one informing the nation of the current state of the tribunal in terms of workload and projected timescale. In its terms of reference, the Moriarty tribunal has the discretion to produce interim reports. This appears to be running into the sand. Perhaps some facility could be arranged to require the Moriarty tribunal either to produce an interim report to tell us where we are after a cost of €18 million, or to set a definitive date to have it wound up, when a final report can be produced. The announcement by the previous Minister for Finance about the new schedule of fees has had a bearing in this in that there appears to have been a decision to walk if they did not get the fees that applied prior to his announcement. Does the Taoiseach accept that in the context of the Moriarty tribunal the legal personnel appear to have the upper hand? Could we have an announcement on either an interim report or a conclusion to the tribunal, because it is running for nine years at a cost of €18 million and no one appears to know what is happening?

The Taoiseach: As the Deputy will be aware, I have no control over these issues. When the Minister for Finance announced the new rates, the Attorney General was requested to contact all the tribunals to come to a conclusion time from which the new rates would be applicable. The period agreed in the case of the Moriarty tribunal was 11 January 2006. It is hoped to complete the tribunal by that date. It is also the date from which the new rates will apply and, I hope, it is the date on which the tribunal will have completed its work.

Mr. Rabbitte: Given the various issues that have arisen in recent years, such as the Army deafness claims and so on, I have comforted myself in the knowledge that it is a redistribution of wealth and can be justified on these grounds. I have greater difficulty applying that approach to my learned friends. It certainly is an extraordinary situation. Are there legal challenges, or High Court or Supreme Court judgments or actions delaying all of this? Does the Taoiseach have a prospective date when it is expected this tribunal will finish?

The Taoiseach: I am subject to correction, but I am not aware of any challenges affecting the tribunal. The Christmas period or early January was the date negotiated before the Bill was passed some months ago. It does not mean the new rates will apply from that date. If everything is not finished by that date, I do not envisage a situation where the Government will say that is it. This is the difficulty. All we can do is apply the new rates. That date was given on the basis that the work would be finished and the report presented. Presumably the hearings would have to be finished before the summer so that the report could be written. That is what I understand. It is several months since the date was negotiated and I have had no engagement with any of the teams. This is what was discussed with the Attorney General last summer.

Caoimhghín Ó Caoláin: On the specific line of questioning relating to the Taoiseach's Department and costs for the Moriarty tribunal, the information he has given us is shocking. Has he taken an overview position on the cost of the Moriarty tribunal and other tribunals in regard to all Departments? The piecemeal approach does not address the core issue of the excessive cost of legal fees for both senior and junior counsel representation at the Moriarty tribunal and all the other tribunals.

Is the Taoiseach aware of the presentation by the Department of Communications, Marine and Natural Resources to the Committee of Public Accounts relating to the mobile telephone licence to Esat Digifone?

An Ceann Comhairle: Deputy, we are dealing with the Moriarty tribunal. The Deputy is moving well away from the question if he is moving onto mobile telephone masts.

Caoimhghín Ó Caoláin: I appreciate that. In the particular instance, more than €1 million was expended for a brief representation to that Department in regard to that particular issue. While the €18 million is shocking, does the Taoiseach agree that it does not actually reflect the reality of the cost to the Exchequer and to taxpayers of the Moriarty tribunal and all the other tribunals?

An Ceann Comhairle: We are dealing exclusively with the Moriarty tribunal.

Caoimhghín Ó Caoláin: Has he a holistic view and understanding of all the costs across all Departments and what can he share with the House?

The Taoiseach: There are third party costs in regard to the Moriarty tribunal. The overall assessment of these costs will not be available for some time. Up to the end of December, the total cost to the Exchequer of completed and sitting tribunals of inquiry and other public inquiries was €191.82 million.

Caoimhghín Ó Caoláin: Now you are talking.

The Taoiseach: Of this amount, €138.92 million was in respect of legal costs and €52.84 million related to other costs. The figure for legal costs includes €60.53 million in respect of third party legal costs awarded to date.

In regard to tribunals of inquiry and public inquiries which are sitting at present, the total cost to the end of December last is €154.12 million, of which €107.2 million is in respect of legal costs, and of which €35 million related to third party legal costs.

Mr. Sargent: The costs accruing in respect of the Moriarty tribunal are astronomical. It is important that the House hear whether the Taoiseach believes, as he stated previously, that the completion date for this work will be January 2006. Does he still believe that completion date is achievable? He also mentioned previously that he would insist on the new fee structures for tribunal lawyers being applied. Is that still the case? Is it also still the case that no new staff are to be appointed to the Moriarty tribunal?

The Taoiseach: In the discussions between the Attorney General and the chairpersons of the various tribunals, numbering six or seven, that was the date that was agreed at that time. I have no other date. The new fees will be applicable after that date if the work is completed. That is still our understanding. I have no particular control over that. If that is achieved, the new fees will apply. It will be totally a matter for the discretion of the chairman.

Mr. Sargent: What about the staff issue?

The Taoiseach: Additional staff were appointed, although I am not sure if that was in regard to the Moriarty tribunal. As the Deputy will recall, some of the tribunals indicated that they would not finish their work until 2014, 2015 or 2016. To carry out part of their work and having regard to the terms of reference that we changed, additional staff were to be made available at that time, and I understand that has happened.

Mr. J. Higgins: Will the Taoiseach accept that the cost to his Department and to the taxpayer in the matter of the tribunals has been massively increased because for eight years he and his Government have included in their herd of sacred cows, with land speculators and developers, the elite of the barrister profession as untouchables whose greed they would not curb by putting control over their fees? Some members of the legal profession added insult to injury by becoming speculators in the infamous land deal in Stillorgan——

An Ceann Comhairle: A question please, Deputy.

Mr. J. Higgins: ——for which they paid €32 million and for which four years later they got €85 million in a speculative gain which I brought to the Taoiseach's attention. When a few barristers who are on their feet for a few hours charge €100,000, does the Taoiseach agree it is time to call a halt and that by not doing so much earlier he is putting a heavy punishment on taxpayers?

The Taoiseach: This House set up these tribunals and we gave them terms of reference. We took on people to serve on them. At the time it was not that easy to get some people to move from their positions to take up that work. The tribunals have gone on for a long time. I believe those on the tribunals would say that under their terms of reference these were matters they had to look into and investigate, and they are doing that. We have to deal with these matters in that way and see them through.

National Archives.

5. **Mr. Kenny** asked the Taoiseach if he will identify the files which were released recently by his Department under the National Archives Act 1986; and if he will make a statement on the matter. [34101/04]

6. **Mr. Kenny** asked the Taoiseach the number of files withheld by his Department from the National Archives in respect of 1974; and if he will make a statement on the matter. [34106/04]

7. **Mr. Rabbitte** asked the Taoiseach the number of files withheld by his Department in respect of the files transferred to the National Archives in respect of 1974; the number withheld under section 8(4)(*a*) of the National Archives Act 1986; the number withheld under section 8(4)(*b*); the number withheld under section 8(4)(*c*); and if he will make a statement on the matter. [34259/04]

8. **Mr. Sargent** asked the Taoiseach the number of files withheld by his Department from the National Archives in respect of 1974; and if he will make a statement on the matter. [34616/04]

9. **Mr. J. Higgins** asked the Taoiseach the number of files withheld by his Department from the National Archives in respect of 1974; and if he will make a statement on the matter. [2797/05]

10. **Caoimhghín Ó Caoláin** asked the Taoiseach the number of files withheld by his Department from the National Archives in respect of 1974; and if he will make a statement on the matter. [3643/05]

The Taoiseach: I propose to take Questions Nos. 5 to 10, inclusive, together.

The evaluating of files for release to the National Archives is carried out by designated officials in my Department. I have no role in that process. It is normal, as files are processed for release each year, that some are certified by the appropriate official for retention on the grounds set forth in the Act. I am informed that the number of files certified in this way in respect of the January 2005 release was nine. In all, a total of 675 files or file parts were transferred to the National Archives by my Department to be released for public inspection on 1 January 2005.

Of the nine files retained, five were retained under section 8(4)(*a*) of the Act and four were retained under section 8(4)(*b*) and (*c*) of the Act. It is the responsibility of the statutorily designated officials to determine the particular subsection in accordance with which files are certified for retention.

Mr. Kenny: The Taoiseach will be aware that section (8)(4)(*a*), (*b*) and (*c*) of the 1986 Act allows an official in the Department of the Taoiseach to certify that files should not be sent to the National Archives if sending them would be contrary to the public interest, if it would or might constitute a breach of statutory duty or it might cause danger or distress to persons living on the grounds that they might contain information about individuals or would or might be likely to lead to an action for damages for defamation.

The Minister for Justice, Equality and Law Reform recently announced that he will allow researchers to examine files in his Department which had been previously unavailable. Does the Taoiseach propose to put in place a similar facility that would allow professional researchers to make an objective and measured assessment of the files that have been withheld by his Department?

He gave some details of the files that have been withheld under section 8(4). Will these files be held indefinitely, are they ever likely to be seen or is the position being constantly reviewed such that professional researchers might, with the passing of time, be able to have access to them on release? Will the Taoiseach expand on the nature of those files and identify the issues that are covered in them that caused them to be not available under the National Archives Act?

An Ceann Comhairle: The last part of the Deputy's question is outside the subject of the question before us.

The Taoiseach: The Deputy is right in that my colleague, the Minister for Justice, Equality and Law Reform, is in the process of establishing a working group to advise his Department on that matter. The reason is that a large number of files have been withdrawn or held in that Department. Many of them relate to personal files and other matters. A similar position does not obtain in my Department.

In regard to files relating to Northern Ireland, a total of 92 files were released to the National Archives and no files were withheld. Some 63 files were released without abstractions, or partial abstractions were made on 105 documents and 27 entire documents were abstracted. I am informed that abstractions were made in the majority of documents under section 8(4)(*b*) and (*c*) and three documents under section 8(4)(*c*). The abstractions related to information given in confidence, including security information and information about individuals which might be likely to defamation claims.

While it is not a matter for me, these are the kinds of issues in respect of which information would never be released. Names would be removed for those reasons. The normal files held for historical reasons in my Department are, as I understand it, always released. The only information withheld are names mentioned or the name of a person who gave information to the Taoiseach of the day or the Department of the day.

Mr. Rabbitte: In the matter of the Omagh atrocity and the Omagh families looking for the transcripts of a recent court case, I raised recently with the Taoiseach that this Act could be invoked by the Minister for Justice, Equality and Law Reform to cause the transcripts concerned to be made available to the families, transcripts that, as matters stand, are not otherwise accessible. I thank the Taoiseach for replying to me. I know that he has been preoccupied with other matters and may not have had an opportunity to look at this, but I am bound to say that the reply I got from him did not really address the net point I raised. I sent back a more detailed explanation of what I suggest could be a useful route. This could assist the Omagh families to get their hands on the transcripts that are essential to the civil compensation case they are initiating. Has the Taoiseach had the opportunity to examine the suggestion that under the relevant section of this Act, the Minister for Justice, Equality and Law Reform is enabled to cause the transcripts concerned to be transferred to the National Archives where they can be accessed?

The Taoiseach: I received Deputy Rabbitte's letter on this matter and I contacted the Attorney General's office on Thursday or Friday. A reply should be on its way to the Deputy. I looked at the letter carefully and its core point is that the Minister for Justice, Equality and Law Reform can direct the registrar of the Special Criminal Court to release the transcripts of that court prepared for an appeal where the appeal is still pending. I was told, subject to confirmation in writing so this may change and I ask the Deputy to forgive me if it does, that notwithstanding the fact that the Special Criminal Court's function is now spent, the judicial process as a whole is not spent given that appeals are pending. The Attorney General's office advises me that the National Archives Act does not bestow a power on the Minister to authorise the transfer of transcripts of the Special Criminal Court prepared for appeal to the National Archives when the appeal is pending for administrative reasons. I have asked the office to ensure that is the position.

Mr. Sargent: What progress has been made in finding the missing Garda Síochána and Department of Justice files from the 1974 Dublin and Monaghan bombings?

An Ceann Comhairle: That does not arise out of these questions.

Mr. Sargent: My question specifically refers to 1974 and that is why I am asking it.

An Ceann Comhairle: That may be but the question refers to the number of files from the National Archives, not their content. It is not

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appropriate to raise the contents of files in these questions.

Mr. Sargent: I will not refer to the content but the Taoiseach understands that if I am inquiring about the number of files, I obviously have an interest in this matter.

An Ceann Comhairle: That may well be but we must stay within the rules of the House.

Mr. Sargent: I will not mention the contents, I respect the Chair's ruling, but the Taoiseach can reply as he sees fit.

I asked almost a year ago about the problems in the National Archives office which are preventing the transfer of files. The Department of Health and Children has not sent anything for the 30 year deadline on confidentiality since 1993. Given that the Taoiseach takes his responsibility for the National Archives seriously, does he envisage historians such as John Bowman having thin pickings when it comes to the archives on the basis that a number of organisations subject to the National Archives Act cannot transfer their records? This matter is becoming serious. The Taoiseach stated in his previous reply that he is keeping the matter under review. What review has taken place since March 2004 and is any action planned?

The Taoiseach: There is regular dialogue between the historians and the authorised officials in my Department and they have worked out the basis for passing files. There is no problem but I will check it because this arose before.

I do not have the information on the 1974 files. I will check and contact the Deputy about this.

Caoimhghín Ó Caoláin: On the 1974 files, the Taoiseach said that no files relating to the North of Ireland were withheld. Is it the case that as the Dublin and Monaghan bombings took place in this State, files from 1974 may have been withheld on that or any of the matters under investigation by Mr. Justice Barron?

An Ceann Comhairle: I have already ruled those questions out of order for Deputy Sargent.

Caoimhghín Ó Caoláin: I am only asking about numbers, which is what we are talking about.

An Ceann Comhairle: It is not appropriate to discuss the content of the files under these questions.

Caoimhghín Ó Caoláin: I have not done that, I am asking a specific question about the numbers in response to what the Taoiseach said himself, regarding files relevant to the North of Ireland, which invites the clarification I seek.

An Ceann Comhairle: That question has been asked by Deputy Sargent and the Taoiseach has answered.

Caoimhghín Ó Caoláin: Is it the case that there may have been between 1972 and 1974 files relevant to the interests of Mr. Justice Barron that may not have been open to public scrutiny? Is it the case that the subject matter of files withheld is never disclosed?

The Taoiseach: There were 92 files related to Northern Ireland released to the National Archives and no files were withheld. Some documents were abstracted but no file was withheld. In my Department, very few files are certified for retention — there were only nine in 2004, five in 2003, five in 2002, 13 in 2001, 12 in 2000 and none in 1999. The numbers are small.

I do not have the information here but I have answered the question before. Deputy Ó Caoláin is correct, on some of them the subject matter is not published because it often contains the name of an individual. If the subject matter is given the person is identifiable. Some of those files related to a Mr. X or Ms Y so for that reason the subject matter was not published. Where the subject matter is general, it is published. That is the call that the designated officers make.

Decentralisation Programme.

11. **Mr. Kenny** asked the Taoiseach the number of staff of his Department who have applied to be relocated outside Dublin under the Government's decentralisation programme; and if he will make a statement on the matter. [34102/04]

12. **Mr. Rabbitte** asked the Taoiseach the number of staff in his Department, broken down by grade, who have applied to relocate under the Government's decentralisation programme; and if he will make a statement on the matter. [3499/05]

13. **Caoimhghín Ó Caoláin** asked the Taoiseach the number of staff in his Department who have applied for relocation outside Dublin under the decentralisation programme; and if he will make a statement on the matter. [3644/05]

14. **Mr. Sargent** asked the Taoiseach the number of his staff who have applied to relocate outside Dublin under the decentralisation programme; and if he will make a statement on the matter. [4485/05]

The Taoiseach: I propose to take Questions Nos. 11 to 14, inclusive, together.

A total of 45 staff from my Department have applied through the central applications facility to relocate under the decentralisation programme, an increase of one since the expiry of the initial period for priority applications on 7 September 2004. Broken down by grade, there are seven assistant principals, nine administrative officers, four higher executive officers, 12 executive

officers, two staff officers, ten clerical officers and one general operative.

Mr. Kenny: Since the last occasion on which these questions were asked, significant events have taken place. Will the Taoiseach indicate if he has made any appointment to the chairmanship of the Government decentralisation implementation committee in view of the resignation of Mr. Phil Flynn arising from his association with a person under investigation by the Criminal Assets Bureau in respect of his involvement with a finance company? Will the Taoiseach confirm that there are no restrictions on the promotion of civil servants in Dublin? Queries I have received indicate that when civil servants in Dublin sign up for promotion it must be on the basis that they are prepared to relocate outside Dublin. Does the Taoiseach agree that this is contradictory, given the voluntary nature of the decentralisation programme, under which the former Minister for Finance, Mr. McCreevy, said 10,000 civil servants would be relocated within three years? Can the Taoiseach confirm that promotions are not contingent upon agreement to relocate to a different part of the country?

An Ceann Comhairle: The question refers specifically to the Department of the Taoiseach.

Mr. Kenny: This refers to the Taoiseach's Department.

The Taoiseach: It does not arise for my Department because it is not moving, but there is no truth in what the Deputy suggests.

On the question of names, it is a matter for the Minister for Finance to bring names to the Government. Given the enormous amount of work going on, it is important that a new chairperson is appointed. I have discussed the issue but not the replacement. The Minister for Finance will move on this very shortly.

Mr. Rabbitte: On that point, has the Taoiseach had any direct discussions with Mr. Phil Flynn either immediately prior to his resignation or since?

An Ceann Comhairle: That does not arise out of the four questions.

Mr. Rabbitte: The answer to the question is probably "no" and it would take approximately five seconds to answer.

The Taoiseach: No.

Mr. Rabbitte: Does the Taoiseach believe the resignation has any adverse implications for the implementation programme, given the circumstances surrounding it?

An Ceann Comhairle: The question must refer specifically to the Department of the Taoiseach.

Mr. Rabbitte: Does the Taoiseach believe the resignation of the chairman of the implementation committee, in circumstances in which he felt obliged to resign, has had any adverse implications for his Department?

The Taoiseach: From the point of view of my Department, the chairman, to his credit, put in a significant amount of his time. He has many commitments but he was dedicated to moving this forward. He is obviously a loss to the group. However, there are other good and dedicated people on the group. They include the Chairman of the Office of Public Works; the Secretary General, PSMD, of the Department of Finance; a chartered surveyor; an outside private sector managing director; a former chairman of the Revenue Commissioners. The resignation is a distraction and it is necessary to fill the position and move on. The process of engaging with the advisory committee, my Department and others has been well organised. It would be better if difficulties did not arise, but they did and we must now move on.

Caoimhghín Ó Caoláin: Can the Taoiseach tell the House who now sits on the Cabinet Sub-Committee on Decentralisation? Has a review been carried out, given what I would describe as the revised estimate, the downward revision, which resulted from the failure to secure sufficient interest among civil servants? The figures are clearly lower than initially anticipated by the Government.

An Ceann Comhairle: This question refers specifically to the Department of the Taoiseach. General questions should be directed to the line Minister, the Minister for Finance.

Caoimhghín Ó Caoláin: Earlier the Ceann Comhairle stopped me on the Esat Digifone mobile licence as if he had better information. I did not respond then that the Moriarty tribunal had dealt with this. My question relates——

An Ceann Comhairle: Discussion on the Moriarty tribunal is not appropriate. The Deputy knows the ruling.

Caoimhghín Ó Caoláin: The Ceann Comhairle saw fit to interrupt me when he did not know what he was talking about. My question relates to the Department of the Taoiseach. It is becoming extremely tedious to be constantly interrupted.

An Ceann Comhairle: The Chair never interrupts. The Chair intervenes when necessary.

Caoimhghín Ó Caoláin: My question is whether or not a review has taken place as a result of the revised estimate of the numbers prepared to relocate.

The Taoiseach: There is no review. The work of preparation actively continues. There are

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priority areas for the first stage. There will be a second report later in the spring. While anticipated numbers have not been achieved in early rounds, there are more than enough to go on with. Perhaps it will be prioritised over a longer period, but work continues.

Caoimhghín Ó Caoláin: Is a report made to a Cabinet sub-committee?

The Taoiseach: Reports are made to the entire Cabinet as this issue affects practically all Ministers. A Cabinet committee meets when necessary but a monthly report is made to the full Cabinet.

Mr. Sargent: Will the Taoiseach indicate when the new chairman of the implementation group will take up the position following the resignation of Mr. Phil Flynn? Given the Taoiseach's earlier reply, on what basis does he state that there is no pressure on civil servants to accept decentralisation before they apply for promotion? The decentralisation programme was introduced as a voluntary scheme. This seems to be contrary to the spirit of the scheme.

An Ceann Comhairle: This question refers specifically to the Department of the Taoiseach.

Mr. Sargent: It does. I hope the Taoiseach will be able to respond.

Is the Taoiseach aware that IMPACT has published very worrying figures which indicate that quite a number of skilled positions will be unfilled if the decentralisation of a number of Departments — I am not sure whether the Department of the Taoiseach is one of them——

An Ceann Comhairle: The question refers specifically to the Taoiseach's Department.

Mr. Sargent: Will the Taoiseach take a note of that and say whether that problem will be addressed?

An Ceann Comhairle: We cannot create a precedent where Members can ask the Taoiseach general questions.

Mr. Sargent: I am not trying to create a precedent. I am asking about the decentralisation programme within the constraints set down.

An Ceann Comhairle: That is a matter for the Minister for Finance.

Mr. Sargent: Is the Taoiseach aware of that worrying development? Is there any indication that wages and costs for people who remain in Dublin will be assessed as an additional cost, given that they are voluntarily not being decentralised.

The Taoiseach: The system is a voluntary one. It is being implemented on a voluntary basis. That is the spirit of it and that is how it operates.

Requests to move Adjournment of Dáil under Standing Order 31.

An Ceann Comhairle: Before coming to the Order of Business I propose to deal with a number of notices under Standing Order 31.

Mr. Healy: I seek the adjournment of the Dáil under Standing Order 31 to discuss a matter of national importance, namely, the need for the Minister for Justice, Equality and Law Reform to immediately commence the appointment of community gardaí and the installation of closed circuit television cameras in towns and cities throughout the country in order to deal with the ongoing scourge of anti-social behaviour and to enable the Minister to make a statement on the matter.

Mr. Sherlock: I seek the adjournment of the Dáil under Standing Order 31 to discuss a matter of public interest requiring urgent attention, namely, the need for the Government to act to stop a leading mobile phone company from erecting mobile phone masts within the Dairygold complex in Mitchelstown, County Cork and within MICAM Limited, formerly Mica & Micanite, in Mallow, owing to the uncertainty surrounding the potential health risks of such masts. In view of the importance of this issue, I hope the Chair will agree to my request. I should have mentioned that this is without licence or permit in each case.

Dr. Cowley: I seek the adjournment of the Dáil under Standing Order 31 to discuss a matter of major national importance, namely, the unrecognised part which road conditions play in the causation of serious and fatal road traffic accidents and the need for a nationwide study to audit where dangerous road conditions exist and have caused and continue to cause fatal road traffic accidents.

Mr. Sargent: I seek the adjournment of the Dáil under Standing Order 31 to discuss a matter of national and international importance, namely, the inadequacy of the Government's plans to reverse the inexorable growth of greenhouse gas emissions in light of reports today that a further allowance of 37,000 tonnes of CO_2 emissions is proposed for Irish Cement plc while at the same time the energy performance directive for the built environment has not been implemented.

An Ceann Comhairle: Having considered the matters raised I do not consider them to be in order under Standing Order 31.

Order of Business.

The Taoiseach: It is proposed to take No. 10*a*, motion re proposed approval by Dáil Éireann of the Údarás na Gaeltachta Elections (Amendment) Regulations 2005; No. 1, Criminal Justice (Terrorist Offences) Bill 2002 — amendments from the Seanad; No. 18, Safety, Health and Welfare at Work Bill 2004 — Order for Report and Report and Final Stages; and No. 17, Dormant Accounts (Amendment) Bill 2004 *[Seanad]* — Second Stage (resumed).

It is proposed, notwithstanding anything in Standing Orders, that No. 10*a* shall be decided without debate. Private Members' business shall be No. 43, motion re education, special needs, autism and class sizes (resumed) to conclude at 8.30 p.m.

An Ceann Comhairle: There is one proposal to be put to the House. Is the proposal for dealing with No. 10*a,* motion re proposed approval by Dáil Éireann of the Údarás na Gaeltachta Elections (Amendment) Regulations 2005, agreed?

Mr. Sargent: Níl sé aontaithe.

Mr. Kenny: May I ask the Taoiseach the reason the date of 2 April was chosen? I know the Taoiseach said it was a little cold for canvassing the other day in Meath.

The Taoiseach: It was freezing.

Mr. Kenny: I understand that. Where I come from we do not feel that cold.

Cecilia Keaveney: Certainly all along the north east——

The Taoiseach: All the natives thought it was very cold.

Mr. Kenny: Whoever fixed the date of the elections for 2 April did not appreciate that the Easter campaign comes just before it. Obviously, the Taoiseach will be dispensing his parliamentary members, after a heavy defeat in Meath and Kildare, to the outermost fringes of the country to the Gaeltacht areas. Why was the date of 2 April chosen?

Cecilia Keaveney: The last date set was very successful.

Mr. Kenny: Is that a statutory date by which the elections must be held or was it chosen at random?

Mr. Sargent: : Níl an Comhaontas Glas ag glacadh leis seo gan díospóireacht. Is mionphoínte é seo de réir an Aire ach ní mhionphointe é de réir muintir na Gaeltachta go mbeidh athrú suntasach le haghaidh iarrathóirí a bheidh ar lorg suíochán ar Údarás na Gaeltachta. Anois beidh baint le páirtí luaite, rud nach raibh i gceist go dtí seo. Is tús é ar athrú eile a bheidh ag cur isteach ar údaráis eile ar nós an IDA agus a leithéid. Is tráidisiún é nach mbeidh an t-údarás gafa leis an leibhéal céanna polaitíochta. Tá an tAire ag athrú sin agus tá gá le díospóireacht leis seo mar is athrú suntasach é.

Aengus Ó Snodaigh: Tá mé i gcoinne an rúin seo a rith gan díospóireacht mar tá athraithe bunúsacha i gceist san reachtaíocht. Ba chóir go mbeadh an toghchán i mí Aibreán ach tá na hathraithe bunúsacha atá sa dréacht ag tarraingt siar ón stair a bhí i dtoghcháin údaráis agus ag bogadh i dtreo toghchánaíocht páirtí polaitiúil mar go mbeadh ar dhaoine ánrachán a fháil mura bhainfeadh siad le páirtí polaitiúil, chaithfeadh siad 15 ainm a fháil.

Tá athrú bunúsach eile i gceist ag an Aire atá ag ísliú an choisc ar chanbhasáil ó 100 méadar ón staisiún vótála go dtí 50 méadar. Is i malairt threo a ba chóir a bheith ag dul, ag cur leis an chosc go dtí 200 méadar seachas atá ráite sa dréacht a fuair muid.

Tá mise agus mo pháirtí ag cur i gcoinne an rúin seo a bheith curtha gan díospóireacht.

Mr. McGinley: Aontaím leis an dearcadh atá curtha i láthair ag na Teachtaí eile. Tá sé tábhachtach go mbeidh díospóireacht de chineál éigin mar go bhfuil athrú bunúsach ar thoghchán an údaráis. Go dtí seo, ní raibh páirtithe polaitíochta ainmnithe mar a bheidh as seo amach. Sin an chéad chúis.

An dara cúis, agus b'fhéidir go ndéanfadh an Tí seo soiléiriú air, sin an laghdú ó 100 méadar go dtí 50 méadar ar an achar gur féidir le daoine bheith ag canbhasáil agus ag déanamh bolscaireachta taobh amuigh den bhothán vótaíochta. An bhfuil sin mar an gcéanna le gach toghchán eile nó an rud eisceachtúil seo a bhaineann leis an údarás?

Ba chóir go mbeadh díospóireacht ann mar is athrú bunúsach é seo ar choincheap Údarás na Gaeltachta a bhí neamhpholaitiúil.

Minister for Community, Rural and Gaeltacht Affairs (Éamon Ó Cuív): An fáth gur roghnaíodh 2 Aibréan ná go gcaithfidh an toghchán a bheith ann cúig bhliain agus sé mhí tar éis an chinn deiridh. Bhí an ceann deiridh mí na Nollag 1999 agus caithfidh sé a bheith idir mí na Nollag agus mí an Mheithimh. Bhí seo pléite agam go poiblí le pobal na Gaeltachta agus na baill údaráis agus aontaíodh go mbeadh sé san earrach na bliana seo. D'fhógair mé sin cúig bhliain ó shin. Shíl mé go mb'fhearr fanacht go dtí tar éis athrú an ama — ní raibh mé anuas ar an bhFreasúra, shíl mé go mba cheart deis a thabhairt do dhaoine canbhasáil agus na oícheanta fada acu.

Roghnaíodh an Satharn mar bhí sé ar an Satharn cheana agus thaitinn sé leis an bpobal. Pobal scaipthe atá i gceist agus bíonn go leor acu ag obair agus ag staidéar i mBaile Átha Cliath agus áiteanna eile. Tugann seo deis dóibh dhul abhaile d'áiteanna nach mbeadh siad in ann a dhul más tráthnóna De hAoine a bheadh ann don

[Éamon Ó Cuív.]

toghchán mar bheadh fadhb fáil amach as an gcathair agus bheith sa mbaile roimh 9 p.m. ar an Aoine. Feileann ar an Satharn leis seo.

Ó 1979, b'é an fíorscéal gur theastaigh na daoine páirtithe éagsúla a chur ar na postaeir ach nuair a chuaigh daoine isteach ag breathnú ar an bpáipéar ballóide, ní raibh ainm aon pháirtí ar an bpáipéar ballóide. Tá sé in am fáil réidh leis an bhfinnscéal agus an fhírinne a admháil — go mbíonn daoine ag seasamh do na páirtithe. Bhí éagóir á dhéanamh ar pháirtithe polaitiúla agus daoine a bhí ag seasamh leo gurbh é seo an t-aon toghchán amháin nach raibh ainm an pháirtí sofheicthe ar an bpáipéar.

12 o'clock

Ní shin le rá nuair a thoghfar an bord nach mbeidh comhoibriú idir na baill. Nach bhfuil Fine Gael tar éis coinbhinsiún a reáchtáil? Níl a fhios agam faoi Sinn Féin, níl aon iarrathóir aige i gCiarraí ach tá i gConamara. Glacaim go bhfuil iarrathóirí ag an gComhaontas Glas agus go mbeidh siad ag seasamh ag coinbhinsiún de chuid an Chomhaontais Ghlais agus go n-ainmneofar ansin iad agus go mbeidh logo an pháirtí ar na postaeir. Tá rud éigin míréalaíoch go mbeadh chuile duine ag dul thart ag cur ainm na bpáirtithe ar na postaeir agus nach mbeadh siad le feiceáil ar an bpáipéar ballóide. Finnscéal atá ann agus sin an fáth gur cuireadh na leasaithe sin air.

An leasú deireannach a luadh an 50 méadar. Sin a bhí ann ag na toghcháin do na húdaráis aitiúla agus ní hathrú an suntasach atá i gceist i dtaobh an údaráis.

Question put: "That the proposal for dealing with No. 10a be agreed."

The Dáil divided: Tá, 71; Níl, 48.

Tá

Ahern, Bertie.
Ahern, Dermot.
Ahern, Michael.
Ahern, Noel.
Andrews, Barry.
Ardagh, Seán.
Brady, Johnny.
Brady, Martin.
Brennan, Seamus.
Callanan, Joe.
Callely, Ivor.
Carey, Pat.
Cassidy, Donie.
Collins, Michael.
Cooper-Flynn, Beverley.
Coughlan, Mary.
Cowen, Brian.
Cregan, John.
Cullen, Martin.
Curran, John.
Davern, Noel.
Dempsey, Tony.
Dennehy, John.
Devins, Jimmy.
Ellis, John.
Fahey, Frank.
Finneran, Michael.
Fitzpatrick, Dermot.
Fleming, Seán.
Gallagher, Pat The Cope.
Glennon, Jim.
Hanafin, Mary.
Haughey, Seán.
Healy-Rae, Jackie.
Hoctor, Máire.
Jacob, Joe.
Keaveney, Cecilia.
Kelleher, Billy.
Kelly, Peter.
Killeen, Tony.
Kirk, Seamus.
Kitt, Tom.
Lenihan, Brian.
Lenihan, Conor.
McDowell, Michael.
McEllistrim, Thomas.
McGuinness, John.
Martin, Micheál.
Moloney, John.
Moynihan, Donal.
Moynihan, Michael.
Mulcahy, Michael.
Nolan, M.J..
Ó Cuív, Éamon.
Ó Fearghaíl, Seán.
O'Connor, Charlie.
O'Donnell, Liz.
O'Donovan, Denis.
O'Flynn, Noel.
O'Keeffe, Ned.
O'Malley, Fiona.
O'Malley, Tim.
Parlon, Tom.
Power, Seán.
Roche, Dick.
Sexton, Mae.
Smith, Brendan.
Wallace, Dan.
Wilkinson, Ollie.
Woods, Michael.
Wright, G.V.

Níl

Allen, Bernard.
Boyle, Dan.
Breen, Pat.
Broughan, Thomas P.
Burton, Joan.
Connaughton, Paul.
Costello, Joe.
Crawford, Seymour.
Deenihan, Jimmy.
Enright, Olwyn.
Ferris, Martin.
Gilmore, Eamon.
Gogarty, Paul.
Gormley, John.
Gregory, Tony.
Healy, Seamus.
Higgins, Joe.
Hogan, Phil.
Howlin, Brendan.
Kehoe, Paul.
Kenny, Enda.
Lynch, Kathleen.
McCormack, Padraic.
McGinley, Dinny.

Níl—*continued*

McGrath, Finian.
McGrath, Paul.
McManus, Liz.
Mitchell, Olivia.
Morgan, Arthur.
Murphy, Gerard.
Naughten, Denis.
Neville, Dan.
Ó Caoláin, Caoimhghín.
Ó Snodaigh, Aengus.
O'Keeffe, Jim.
O'Shea, Brian.
O'Sullivan, Jan.
Pattison, Seamus.
Quinn, Ruairí.
Rabbitte, Pat.
Ring, Michael.
Ryan, Seán.
Sargent, Trevor.
Sherlock, Joe.
Shortall, Róisín.
Stanton, David.
Twomey, Liam.
Upton, Mary.

Tellers: Tá, Deputies Kitt and Kelleher; Níl, Deputies Kehoe and Broughan.

Question declared carried.

Mr. Kenny: The Supreme Court decision in respect of charges levied against public patients has generated considerable interest. When does the Taoiseach expect the sub-committee, which he will probably chair, to meet? In view of the number of queries Members are receiving from next of kin and others, will there be a point of contact to which persons who believe they have a legitimate claim to have a charge paid back to them or their estate can send information? Will information be supplied as to the extent of proof required? When does the Taoiseach expect legislation to come before the House to deal with the element which the Supreme Court deemed to be constitutional?

Has an investigation been carried out into the destruction caused at the national aquatic centre by a storm?

An Ceann Comhairle: The matter does not arise on the Order of Business. I suggest the Deputy submit a question to the line Minister.

Mr. Kenny: Could I fit in a question under the Abbotstown Sports Campus Development Authority Bill? The same wind which blew over this publicly-funded building blew over many private buildings without causing any destruction. It is extraordinary that a building of such cost and size should be damaged in such a way.

With regard to the Transport Reform Bill, is the Minister for Transport, who is not present, serious about announcing a rail link to Navan in the next three weeks. He stated he was closing in on——

An Ceann Comhairle: The matter does not arise on the Order of Business. The House cannot discuss the content of legislation at this stage.

Mr. Kenny: A Cheann Comhairle, many years ago you told me to name some kind of a Bill and then ask a question.

An Ceann Comhairle: The Deputy may ask about legislation coming before the House but not its content.

The Taoiseach: On the first matter, the Cabinet sub-committee is looking at this issue and we have had advice from the Attorney General. We discussed the matter yesterday and received a report from the Tánaiste who answered questions on the issue in the House yesterday. We will move ahead on the issues. The Deputy will appreciate there are many complex issues and questions about the categories and we will have to work our way through them. It will take some time before we get to legislation. We will have to work on the handling of the various categories that have been identified in the Supreme Court judgment, based on what the Tánaiste said in the House on Leaders' Questions yesterday.

The Abbotstown Bill will be taken this session. There is an examination of what happened around those issues and the official there has made some statements about this. The transport programme will be announced today.

Mr. Howlin: I assume the Government is proceeding with its commitment to have the "yellow pack" medical cards available on 1 April. The timeframe for the enactment of legislation is tight. When will it be brought before the House?

With regard to another matter of some urgency, which has arisen due to constant reports of abuse of the current work permits legislation, new work permits legislation was promised for this session. When will it come before the House?

The Taoiseach: The Tánaiste is answerable for the legislation giving tens of thousands of people free access to GPs and is working on it as a matter of urgency so that people will be able to get these medical cards, which are important for their health, in the month of April. The work permits legislation is due this session.

Mr. Sargent: Will the amended nursing home legislation take into account relatively young people who have been affected by the Supreme Court decision for other reasons and to whom pension books do not apply? What is the scope of the legislation and when will it be published?

An Ceann Comhairle: The question is not appropriate at this stage and should be directed to the line Minister.

Mr. Sargent: I am seeking information on promised legislation.

My second question relates to the Curragh of Kildare Bill, which was raised with me while canvassing with Councillor J. J. Power in Naas last night. Although the Curragh is not in Kildare North, it is of relevance to many people in Naas. When will the legislation be published?

The Taoiseach: The Curragh of Kildare Bill will be published in the summer.

Ms O. Mitchell: In view of the Taoiseach's plans for an M50 Mark II and the fact that the cost per kilometre of the current M50 is running at about €60 million——

An Ceann Comhairle: Does the Deputy have a question appropriate to the Order of Business?

Ms O. Mitchell: I do. It is envisaged that this road will cost €4.2 billion. Is there any sign of a strategic infrastructure Bill, which is now critical?

The Taoiseach: Work on that legislation is advancing and the Government hopes to conclude it shortly for introduction during the year.

Ms Shortall: Following yesterday's report on the frequency of collisions between Luas trams and other vehicles, what is the reason for the delay in the Railway Safety Bill 2001, which completed Committee Stage more than two years ago?

The Taoiseach: I will ask the Minister why this Bill has not been brought forward. It is ordered for Report Stage.

Caoimhghín Ó Caoláin: Yesterday, I asked the Tánaiste and Minister for Health and Children, Deputy Harney, if legislation is intended to address the disparities in regard to the practice of ECT for patients in mental hospitals, and other related matters. Her reply referred to the medical practitioners Bill. Is legislation being prepared to address the use of ECT and the other disparities that exist in regard to addressing the needs of patients with mental health issues?

Second, in which session is it intended that the promised pharmacy Bill will be published?

The Taoiseach: The medical practitioners Bill will be published later this year. I do not know if the issues identified by Deputy Ó Caoláin will be covered by the provisions of this legislation, but will ask the Department of Health and Children to communicate with the Deputy on this matter.

Caoimhghín Ó Caoláin: Will the Taoiseach answer my second question?

An Ceann Comhairle: Deputy Ó Caoláin should submit a question to the line Minister. Questions about the content of a Bill are not appropriate to the Order of Business.

Caoimhghín Ó Caoláin: The Taoiseach has indicated he will answer my question about the pharmacy Bill.

The Taoiseach: The pharmacy Bill is due later this year.

Údarás na Gaeltachta Elections: Motion.

Minister of State at the Department of the Taoiseach (Mr. Kitt): I move:

"That Dáil Éireann approves the following regulations in draft:

Údarás na Gaeltachta Elections (Amendment) Regulations 2005,

copies of which regulations in draft were laid before Dáil Éireann on 22 February 2005."

Question put and declared carried.

Criminal Justice (Terrorist Offences) Bill 2002: From the Seanad.

The Dáil went into Committee to consider amendments from the Seanad.

Seanad amendment No. 1:

In page 51, before section 52, the following new section inserted:

52.—Section 38 of the Act of 1939 is amended by adding the following subsection:

'(4) For the purposes of this Act, a Special Criminal Court is in existence if it has been established under this section and has at the relevant time not fewer than three members appointed under section 39.'.

Minister for Justice, Equality and Law Reform (Mr. McDowell): Before dealing with this amendment, I will provide some background. As Deputies are aware, I obtained the approval of the Government last December for the establishment of an additional Special Criminal Court consisting of seven members. My objectives in this regard were twofold. First, dissident republican groups continue to pose a serious threat to the State. In this regard, I am determined to ensure that where persons who are intent on challenging the legitimacy and authority of the State are charged in regard to criminal offences, that such persons are brought swiftly to justice. In this context, the speedy resolution of trials before the Special Criminal Court will serve to demonstrate the State's resolve to deal seriously with any activity which is a threat to the State.

Second, I am also mindful of the need to avoid any difficulty or challenge on the basis that persons are being held on remand for lengthy periods of time pending trial. There are currently five cases before the Special Criminal Court and the earliest date available for a new trial is

October 2005. Cases coming before that court can be complex and lengthy, as we have seen, and with only one court available, even one or two extra cases could greatly increase delays.

On 30 July 2004, in the case of Colm Maguire *v.* the Director of Public Prosecutions, the Supreme Court confirmed that, on application for bail, the question of whether a trial would take place is an admissible and important consideration. The court stated that if a long-deferred trial were in prospect, bail would be granted where otherwise it might be refused. As this House knows, following the referendum on bail, one of the grounds for refusal of bail, as a matter of constitutional and statute law, is where the prosecutor establishes there is a likelihood that, if admitted to bail, the accused is likely to commit a different serious offence.

That particular ground was introduced after a referendum, proposed by my predecessor, Nora Owen. However, the Colm Maguire case seems to indicate that this particular line of objection can itself be compromised if the State cannot provide an early date for trial. This presents a difficulty. For example, if a group of people is found in a paramilitary training camp and the Garda indicates to the court that it is objecting to bail on the basis that these were clearly paramilitary subversives intent on destabilising the State and carrying out serious crimes, it should not be the case that these legitimate objections to bail should be overturned by considerations such as the degree of delay in securing a Special Criminal Court trial by reason of that court's existing commitments.

These amendments do not in any sense indicate that I have flagged in my complete belief that the preferable form of trial for indictable offences is jury trial. I am presenting no qualification of that view. As long as there is a need for a Special Criminal Court, however, those who are brought before that court must be dealt with in a timely fashion. My objective is not to institutionalise the court or make it more permanent. On the contrary, the purpose of this legislation is to ensure that the injustice of delay to both prosecutor and accused in the criminal process is obviated to the greatest extent possible, even in the special circumstances where the provisions of the Constitution for the establishment of Special Criminal Courts have, unfortunately, been necessarily invoked.

Mr. J. O'Keeffe: There are some basic principles that must be considered in examining these amendments. First, in an ideal society, the normal rule of law should apply, namely, the process of trial by jury. This should be our objective. Unfortunately, however, we do not live in an ideal society but must contend with subversive elements and those who do not accept the rule of law within the State. In this situation, we must be prepared to ensure that the necessary measures are taken to accord with another basic principle, which is the safety of the public. This involves the establishment and continuation of the Special Criminal Courts.

So long as subversive elements threaten our society, I accept the need for such courts. I aim towards the situation where they will no longer be necessary and where normal jury trials will take place in all cases. However, such an eventuality is dependent on the ending of subversive activity within the State and the acceptance of the rule of law by all political and other organisations.

The second major principle to be considered is the fundamental provision that justice delayed is justice denied. If we must have Special Criminal Courts, there is an obligation on the State to ensure that those who are brought before such courts are dealt with as speedily, fairly and efficiently as possible. This necessitates the provision of trials within a reasonable time. If one Special Criminal Court is found inadequate to deal with cases in reasonable time, another must be established. If that is done, it must be properly underpinned in legislation. I support this amendment that underpins the principles I have outlined. However, I long for the day when there will be no need for Special Criminal Courts. In the meantime, however, we must ensure they operate fairly, efficiently and without undue delay.

Mr. Costello: This amendment gives rise to considerable concerns, already voiced on the Criminal Justice Bill 2004. The Minister for Justice, Equality and Law Reform justifies the establishment of a second Special Criminal Court on the basis that justice delayed is justice denied. Previous rulings on granting bail could be overturned if there was an inordinate delay in the provision of justice and a trial date being set in the Special Criminal Court. Will the Minister provide the House with statistics on how the Special Criminal Court has been used over recent years? Are there offences before the court which have nothing to do with emergencies or the scheduled offences in the Offences Against the State Act? Non-scheduled offences and those normally dealt with in the ordinary courts are being lumped into the jurisdiction of the Special Criminal Court. This information is required when examining whether the Special Criminal Court is operating in its remit or whether it has been unduly expanded to include a plethora of other offences.

Once the backlog of cases has been dealt with, will the Minister abolish the second Special Criminal Court? Otherwise there will be a recurring backlog because of the manner in which the legislation is applied and the court is operated. Non-scheduled offences can become the major part of the legislation. Deputy Jim O'Keeffe stated there was much subversive activity. It is ironic there is more subversive activity now than before the Good Friday Agreement. However, much of the subversive activity being dealt with by the courts and the Garda falls under the proceeds of crime legislation and the Criminal Assets Bureau. While some argue that such activity is

[Mr. Costello.]
another mechanism of usurping the authority of the State, it is covered by special powers legislation with accompanying investigative bodies. We must be careful to separate those two types of legislation.

The Good Friday Agreement contains an obligation for the review of all special powers legislation with a view to dismantling it. The British authorities abolished the Diplock courts under the Agreement. However, on our part there has been no *quid pro quo*.

This morning the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights heard representations from the Irish Council for Civil Liberties and Amnesty International on the Criminal Justice Bill 2004. Amnesty International is concerned with the bevy of provisions contained in this Bill that could be in breach of international requirements on human rights. If we introduce special powers legislation, safeguards must be put in place. There is no proposal in this legislation that the proposed second Special Criminal Court will be reviewed or abolished. When the Offences Against the State Act was amended after the 1998 Omagh bombing to provide extra powers for detention, a specific caveat was included that the provision was to be reviewed on an annual basis. However, what mechanisms will inform us that this second Special Criminal Court may become unnecessary? While the Minister claims he is establishing it to deal with the backlog of cases, no other reason has been given. More reasons and statistics must be given and a review mechanism must be put in place. Otherwise, we are being unfair and not entirely responsible in accepting this Bill.

On constituting a terrorist offence, this Bill includes everything, down to the kitchen sink. Schedule 2 would make one's hair turn grey, if it was not already so. Offences that may be considered terrorist and terrorist-linked activities include common law offences such as rape, manslaughter, assault causing harm, assault causing serious harm, poisoning and endangerment. Endangering traffic is also considered a terrorist offence. Malicious damage to railways, obstructing engines or carriages on railways are all considered terrorist offences. Our wonderful air force will be protected by the Schedule.

Acting Chairman (Dr. Cowley): Will the Deputy stick to the amendment?

Mr. Costello: The Special Criminal Court will deal with many of these offences. Offences relating to firearms and other weapons are outlined in the Schedule, with reference to the Firearms Act 1925. Section 30 of that Act, dealing with the accommodation of firearms, requires amendment rather than the Criminal Justice Bill 2004. I say that jocosely, but having seen a presentation on the matter, the 1925 Act should be re-examined with a view to introducing further conditions. The Minister must give more information on the proposals for a second Special Criminal Court.

Mr. McDowell: I welcome Deputy Jim O'Keeffe's support. Like him, I know that all lawyers share the view that the sooner we return to jury trial in all our cases, the better. It is an important constitutional right but one which the framers of the 1937 Constitution felt could be compromised if, due to the activities of others, the ordinary courts became inadequate for the proper discharge of criminal justice. It is not an unconstitutional or extra-constitutional power to look to what happens when a subversive and paramilitary threat appears which justifies the establishment of a Special Criminal Court.

Deputy Costello inquired if this is as a result of the backlog of cases and the placing of non-terrorist or subversive type of offences before the Special Criminal Court. All cases in the backlog are considered subversive type offences involving membership of illegal organisations, firearms and the like.

Mr. Costello: What about scheduled offences?

Mr. McDowell: Organised crime type offences do not form part of the backlog. The Hederman committee reviewed the Special Criminal Court and came to the conclusion that the existence of the court was justified by subversive activity alone, that is, it was justified regardless of whether there was or was not some organised crime case which might or might not be sent to the Special Criminal Court.

Deputy Costello referred to the ingredients of the offences set out in Part 1 of Schedule 2. I refer the Deputy to section 4 which states

> "terrorist activity" means an act that is committed in or outside that State and that -
>
> (*a*) if committed in the State, would constitute an offence specified in *Part 1* of *Schedule 2*, and
>
> (*b*) is committed with the intention of—
>
> (i) seriously intimidating a population,
>
> (ii) unduly compelling a government or international organisation to perform or abstain from performing an act, or
>
> (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a State or an international organisation;

Paragraph (*b*) is important too. I accept the Deputy's point on the first part of the equation, the Schedule on page 88. However, one must take into account that the preconditions in section 4 paragraph (*b*) seriously restrict an apparently broad category of crimes to ones which have a terrorist function.

The other point one must bear in mind is that during the passage of this Bill, it was made very clear that the scope of terrorism was being further

restricted to meet some of the criticisms made in this House on Second Stage. To prevent some of the cases mentioned on Second Stage, we, as promised, inserted into the legislation a provision stating that no offences could be proceeded with on an extra-territorial basis, or with an extra-territorial dimension, unless the Attorney General gave his consent to it. We spent a long time considering exactly how we would deal with the legitimate points raised on Second Stage in this House on that issue. This is formula we came up with in the end.

I take on board the point the Deputies made in regard to a second Special Criminal Court being established. However, a fair point to make is that if we establish a second Special Criminal Court and if the objective basis for its establishment continues, then nobody's rights will be interfered with by the fact that the trial it gives is speedier than otherwise. It does not dilute anybody's right. Nobody's rights are enhanced by the fact there is delay, while nobody's rights are interfered with by the fact that delay is removed.

Mr. Costello: I meant to compliment the Minister on the safeguards he included, particularly in regard to the Attorney General and the change in the definition. However, we have some problems with the proposal. If there was a review mechanism in the legislation, or something to say a second Special Criminal Court was established for a particular reason and that it will be done away with once that reason is removed, I presume the second Special Criminal Court would be able to deal with that pretty quickly and get rid of the backlog. If it does, should it not lapse or be abolished?

The definitions of terrorist activities the Minister mentioned are fairly esoteric. What does "seriously intimidating the population" mean? How does one seriously intimidate a population in a democracy? In certain jurisdictions, populations could be seriously intimidated. Perhaps the Minister will elaborate on that. Section 4(*b*)(ii) states: "unduly compelling a government or an international organisation to perform or abstain from performing an act". This is weird and wonderful stuff. How does one unduly compel a government? Section 4(*b*)(iii) states: "seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a state or an international organisation". Some people might feel some of our economic and social structures need to be somewhat destabilised and radically reformed. It is still very vague. The types of offences are extremely broad. That remains a concern.

These are matters which will be deal with by a Special Criminal Court. Two decades ago, this legislation would have been regarded as emergency legislation but it is now becoming the norm in that it is being incorporated into our corpus of legislation. In our criminal justice legislation measures that would have been regarded with a jaundiced eye are now becoming quite normal. I have concerns about that and this legislation is one area in which these new measures are being introduced.

Seanad amendment agreed to.

Seanad amendment No. 2:

In page 51, before section 52, the following new section inserted:

53.—Section 49 of the Act of 1939 is amended by renumbering it as section 49(1) and adding the following subsections:

'(2) A trial that is to be heard before a Special Criminal Court may be transferred by the Court, on its own motion or on the application of a triable person or the Director of Public Prosecutions, to another Special Criminal Court, but only if the first Court decides that it would be in the interests of justice to do so.

(3) In deciding whether it is in the interests of justice to transfer a trial, the Special Criminal Court may consider any factors it thinks relevant, including—

(*a*) whether the transfer would be in the interests of the expeditious administration of justice, and

(*b*) whether the transfer would prejudice the triable person or persons or the prosecution.

(4) A trial may be transferred under this section notwithstanding that an order has been made under subsection (1)(*e*) in relation to the triable person or persons.

(5) Where 2 or more triable person are to be tried jointly, the decision of the Special Criminal Court to transfer the trial applies in relation to all of them.

(6) Subsection (5) does not affect the right of a triable person to apply for a separate trial and, if the application is granted, then to apply for a transfer of that trial.

(7) The decision of a Special Criminal Court to transfer a trial is final and unappealable.

(8) In this section "triable person" means a person sent or sent forward for trial to, or charged before or transferred under this Act to, a Special Criminal Court.'.

Mr. McDowell: This amendment is effectively to allow for the transference by a court on its own motion or on the application of a triable person or the Director of Public Prosecutions to another Special Criminal Court where only if the first court decides it would be in the interests of justice to do so. In other words, it will be open to any interested party, be it the defence, the pros-

[Mr. McDowell.]

ecution or the court itself, to seek to have a trial transferred. The transfer will only happen if it is in the interests of justice to do so. The factors that can be taken into account are set out in subsection (3).

Subsection (4) states that a trial can be transferred under this section notwithstanding that an order has been made in relation to the triable person. Subsection (1)(*e*) provides that if one or more Special Criminal Courts are in existence, the DPP can apply to a court to have the trial before that court. Simply put, the fact the DPP has selected a particular court to hear the case does not prejudice the rights of an interested party to apply to have it transferred to another court.

I do not believe this provision could be characterised as in any way cutting across the rights of people. It is a fair provision and it is clear that nobody can forum shop and that the court from which the trial is to be transferred must come to the view that the request is being made in the interests of justice which would be served by the transference.

Mr. J. O'Keeffe: If we are to have a second Special Criminal Court, it makes sense to have practical arrangements applying in regard to the transfer of cases between the two courts. It is important that the necessary safeguards are included and I am glad they are. Whatever decisions ultimately emerge in regard to the listing of cases in the courts will be open to the possibility of the accused being heard and decisions being made in the interests of justice. From that point of view, I am happy to support these amendments.

Mr. Costello: I understand a transfer will take place only if there is a backlog in one court and a case needs to be listed in the other court. I refer to subsection (7). The decision of a Special Criminal Court to transfer a trial is primarily unappealable. If one of the two Special Criminal Courts decides to transfer a case to the other one, the other court has no choice but to accept. It cannot appeal to a higher authority. What would happen if the second court were not disposed to take a trial thus transferred to it? Why should the transferring court have full jurisdiction? If the second court cannot refuse, the first court could decide to transfer and get rid of all its cases or perhaps all its difficult cases. This seems to be somewhat one-sided.

Mr. McDowell: I do not want any case to move like a ping-pong ball between two courts with both refusing it, which would fly in the face of everybody's concept of justice. For instance, at the moment cases are transferred between geographical locations under criminal justice law. It is not necessary to apply in Dublin to receive a case if it is to be moved from Donegal. It is generally presumed that the courts have a mutual respect for each other's decisions and if a court in Donegal were to decide to transfer a criminal case for trial in Dublin, a court in Dublin will not send it back on the basis that it was not asked. These decisions are not made lightly and members of the Judiciary respect each other's decisions. In these cases we do not have a regulator who arbitrates between two judges neither of whom wants to deal with the case. In general such a case is dealt with on a commonsense basis. If one court concludes it is in the interests of justice that it should not deal with a case and that another court should, all relevant issues would be ventilated before the first court and the case would not go into limbo between the two courts.

Mr. J. O'Keeffe: What is the thinking behind the proposal that the decision of the Special Criminal Court to transfer a trial is final and unappealable? When dealing with the administration of justice, one feels that any decision of a court in normal circumstances should be capable of being appealed and decided by another court. Why has such a decision been made final and unappealable?

Mr. McDowell: The Deputy will remember that as a matter of ordinary criminal justice procedure, at the moment provision is made for the transfer of cases from one court to another on a geographical basis in Ireland. Exactly the same provision applies in respect of that. They are considered to be final and unappealable orders. We do not want cases going into limbo or hyperspace between two courts. However, saying that a decision is final and unappealable does not mean it can be made unlawfully. Somebody might be able to put together a case stating that it was an unlawful exercise in a particular case.

If a judge decided to transfer a case from A to B for some prejudicial purpose or arbitrary reason, such as he did not like people of a particular class, colour, religious belief, sexual orientation or whatever, and it was manifest from the order that he had moved a case from Donegal to Dublin on such an arbitrary and unconstitutional basis, the fact that the decision is final and unappealable does not preclude going to the High Court to have the order quashed on the basis that it should not have been made in the first place. However, this would need to be done by way of judicial review and would not be an appeal as of right internal to the procedure, which is the distinction.

Mr. Costello: Will the Minister answer my point about the second Special Criminal Court? Surely it would make sense to have a proper listing giving a balance between the two courts. The power is given in this legislation exclusively to a court to transfer to another court. The power is not given to that court to have any say in the matter, regardless of how unfair it might be or what its workload might be.

Mr. McDowell: As I said, that is the case for geographical transfers. If it were a case of "out of the frying pan into the fire" with, for example, a case going from a court with no delay to one with a substantial delay, the first court should make the inquiry as to whether it is in the interests of justice and whether an early trial is likely to occur if the decision is made. The court would ask the parties to the case whether they are satisfied that if the case were transferred it would result in an earlier trial or whatever the point at issue might be. When given this function of not making an order unless it is in the interests of justice to do so, the members of the Judiciary would make precisely this kind of inquiry of the person requesting the change. Presumably in an adversarial system such as ours, if the Director of Public Prosecutions requested a transfer, the accused person could point to the likelihood of only getting a trial in six months' time instead of the following week. If the court asked counsel for the Director of Public Prosecutions and was advised this would be so, in all probability it would not be in the interests of justice to transfer it to the second court unless some radically different supervening reason could justify such a delay.

This provision is not unconventional. Where we provide for a transfer of a case from one court to another, the application and all the interests of justice issues are addressed in the first court and the second court is presumed to pay respect to the decision of the first court. If the decision were made improperly as a matter of law, while judicial review would be an option, an internal mechanism of appeal as of right is not provided in these cases as some certainty is needed. We cannot have cases lodged in some form of hyperspace between two courts.

Mr. Costello: The Minister's response does not explain the matter. While I do not want to labour the point, the first court can transfer a case if it decides it would be in the interests of justice. However, the first court will be the only court consulted on the matter. How will the first court decide? Will it play tick-tack with the second court? Nothing in the Bill allows it to do so. Only the first court can do so and this decision is unappealable. This could result in considerable friction between the two Special Criminal Courts.

Mr. McDowell: Subsection 3 of the amendment states:

> In deciding whether it is in the interests of justice to transfer a trial, the Special Criminal Court may consider any factors it thinks relevant, including—
>
> (*a*) whether the transfer would be in the interests of the expeditious administration of justice, and
>
> (*b*) whether the transfer would prejudice the triable person or persons or the prosecution.

All those issues must be considered, including expeditiousness. These are the issues capable of being viewed by the court where they are relevant. To provide otherwise would be to introduce a new mechanism of some kind of consultation and statutory uncertainty while two sets of judges consider a matter in two different locations, which would not be satisfactory and cause delay.

Mr. Costello: I am just trying to be helpful.

Seanad amendment put and declared carried.

Seanad amendment No. 3:

In page 55, before section 59 and Part 7 of the Bill, the following new section inserted:

"PART 7

COMMUNICATIONS DATA

59.—(1) In this Part—

'Act of 1993' means the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993;

'aggregated data' means data that cannot be related to individual subscribers or users;

'data' means communications data;

'data retention request' means a request made under *section 61* for the retention of traffic data or location data or both;

'designated judge' means the person designated under section 8 of the Act of 1993;

'Directive' means Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and protection of privacy in the electronic communications sector;

'disclosure request' means a request under *section 62* for the disclosure of traffic data or location data retained in accordance with *section 61(5)*;

'Garda Commissioner' means the Commissioner of the Garda Síochána;

'processing' has the same meaning as in the Data Protection Acts 1988 and 2003;

'Referee' means the holder of the office of Complaints Referee under the Act of 1993;

'service provider' means a person who is engaged in the provision of a publicly available electronic communications service by means of fixed line or mobile telephones.

(2) A word or expression that is used but not defined in this Part and is defined in the Directive has the same meaning in this Part as in the Directive.

Mr. McDowell: I wish to give some background to this set of amendments, as they were not present when the Bill was passed by this House. The data retention amendments, which are set out in amendments Nos. 3 to 9, inclusive, and their timing represent a response to a confluence of circumstances.

In January of this year, the Data Protection Commissioner, a statutory officer who is independent of the Minister for Justice, Equality and Law Reform, issued enforcement notices to telecommunications companies, directing them to erase telecommunications data as soon as it was six months old. As the notices were due to come into operation on 1 May 2005, a rapid response to them was essential. One of the reasons given by the Data Protection Commissioner for the notices was that he did not consider that there had been adequate legislative underpinning of the existing directives, which had been issued by my colleague, the Minister for Communications, Marine and Natural Resources.

1 o'clock

The importance of data information in fighting crime, including terrorist crime, and in safeguarding the security of the State cannot be underestimated. I do not refer to issues of a "big brother" nature, but to criminal matters such as nuisance calls. Data information can be used to determine where a particular person was at a certain time, for example, or whether a prosecution witness is being truthful about when he or she received a telephone call that may be relevant to the facts at issue in a given case. Such information may be of use to the defence side of a case as well as the prosecution.

When the Data Protection Commissioner issued the enforcement notices, I decided that I could not allow the Garda Síochána or anybody else to lose access to data information as soon as it was six months old. As it would not have been practical to prepare a separate Bill and to guide it through both Houses by 1 May next, I decided to add the necessary provisions to the Criminal Justice (Terrorist Offences) Bill 2002 while it was before the Seanad.

Deputies may be aware that an EU framework decision on data retention was published last year following the terrorist bombings in Madrid. The decision, which arose from a declaration on combating terrorism, instructed the European Council to adopt an instrument on data retention by June 2005. The framework decision, which was a response to the declaration, encountered some technical difficulties during the negotiations on it. It is doubtful, regardless of whether the framework decision or an alternative instrument is eventually agreed, that it will be possible to adopt any instrument by June of this year. It is normal to await agreement on such international instruments before preparing implementing legislation.

If the Data Protection Commissioner had not acted as he did and if the EU had not encountered the difficulties I have mentioned, different options would have been open to me. It is like standing with one's feet in different boats which are beginning to move apart — one will eventually have to make a decision. In this case, I would have had to decide whether to legislate on a domestic or a European basis. In the circumstances, I had to act quickly. I had no choice but to legislate at this time, given the possible delay in obtaining agreement on an EU instrument and the timing of the enforcement notices issued by the Data Protection Commissioner, who is entitled to withdraw the notices he has served. I understand he stated his intention to withdraw the notices if I were to publish legislation, which is passed by the Oireachtas, to put this matter on a statutory basis.

The necessity for this legislation was reinforced by the recent decision of the Court of Criminal Appeal in the case of Murphy *v*. Attorney General. The legal advice available to me on the implications of the judgment is that primary legislation on data retention, with statutory safeguards, is necessary. Incidentally, the court's judgment fully vindicated the use of communications data in the investigation of crime.

I emphasise two points before I outline my proposals. This legislation is concerned with data information such as the telephone number phoned, the time at which a call was made or the duration of a call. It is not concerned with the content of the call, which is dealt with in separate legislation from 1993. Section 60 clearly sets out the parameters of my proposals to ensure that there cannot be ambiguity on this point. The proposals are temporary measures for inclusion in this Bill as a matter of urgency, for the reasons I have outlined. As soon as an EU instrument is agreed, I intend to replace it with more comprehensive legislation that will take into account the provisions of the instrument.

Some people might wonder why I am making these proposals or why I am waiting for the EU to take a view on the matter. It is possible for somebody living in a certain jurisdiction to subscribe to a telephone service coming from another jurisdiction. That might not be as obvious in this country as it is elsewhere because we are on the north-west periphery of the European Union. A person living in County Louth could subscribe to a UK telephone service or a person living in Newry could subscribe to a telephone service in the Republic of Ireland. It is obvious that there are places across Europe in which it is possible, under free trade rules, to subscribe to and use a service which is provided outside one's jurisdiction.

There is a case for having the same minimum rules and parameters in respect of this issue across the EU. It is not the case that the EU is engaging in gratuitous meddlesome activity. It is not a case of integration or harmonisation for its own sake. There will be certain implications if a telephone company in one EU member state is required to store data and to make that available for retrieval at a later stage, at its own expense, while another member state is indifferent to the

matter and decides not to bother with it. The timing of the legislation will depend on when agreement is reached on an EU instrument, as well as on its complexity. As things stand, it is likely to involve a unanimous decision of the 25 member states, although I am not certain. In arriving at an agreement, the speed of the train will be determined by the speed of the slowest carriage.

I preface my explanation of the data retention provisions by further emphasising that they place no more obligations on communications service providers than the current provisions. However, I am incorporating into data retention for the first time important safeguards which will ensure that the system cannot be misused in any way. As things stand, service providers which receive directions are obliged to retain telephony data for three years, under directions issued by the then Minister for Public Enterprise in April 2002. It was intended that the directions would be temporary and would be replaced by primary legislation, as I now propose.

Section 61 of the Bill gives the Garda Commissioner the power to ask a service provider to retain communications data "for a period of 3 years". Under section 61(1), the data will be retained for the purposes of:

> (*a*) the prevention, detection, investigation or prosecution of crime (including but not limited to terrorist offences), or
>
> (*b*) the safeguarding of the security of the State.

Section 62 states that the data can be accessed in circumstances similar to those inserted in the Postal and Telecommunications Services Act 1983 by the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993. Under section 62(2), if the data are required for the purposes mentioned in section 61(1), an application for access to the data must be made in writing by "a member of the Garda Síochána not below the rank of chief superintendent". The data will then be disclosed to that officer. Alternatively, section 62(3) allows for the application to be made by "an officer of the Permanent Defence Force not below the rank of colonel" when the data are required for the purpose of safeguarding the security of the State.

Sections 63 to 65 introduce for the first time the safeguards I mentioned some moments ago. The sections extend to data retention provisions the safeguards already in existence under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993, which ensure the integrity of the interception of communications. I refer to matters such as telephone tapping, to use a colloquialism. As a result of this legislation, data retention provisions will be kept under review for the first time by the same judge of the High Court who keeps the interception provisions under review under existing legislation. The judge will also have the power to ascertain whether the Garda and the Defence Forces are complying with the data retention provisions. He or she can include in a report to the Taoiseach such matters relating to data retention as he or she considers appropriate.

Similarly, the existing arrangements relating to complaints referees, who are appointed under the 1993 Act, will apply in respect of data retention. The scope of the functions will be extended to include data retention provisions. Any person who believes that data relating to him or her that is in the possession of a service provider may have been accessed by the Garda or the Defence Forces can apply to the referee for an investigation. The referee can investigate whether a disclosure has been made and, if so, whether any provisions of section 62 have been contravened. If the referee concludes that there has been a contravention of section 62, he or she must notify the applicant and report his or her findings to the Taoiseach. The referee may also order the destruction of the relevant data and recommend the payment of compensation to the applicant.

I sum up the data retention provisions in amendments Nos. 3 to 9, which constitute the new Part 7 of the Bill, by stressing the importance of communications data in the continuing fight against terrorist crime. I do not want to refer to current investigations or investigations of relatively recent origin. Every Member knows that telecommunications data do not apply simply to big brother circumstances but also to personal tragedy and, therefore, there should be a coherent legislative basis therefor. If I simply made provisions underpinning the present regime without providing further protections, Deputies on both sides of the House would obviously ask why it is right to allow a High Court judge to keep an eye on what the Minister for Justice, Equality and Law Reform is doing regarding phone tapping to determine the content of communications while there is absolutely no supervision to determine whether chief superintendents of the Garda Síochána who are looking for data are abusing their power. This is a fairly cogent argument and it had to be met head-on. In any event, our obligations under the European Convention on Human Rights might well require us to extend that kind of independent supervisory mechanism from phone tapping to data communication-type circumstances.

I must accept that the proposals are modest in that they do no more than effectively continue the present procedures and provide legal certainty. In that sense, they do not extend Garda powers beyond their present scope but, in view of the sensitivity of the subject, they provide strict new safeguards to ensure the proper and safe operation of the system.

On phone tapping and intervention to open postal packages, the relevant power is vested in me. I must operate on the basis of a public servant who is the authorised officer under the legislation. It is not proposed to vest the power under discussion in the Minister for Justice, Equality and Law Reform under the new provision. This is for a very good reason. In the case of a ring

[Mr. McDowell.]

buying and selling hot cars, for example, the volume of applications could be substantial. It would be incorrect to contend that the Minister for Justice, Equality and Law Reform could spend his day authorising follow-on applications for data. I would do nothing else if I were to do that kind of work and I would not be able to supervise in any way. It is sensible to vest the power in senior Garda officers and it would be fanciful to suggest a Minister could discharge the function.

Regardless of who discharges the function, there is no argument against putting in place the same supervisory mechanisms. These mechanisms are such that a judge of the superior courts can vet what is happening every year and check by way of audit that there are good reasons for each action to be taken, and that somebody who believes his data were accessed improperly can go to an independent referee, make a complaint and, only if it is found that his data were accessed improperly, be informed of that fact, after which the independent referee can order the destruction of the data in question and propose compensation for the victim of the abuse of the power.

Mr. J. O'Keeffe: It would be in everybody's interest if a Europe-wide system were adopted as soon as possible because, as the Minister stated, communications systems are generally international. Such a system has not yet been put in place and, therefore, I appreciate the need to deal with the current set of circumstances.

I accept the need for these amendments and the only issues I want to raise concern the adequacy of the safeguards. I recollect a time when the phone tapping system was abused. It was not abused openly and directly by the Garda Síochána but by the then Government. This strengthens my resolve to ensure that any system put in place, which would be underpinned by statute, would provide full and adequate safeguards. I appreciate the need for access to data but I would prefer if it were not achieved directly through the initiative of a senior member of the Garda Síochána. I would prefer if there were an independent body to which the Garda could make an application. I understand the practical difficulties that exist. Will the Minister outline the consideration that has been given to establishing such a body?

Many people would like to ensure that in the fight against crime access to data by senior members of the Garda would be possible, but they would also like to be satisfied that there are sufficient safeguards to ensure that any such power could not be abused in any circumstances.

Mr. Costello: This is a fairly far-reaching measure and I understand the Minister's reasons for introducing it and particularly for ensuring that it is not abused. As we know, existing powers allow for interception, collection and the use of telecommunications data and other forms of data. However, a broader range of powers is being provided for and there seem to be very few safeguards. Section 61(1) states:

> Subject to subsections (2) and (4), the Garda Commissioner may request a service provider to retain, for a period of 3 years, traffic data or location data or both for the purposes of—
>
> (*a*) the prevention, detection, investigation or prosecution of crime (including but not limited to terrorist offences), or . . .

Prevention of crime is not very well defined and could lead to what is very much characterised as a trawling exercise. The definition is very broad and open to abuse. It could be argued that there is a big brother element. The power to deal with this matter rests with the Garda, the Defence Forces and the service providers and there is no monitoring body directly involved. There is no independent mechanism or forum to deal with the matter. What is the position on a service provider who decides to interfere with the general information that is collected, bearing in mind that we are not talking about interfering with the substance of the material at this point? What controls are there on a service provider once it has retrieved the data retained for three years and which it knows to be sensitive because the Garda or Defence Forces have contacted it? There is always fierce competition within the business community and a great deal of sensitive data passes through electronic and telecommunications networks. Newspapers thrive on private matters and make scandals out of people's lives. How can we control the service providers? What provision is there in this legislation to monitor them?

Monitoring takes place only if there is a complaint and complaints arise only when something goes wrong. How are we to know whether something is going wrong if there is no independent mechanism to monitor the service providers' retention of the data? Will it be stored in such a way that we can be sure it is safe? The Minister has secure accommodation for firearms but what about the data kept for three years? Given that everybody knows it is significant information, it is important to ensure it is safely stored.

I note the role of the Taoiseach in the matter but why has the Minister decided that the report of the findings of a complaint procedure would come to the Taoiseach, although one of the duties of the judge is to the Taoiseach or to the Minister? Would it not be better to give an annual report on how this operates? The Minister could report to the House on how data collection and retention mechanisms operate so that we could see what type of applications come from the Defence Forces, their number and statistics, and what applications come from the data, with statistics on that and how the service provider deals with the applications. We would see what mechanisms for secure safeguarding are in place, how many complaints there are and how many are vexatious or frivolous. What constitutes such a complaint? If one thinks that someone has been

interfering with one's data, one is surely entitled to complain but the referee can unilaterally determine it to be frivolous or vexatious.

I have many concerns about this legislation. The Minister indicated that he intended to review it and introduce a more comprehensive Bill when the EU directive is available for implementation. It would be useful to know how long this legislation will remain in place in its present form.

The Minister says he did not have much influence in the matter but this material should have been before us on Second Stage for a proper debate and the Oireachtas Committee on Justice, Equality, Defence and Women's Rights could have teased it out at an oral hearing. In that way we could have examined the provisions to see whether they are commensurate with our other international commitments and civil liberties and so on. Will the Minister provide more information and will he consider putting further safeguards in place?

Aengus Ó Snodaigh: I have already made clear my views on the repressive emergency legislation, the Offences against the State Act, and the European Arrest Warrant Act. We opposed this Bill on Second and Report Stages because it is repugnant to the principles of human rights and fundamental freedoms. Unfortunately, the amendments before us do nothing to alter this view.

I particularly oppose the new section which the Minister has introduced concerning traffic data retention. This is not only because it infringes the right to privacy, has fundamental and significant human rights implications and the Human Rights Commission has not had an opportunity to give its opinion on this and other amendments, but also because it is another instance of the Government making an illegal practice legal retrospectively, similar to the Health (Amendment) (No.2) Bill. I oppose it because of the manner in which the Minister is inserting these sections into this legislation by stealth at a late stage, which is anti-democratic.

My office never received the amendments and on inquiry was initially told that they would be published only this morning. That was misinformation. They were not available electronically. They were not in the internal mail this morning and the General Office informed me they were not circulated at all. They had got stuck in that office whose staff did not seem to be aware they had them. I cannot speak for other Deputies but I had only two hours in which to peruse these proposals. Human error or not, this is not acceptable. The debate should at the very least have been postponed on that basis as well as on the basis of my other points.

The first legislative programme of this Government contained a promise to introduce a communications data retention Bill to oblige licensed operators to retain records of communications data for a specified period necessitated by the terms of the EU telecommunications directive. It is listed as No. 63 in the legislative programme published on 25 January last. When my colleague, Deputy Morgan, yesterday asked the Tánaiste about the status of that Bill and when it would be published, she replied it was already in the Seanad. While her reply was somewhat incoherent, I can only take it that there is no communications data retention Bill apart from these amendments.

The Minister, who knows these measures are controversial and, some would say, illegal, wants to limit democratic debate on them as much as possible. It is his standard practice to use amendments to introduce one Bill inside another. I asked him a question on the data retention Bill on 6 March 2003 because the impending legislation was a controversial matter and had been opposed by human rights advocates across Europe. The Minister replied that he intended to publish the Bill in 2003 but I have not seen it. I am not certain whether this series of amendments is in effect that Bill.

The Minister also said that the legislation would be subject to the normal rigours of passage through the Oireachtas, including Committee Stage scrutiny. The Minister misled the Dáil and possibly also the Seanad and the public in this regard. I do not accept his reason for introducing these amendments at this stage. The safeguards in which he places great faith are not adequate.

The Bill does not provide for any punishment for somebody who misuses this. There is compensation but no punishment. These sections should not form part of the Bill but should be resubmitted for proper public scrutiny.

A debate should be held, as originally promised, on a separate communications data retention Bill. If the Minister does not withdraw amendments Nos. 3 to 10, this debate is similar to many other debates in that this legislation is a farce, like other legislation brought forward by this Minister.

Progress reported; Committee to sit again.

Sitting suspended at 1.30 p.m. and resumed at 2.30 p.m.

Ceisteanna — Questions (Resumed).

Priority Questions.

Social Welfare Payments.

62. **Mr. Stanton** asked the Minister for Social and Family Affairs the number of persons with disabilities, resident in institutions, who are in receipt of full and partial payments of the disability allowance; the number of persons with disabilities, residents in institutions, who do not receive the disability allowance; and if he will make a statement on the matter. [6227/05]

64. **Mr. Boyle** asked the Minister for Social and Family Affairs if he will consider introducing con-

[Mr. Boyle.]
trols to ensure that social welfare payments given to those in institutional care cannot be abused. [6340/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 62 and 64 together.

Disability allowance is a personal allowance payable to people between 16 and 66 years of age who satisfy certain medical eligibility conditions and a means test. Under existing social welfare legislation, disability allowance is not payable where a person is resident in an institution and where the cost of his or her care and maintenance is being funded in whole or in part by the Health Service Executive.

Since the introduction of the scheme in 1996, the restriction on payments to people in institutional care has been progressively relaxed. For example, the Social Welfare Act 1999 made provision for the retention of entitlement to disability allowance where a person is on disability allowance and subsequently goes into institutional care. My Department does not hold precise figures on the number of people who are resident in institutions at any given time and who are in receipt of disability allowance. There are many such institutions and recipients may move between institutional or community-based settings and their home, depending on their circumstances. My Department's role is, in the first instance, to ensure payment of the allowance to the person concerned or their appointed agent.

With regard to the number of people with disabilities who are resident in institutions and who do not receive disability allowance, the Deputy will be aware that in the context of Budget 2005, I announced that I would remove the restriction on entitlement to disability allowance in such cases. With effect from 1 June 2005, I will introduce a new weekly personal payment of up to €35 to people resident in institutions who are not getting a disability allowance payment. This allowance will replace the existing pocket money allowance which is paid to such residents by the Health Service Executive. My Department has already completed an information gathering process with the Health Service Executive with a view to arranging the payment of this new allowance. This process has identified that 2,469 persons with disabilities between 16 and 66 years of age, who currently reside in an institution on a permanent basis, do not have a disability allowance. The provisions for this allowance are contained in the current Social Welfare and Pensions Bill which is before the House.

In regard to payments to people in institutional care, the practice generally has been that when social welfare pensioners took up residence in long-stay residential care centres operated by the health boards, the board was appointed as an agent for the purpose of cashing the person's weekly pension or allowance and any charges towards the maintenance of people in institutions were normally deducted from these payments. Following instructions in December to the Health Service Executive, no maintenance charges for long-stay care are now being levied. Until such time as alternative arrangements can be made, the Health Service Executive has continued, in a temporary capacity, to act as an agent for the purpose of cashing pension or allowance books. These pension payments are being lodged in all cases to a patient's private property account which is being maintained by the Health Service Executive for each individual resident. Pensioners have full access to this account whenever they wish.

I understand that the Health Service Executive is in the process of writing to all social welfare pensioners in their care to advise them that maintenance charges no longer apply and that pension payments belong in full to pensioners themselves. Where a pensioner is unable, for whatever reason, to manage his or her own financial affairs, the Health Service Executive is making arrangements to inform the next-of-kin of the position. The HSE is also advising pensioners of the various options open to them for receiving their pension payments. These comprise continuation of the existing arrangement whereby the HSE cashes the pension book on the pensioner's behalf and lodges the payment to the patient's private property account; payment of the pension into a bank or building society account or a post office pensions savings account; and cashing the pension at a post office by the pensioner or appointment of another person, such as a relative, to act as an agent to cash the pension book on the pensioner's behalf.

A national implementation group of the HSE is responsible for ensuring that pensioners are fully advised of these new arrangements and my Department is represented on this group. My Department has primary responsibility for issuing payments to pensioners and ensuring that they are satisfied with the method of payment and the security of their payments. I have asked my officials to liaise with the Department of Health and Children and the Health Service Executive to ensure that all appropriate arrangements are made in this regard.

Mr. Stanton: I thank the Minister for his comprehensive reply. Will he agree with me that two people with disabilities in adjoining beds in one of these institutions will receive two separate payments? One will be entitled to the full disability allowance and the other person, who is currently receiving a pocket money allowance, will receive €35 a week after 1 June. Both of these people are citizens of the State, yet both are being treated differently. Will the Minister agree that this is inequitable and unfair? Is it his intention in the longterm to move to a situation where all patients will get the full disability allowance and, if so, will he give a timescale for it? Will he consider treating equally all patients in residential care and extending aid to all those who would be eligible if they were outside at this point? Following the

Supreme Court ruling, what are the implications for people with disabilities living in long-term care who had part of their disability allowance taken from them as a charge for their care? Will the Statute of Limitations apply in that instance? Is the Minister's Department making repayments to these people and their families?

Mr. Brennan: The Deputy and I had a brief discussion on this matter on committee yesterday and no doubt we will return to it later. The Deputy will be aware that these people were not included prior to the 1999 legislation. After 1999, people who went into an institution could bring their disability allowance with them, therefore, they were entitled to the full disability allowance by virtue of going into an institution. What I did in the budget, and what I am seeking to do in the legislation, is to ensure that the 2,400 or so people who were in institutions prior to 1999 will receive the first instalment of what should ultimately become the full disability allowance. It is my ambition to bring the current rate of €35 a week up to what over time will be equal to the full disability allowance, because these people have been left behind from an income point of view.

The Department of Health and Children is dealing with the other issue to which the Deputy referred. It relates to the proportion of one's allowance or pension that can be retained by the institution. The Department of Health and Children is drawing up legislation to deal with this issue. It will apply across the board, irrespective of the pace at which we get the €35 a week up to the full disability allowance level. I want people in adjoining beds in the same institution, with the same means, to get the same income, which is theirs alone. The proportion of that income which can be taken by the institution will be laid down in legislation. The payment of up to €35, which is a means-tested payment, is a step in the direction of catching up for these people who were pre-1999 and, therefore, did not have a disability allowance in the institution.

Mr. Boyle: My questions to the Minister are threefold. While he has already answered some aspects of them, I will ask again in order to get more detailed information. Given the differing rates of payment he intends to introduce under the new Social Welfare and Pensions Bill, is the Minister satisfied that any constitutional implications have been satisfied? In light of the difficulty in which the Government has already found itself following the court decision, is he satisfied that the different rates of payment to people with similar entitlements will not cause further trouble in the future? Is the Minister able to put a cost implication on the aspect of people in receipt of disability payments, in particular, and other social welfare payments, other than pensioners, who have been affected by the court decision? Will the Minister indicate the cost implication of that element alone because media reportage on this area to date has been solely on the pensioners issue?

My question is broader than abuse in which the Government might have been involved through poor regulation and poor management. Some family members and people known to the social welfare recipients abuse social welfare payments to people in institutional care. To what extent has the Department identified this to be a problem and what suggestions has it made to ensure that people cannot remove cheque payments from books, cash them outside the institution in question, pocket the money received and not use it for what it was intended? We are all aware that potential abuses exist and abuse is practised. Is the Minister and his Department aware of such abuse and what steps are being taken to prevent it occurring?

Mr. Brennan: I thank the Deputy for those questions. There are two parts to this issue. One is the income part, which is the property of the person in receipt of the disability allowance or this new allowance. The other part is the amount the institution is permitted to have paid to it, which will be dealt with under legislation going forward. The first part of the issue is not involved in the constitutional debate we have had because these are income payments made to individuals under law. Different payments are made to people under law depending on their various circumstances at the time. There are many cases where different rates of payment are made to people in broadly similar, but not identical, circumstances. Different rates can be paid in what appear to be similar circumstances but which are not quite the same. That is governed by legislation. Social welfare legislation laid down certain regulations in 1999 and prior to that such legislation laid down different rates.

The first part of this issue concerning disability allowances in residential institutions is the income side and in so far as that has been governed by law, it is legal and above board to have different rates. The second side of the issue, the charges for such care, is the side with which the Department of Health and Children deals. We have to separate those two issues. In so far as the second part of the issue has constitutional implications, they are the same as those that have been discussed by the Tánaiste and by other Members of the House in regard to payment for care. We have to separate the income side from the expenditure side, which is the constitutional area, and that is being dealt with.

I condemn any abuse by family members or anybody else — I assume that was what the Deputy was getting at — who do not play it fair with persons in residential institutions, be they relatives or persons for whom they are responsible or over whom they have some charge. I do not have any great statistics or information on that area. My Department tries to monitor, as best it can, how these arrangements work on the

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ground, but we do not have a great deal of information on that area.

Social Welfare Code.

63. **Mr. Penrose** asked the Minister for Social and Family Affairs his plans for the reform of the social welfare provisions available to lone parents; if he has considered the recent statistics published by the CSO on the number of births occurring outside marriage; his views on the recent EU survey which found that lone parents are extremely vulnerable to poverty; and if he will make a statement on the matter. [6108/05]

Mr. Brennan: Increases in the numbers of non-marital birth, as revealed in statistics, do not necessarily result in comparable increases in the incidence of lone parenthood. In many cases the parents of the children are living together and will parent together. A significant proportion marry soon after the birth of their first child. Others continue to cohabit for a period afterwards. For example, CSO figures reveal that up to 40% of cohabiting couples have children and that a significant proportion are in their twenties, many of whom may subsequently marry.

According to the census returns, there were 154,000 lone parent families in 2002, comprising one in six of all families, with 85% headed by females. In terms of marital status, 40% were headed by a widowed person, 32% by a separated or divorced person and 24% were headed by a single person.

The numbers in receipt of the one parent family payment in 2004, were 80,103, up from 58,960 in 1997, when the scheme in its current form was introduced. There were, in addition, 12,225 lone parents with children in receipt of payments under social insurance — 10,769 widowed persons and 1,456 deserted wives. In total, therefore, 92,328, or up to 60% approximately of, lone parents are receiving weekly payments under the social welfare system.

The social welfare system has provided income support and other services for lone parents and has adapted to the changes in recent decades that has seen, proportionately, a decline in the incidence of lone parenthood arising from widowhood, and a growth in the incidence arising from separation and divorce and from parents being unmarried.

The findings of the recent EU Standard of Living Conditions survey bear out the findings of previous surveys, and of experience in other developed countries also, that poverty rates tend to be higher among working age households with children than those without. This is mainly due both to the direct costs of rearing children, including child care costs, and the opportunity costs related to the reduced earning capacity of parents, arising from their care responsibilities. This applies particularly to larger families, and to one parent families which can face a higher poverty risk, as the lone parent has to be the main breadwinner and carer at the same time.

For people in working age households, the main route out of poverty is employment. Despite the huge increases in employment participation in Ireland in recent years and in employment opportunities generally, the proportion of lone parents in employment is low compared to other developed countries.

Additional information not given on the floor of the House.

The earnings disregard introduced in 1997 has helped to increase employment participation, but many lone parents who avail of this disregard stick with the part-time employment it permits in order to retain entitlement to the one parent family payment. This is understandable as for many the benefit represents stable income security for themselves and their children, although at a relatively low level compared to the incomes a majority of other families derive from employment.

A first objective is to replace what may, in practice, be disincentives to full employment in the current schemes with more positive incentives to take up employment and avail of opportunities for education and training that can greatly increase the chances of obtaining more secure and well paid jobs.

Concern relating to the evolution of the income and other support arrangements for lone parent families has resulted in much research on the matter in recent years. These have included reports on the operation of the scheme by my Department, the NESF, consultations in 2003 and since in the context of preparation of a family strategy, and Ireland's participation in a major international comparative study by the OECD on reconciling work and family life. Ending child poverty, for which effective support for lone parent families is a key component, is also one of the special initiatives under Sustaining Progress.

It was in the context of work under this special initiative that the Cabinet Committee on Social Inclusion requested last November the senior officials group, which reports to it, to draw up a report on obstacles to employment for lone parents. The report will include not just an examination of the income support arrangements, but also child care, education and training, information, and employment and other relevant supports.

A sub-group has been established to progress the work with a view to completion of the report by mid-year. Full account will be taken, in drawing up the report, of the research carried out to date and the outcome of the extensive consultation on supports for families.

The group includes representatives of the Departments of the Taoiseach and Finance and my Department is directly involved with representatives of other Departments participating during consideration of policy issues for which they have responsibility. My Department will

review the existing income support arrangements and provisions as an input to the work of the group.

It is also intended that the outcome of these reviews will contribute to final concrete proposals designed to better support and encourage lone parents in achieving a better standard of living, employment and education opportunities, and a better future for themselves and their children. These will be the main criteria against which recommendations in the reports will be judged.

Mr. Penrose: I thank the Minister for his reply. Can we all accept that the best route out of poverty is through work, a proposition which is a mantra at this stage? Is it not ironic that some of the barriers to employment for lone parents and many other parents on low income have been put in place by the Minister's Department and by policy decisions taken in the Department, not by the Minister but by his predecessors in title? Will the Minister agree that some of the savage 16 cuts raised the barrier for self-sufficiency for single parents and extenuated their circumstances? The cuts were tinkered with but were not reversed.

Will the Minister agree that the abolition of the creche supplement, which allowed single parents to take up educational and training opportunities was a retrograde step? Will he agree that the cutback in the Back to Education scheme curtailed another important opportunity? There was a restriction on entitlement to the one parent family payment for those in receipt of modest earnings. There were also rent allowance restrictions.

Will the Minister agree that many lone parents and low income families will find to difficult to return to employment without assistance in terms of child care? Will he also agree that for low income earners and one parent families child care can cost all the income earned and leave such families no better off than when the parent is not working?

In respect of the one parent family payment, will he agree the income disregard which allowed lone parents to work and earn up to €146.50 was innovative? That was introduced in 1996 and people can earn up to €293 before losing that entitlement. Why was that disregard not increased? Surely the best way to tackle poverty is to ensure that as many people as possible qualify for benefit during their transition to work and that they do not lose their entitlement to ancillary benefits such as the Back to School allowance, clothing and footwear allowance, medical cards and others benefits? Is it not time we gave some substance to all the aspirational talk and ensured that those disregards, which are important in facilitating the transition from dependence on those welfare schemes to work, are all raised to facilitate that ultimately noble objective?

Mr. Brennan: It is in that context that the Cabinet Committee on Social Inclusion last November requested the senior officials group which reports to it to draw up a report on obstacles to employment for lone parents. That report will include not just an examination of income support arrangements but also child care, education, training, information, employment and any other relevant supports. The group has been established to progress work with a view to completing it by the middle of the year. At that time full account can be taken of all the research carried out to date, and the points regarding various barriers that the Deputy has put to the House on many occasions. That group includes the Department of the Taoiseach, the Department of Finance, my Department and a number of other Departments that have an input into this area. We will examine the outcome of that work and that will allow us to review the existing income support arrangements, including the disregard. I am conscious the Deputy feels particularly strongly about the income disregard whereby lone parents who are working could earn from €146 to €293 before they lost benefit. The Deputy has made the point on a number of occasions that it has not been increased. I will keep that in mind as we go forward.

We have expressed our aspirations, dissatisfaction and ambitions in this area and it is time to get down to the hard work. The group is working strongly with very strong terms of reference. I look forward to hearing from it as soon as possible.

Social Insurance.

65. **Mr. Stanton** asked the Minister for Social and Family Affairs if he has proposals to reverse an anomaly whereby, when the tax and PRSI year starts on a Saturday or Sunday, job sharers who work on a week-on week-off Monday to Friday basis, only receive 26 PRSI contributions within the year; and if he will make a statement on the matter. [6228/05]

Mr. Brennan: The concept of a week of insurable employment is a central feature of the operation of the social insurance system and is defined in legislation. PRSI contributions are paid by employees and their employers at the relevant contribution rate for each week of insurable employment. These contributions progressively build towards entitlement to social insurance payments.

Work sharing arrangements such as three-day week or week-on-week off are entered into voluntarily and are agreed between an employer and an employee. In many cases the attendance pattern will overlap with the pattern of contribution weeks and work sharers will receive contributions in respect of 52 weeks, as is the case with full-time workers. Work sharers with a Monday-Friday week-on-week-off pattern will accrue different numbers of contributions depending on the alignment between their working week and the contribution week. Depending on the exact work pattern, work sharers may work for 26, 39 or 52 insurable weeks. However, the worker may

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be entitled to a higher number of contributions on the basis of their entitlement to public holiday pay as provided for under the Organisation of Working Time Act 1997. During weeks off the work sharer is not entitled to credited contributions as he or she is not unemployed. He or she may, however, be entitled to home-maker credits which maintain entitlement to contributory old age pension, providing certain criteria are fulfilled.

A social partnership working group, which examined a range of social insurance issues, identified work sharing as one of a number of areas which could potentially lead to employees having gaps in their contribution records. The working group's examination of this issue found that the longer a person work shares, the more likely it is to affect their pension entitlement, although the net effect of this may be relatively small; while it could lead to a reduced rate of old age contributory pension, the consequential loss in monetary terms would be small; and in the case of short-term benefits most employees are fully covered for these benefits, on foot of changes made to the contribution conditions for short-term benefits in 2001 to cater specifically for work sharing employees. While this improves the situation for the generality of work sharers, any period of unpaid leave could potentially give rise to a reduced level of social protection.

Additional information not given on the floor of the House.

The working group, which included representatives of trades unions and employers, did not consider that the potential incidence of persons not qualifying for benefits for this reason would warrant a fundamental review of the weekly contribution basis which underpins the social insurance system.

However, in its final report, which will be published shortly, it suggested that the situation be monitored closely to ensure work sharers were not being unduly disadvantaged by the weekly-based system, especially if they sought to pursue other forms of family-friendly arrangements such as parental leave. The working group recommended that data on the impact of work sharing arrangements on social insurance coverage be collated to inform any future examinations and developments.

My Department has published an information booklet which specifically deals with the issue and the interaction of the pattern of weeks of insurable employment and attendance patterns. That booklet refers to the working patterns and years wherein employees would be awarded a reduced number of contributions.

There are no plans to change the system of weeks of insurable contributions, which is at the heart of the social insurance system, but I will continue to monitor the impact of work sharing arrangements on entitlement to social welfare payments.

Mr. Stanton: I thank the Minister for his reply. Does he agree that this creates serious inequity between workers and that job sharers are at risk of losing out regarding social welfare benefits simply because of their choice of work pattern?

I am aware that workers in the public sector have been made aware of this. Has the Minister done anything to inform people in the private sector of this anomaly? Has he examined the possibility of introducing a PRSI top-up for people who work on a week-on week-off basis from Monday to Friday? It must be remembered that the problem only occurs usually every eight years when 1 January falls on a Saturday or Sunday. It has been suggested that people should stagger their work week but that is not always possible — for example, it may impact on child care arrangements. Will the Minister agree that there is an anomaly and give serious consideration to introducing measures to ensure that anybody who is job sharing gets equal treatment? We need to encourage people into the workplace and offering job sharing arrangements is one way of doing that.

Mr. Brennan: There is no intention on the part of the State to put anyone at a disadvantage by virtue of their work pattern. However, I understand how that can happen. This is a complicated area. Social insurance is based on contributions, and the pattern of work can affect the number of contributions a person ends up with. The final report of the social partnership working group will be published shortly. It suggested that the situation be monitored closely to ensure work sharers were not unduly disadvantaged by the weekly based system, especially if they sought to pursue other forms of family friendly arrangements, such as parental leave. The working group recommended that data on the impact of work sharing arrangements on social insurance coverage should be collated to inform any future examination and developments.

The Department has published an information booklet which specifically deals with the issue and the interaction of the pattern of weeks of insurable employment and attendance patterns. There are no plans at the moment to do anything. We will await the reports and see whether any improvements can be made. A person who works part time two or three days a week could accumulate 52 contributions in the year, whereas a person who works week-on week-off, depending on the pattern of the week-on week-off arrangement, could end up with only 26 contributions in the year, even though each works a similar number of hours. Most people make their own arrangements if they can by having part-time working arrangements rather than working on a week-on week-off basis. I take the point that people need to be made aware they can do this.

We will further examine how the Department's booklet can be promulgated to a greater extent so that people will be aware that they can improve their ability to get contributions by the

way they organise their work pattern. Whether they should have to do that is a broader issue. What is at the heart of the PRSI system is entitlement to contributions. Everyone should be aware that their pattern of work can affect the number of contributions they have if they are not working full-time. We will try to do more to get that message across. In addition we need to examine the broader issue. I await the final report of the social partnership group.

Social Welfare Benefits.

66. **Mr. Penrose** asked the Minister for Social and Family Affairs if he has completed his considerations of a proposal to extend free travel here to Irish emigrant pensioners in Britain; the decision which has been reached in this respect; and if he will make a statement on the matter. [6109/05]

Mr. Brennan: The free travel scheme is available to all people living in the State aged 66 years, or over. It is also available to carers and to people with disability who are in receipt of certain social welfare payments. It applies to travel within the State and cross-Border journeys between here and Northern Ireland.

There have been a number of proposals for extending entitlement for free travel to people living outside Ireland including a proposal contained in the Report of the Task Force on Policy Regarding Emigrants, which was submitted to the Minister for Foreign Affairs in 2002. This issue was examined in the Review of the free schemes which was published by the Policy Institute, Trinity College, Dublin in 2000. The review considered that the main objective of the free travel scheme is to encourage older people and people with disability to remain independent and active within the community, thereby reducing the need for institutional care.

It noted that extending the scheme to visitors would have significant administrative and cost implications even if it was confined to those in receipt of Irish social welfare pensions. In 2000, it was estimated that the extension of the free travel scheme to EU pensioners could incur expenditure of the order of €10 million to €19 million, depending on the level of concession granted.

The proposal to make free travel available to Irish pensioners residing in the UK, would have to be examined in a budgetary context taking account of the other demands for extension of the free travel scheme, the cost, administrative and legal, and possible wider implications.

One of the issues for consideration regarding this proposal is Article 12 of the Treaty of the European Community which contains a general prohibition on discrimination on grounds of nationality. In other words, a member state can not treat its own nationals more favourably than nationals from the other member states. This may mean that if the scheme were extended along the lines suggested, it would have to be extended to all pensioners who are EU nationals coming to Ireland for temporary stays. Extending the free travel scheme to all retired citizens of the European Union would not be in keeping with the objectives of the scheme. However, I am mindful that this matter has been raised in the House a number of times recently and I am continuing my examination of the complex issues involved

Mr. Penrose: I exhort the Minister to continue his examination of the free travel scheme and to arrive at a conclusion quickly. During the course of a recent visit by Deputy Stagg and I we met numerous groups from Coventry, Birmingham, Luton, London, Cricklewood and so on for whom this matter and access to RTE, TG4 and TV3 were the main issues of concern raised repeatedly at our meetings with them. I ask the Minister to examine the position. Is it not the case when the French want something they appear to throw the treaty out the window? As a member of an agricultural delegation I saw this first-hand when the French Government ensured that French beef was promoted above all else.

Given the important contribution made by thousands of immigrants who sent back €4.5 billion to €5 billion in the past which led to the growth of the State and many families, this would be a gesture of recognition for them. Even if it were to cost €30 million, it is only a small proportion of the €4 billion sent back. Given the importance of this issue to Irish people and Irish immigrants, in particular, I suggest it be raised at an EU meeting. Has any advice been taken by the Attorney General on this important means of access which would be available only for a couple of weeks per year when those people come home? While most may never come home, the important issue is that it would be available to them. We in the Labour Party will continue to campaign on this issue and to raise it in the House because it is fundamentally important to give back something to those emigrants who were good to us in the past. Their generosity saved many households in Ireland. I ask the Minister to revisit the matter and to bring forward a favourable reply which would tie in with the aspiration of so many of our emigrants and the diaspora across the Irish Sea.

3 o'clock

Mr. Brennan: There are two issues. One is affordability given that the extension of the scheme would cost between €10 million and €19 million approximately, and the other is a legal issue relating to the EU. We shall have to focus on the second issue to see what is possible. One could then see if one could afford it. I am sure the Deputy will not mind if I pay tribute to Deputy Stagg who has raised this issue with me on many occasions and has also done so privately. He feels strongly about this issue and asked whether it could be confined to pensioners pre-1953.

The free travel scheme is available to everyone here over the age of 66 years. Some 650,000 people are entitled to use it. It has nothing to do

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with pensions. Everybody over the age of 66 years, irrespective of pension or means, is entitled to free travel. If we were to take the worst case scenario and if the EU equality rule provides that all citizens be treated equally, we would then have to treat everybody over the age of 66 years in the EU to free travel in Ireland. The issue of whether it could be confined to all those over the age of 66 years who are Irish citizens has other legal implications for our membership of the Union. That is probably not practical either.

The Deputy asked if it could be confined to Irish pensioners abroad. It is not confined to Irish pensioners in Ireland but to those over 66 years of age. If it were to be confined to Irish pensioners abroad, then Irish citizens abroad who are not pensioners would not be entitled to it. There is a whole mosaic of questions which arise from the bigger picture. I have asked my officials to raise this matter with the EU with a view to making some progress. Approximately 40,000 Irish citizens in the UK are in receipt of Irish pensions. An extension of the scheme could not be confined to the UK but would have to include the rest of the EU. In the event that there are approximately 10,000 in other parts of the EU, there may be 50,000 or 60,000 in receipt of Irish pensions in the EU. If that number was added to the present stock of approximately 660,000 the increase would be of the order of 8% to 10%. That might be manageable if one was allowed confine it to Irish pensioners living in the European Union. One would then have to consider those in the US. How does one ring fence it? Those are the issues involved. I have asked the Department to speed up its examination of those issues. Even before looking at the question of money we need to sort out what is permitted to us under the EU and where we draw the line. This happens not only in the area of free travel but right across the board in a whole range of concessions that we would like to extend to the Irish abroad. However, there are huge practical implications in trying to do it.

Other Questions.

Social Welfare Benefits.

67. **Mr. Wall** asked the Minister for Social and Family Affairs the treaty or directive of the European Union which prevents the Government from granting free travel to pensioners who live abroad when they visit Ireland for short periods; and if he will make a statement on the matter. [5896/05]

103. **Mr. Stagg** asked the Minister for Social and Family Affairs if he will promote the provision of free travel for Irish pensioners living abroad when they return home for short breaks. [1513/05]

Mr. Brennan: I propose to take Questions Nos. 67 and 103 together.

The free travel scheme is available to all people living in the State aged 66 years, or over. It is also available to carers and to people with disabilities who are in receipt of certain social welfare payments.

The issue of extending the free travel scheme to non-resident pensioners was examined in the review of the free schemes which was published by the Policy Institute, Trinity College, Dublin in 2000. The review considered that the main objective of the free travel scheme is to encourage older people and people with disabilities to remain independent and active within the community, thereby reducing the need for institutional care. It noted that extending the scheme to Irish pensioners living abroad who visit Ireland would have significant administrative and cost implications even if it was confined to those in receipt of Irish social welfare pensions. In 2000, it was estimated that the extension of the free travel scheme to EU pensioners could incur expenditure of the order of €10 million to €19 million, depending on the level of concession granted.

However, one of the issues for consideration is article 12 of the EC treaty which contains a general prohibition on discrimination on grounds of nationality. In other words, a member state cannot treat its own nationals more favourably than nationals from other member states. This may mean that it if the scheme were extended along the lines suggested, it would have to be extended to all pensioners who are EU nationals coming to Ireland for temporary stays. Extending the free travel scheme to all retired citizens of the European Union would not be in keeping with the objectives of the scheme.

It must also be borne in mind that any bilateral or multilateral arrangement would need to have the following elements at least: reciprocity — travel concessions for eligible visitors coming to Ireland would have to be reciprocated in the case of eligible people from Ireland going abroad; appropriate identification procedures — an internationally recognised travel pass would have to be introduced, issued by the country of main residence, for identification purposes; and cost sharing — arrangements for sharing the costs between countries would have to be worked out.

I am mindful that this matter has been raised in the House a number of times recently and I am continuing my examination of the issues involved.

Mr. Penrose: In the context of the various points raised in the Minister's reply and the obstacles which emanate from the interpretation of article 12 of the EC treaty, I suggest he set up an expert group under the chairmanship of, perhaps, Professor Gerry Whyte, Trinity College, who is an expert on constitutional law and has also written extensive books on social welfare. In this way the Minister would get the best of both worlds. Professor Whyte is a very able individual. While I have not discussed the matter with him I

know of him. In this way it may be possible to bring forward a solution to what appears to be a desire on the part of all Members to extend this concession to our immigrants who were the focus of recent programmes with a view to improving their lot in recognition of how they looked after us when the economy was not doing well in the 1950s, 1960s and 1970s. In this context it would be worth getting an expert of that calibre to examine possible ways of dealing with the legal impasse which appears to have been reached. Members of the task force on emigrants as well as departmental officials could be used to help in finding a solution.

Mr. Brennan: The Deputy's suggestion is helpful and I will certainly consider it. I will ask for input from the eminent professor on the basis that the Deputy has referred to him in the House. In the first instance and before I establish any group, I want my officials to establish what scope is allowed from the point of view of Brussels. This may be a matter of fact as much as of opinion. When that scope is established, I will see if the matter can be whittled down to see what legal issues remain.

Mr. Stanton: Has this issue been discussed at the Council of Ministers and if so, what was the outcome? What other EU countries have free travel arrangements such as pertain in this country for older people and others, as outlined by the Minister in his reply? I note his reply about reciprocal arrangements with other countries. Has the cost of such arrangements been examined? Is the solution to be found in an arrangement whereby each country looks after its own citizens?

Mr. Brennan: I will consider the matter. I do not recall any discussions at the Council of Ministers about cross-border free travel arrangements.

Other member states do not offer free schemes to the extent they are offered in Ireland. This country is unique in its schemes for free fuel and free travel. Not many countries offer these schemes and few, if any, have cross-border arrangements. I will check those facts for the Deputy but this is my current information.

Mr. Crowe: With reference to the emphasis on increasing family ties, I do not understand how any other European Union country would object to such a scheme. Is the Minister's reference in his reply to a figure of between €10 million and €19 million an over-estimate? It seems to be a very high figure. Does the Minister agree that the Irish economy could earn kudos because the people in question would spend money in Ireland when they return? The scheme should be regarded as an encouragement of contact between family members.

Mr. Brennan: I acknowledge this is a worthy objective. The benefit would be seen in increased family ties leading perhaps to more family solidarity. The greater economic cohesion and benefits brought about by those visitors would greatly benefit the country.

The figure of €10 million to €19 million is the current best estimate available to the Department of the cost of extending the scheme to the broader group of Irish pensioners abroad. This is a casual estimate and more work would be required to produce a more detailed figure. I can see the benefits of some action in this area. The Government tried to do something for emigrants in other areas referred to by the Deputy, such as broadcasting and other areas, but the EU has a problem with action specifically directed at Irish people which is not extended to other EU citizens. This causes a fundamental problem and with which the Government must deal. It is not a case of other countries objecting but rather a matter of the provisions of EU law and treaties.

Social Welfare Code.

68. **Mr. Gilmore** asked the Minister for Social and Family Affairs the way in which his Department assesses a person's capital assets for social welfare eligibility; if he considers the present system realistic and fair; and if he will make a statement on the matter. [5892/05]

Mr. Brennan: I recently reviewed the current arrangements for the assessment of capital for social assistance purposes and am introducing significant improvements by way of the Social Welfare and Pensions Bill being debated in this House. In assessing means for social assistance purposes, account is taken of cash income a person may have together with the value of capital and property except the home. Capital may include stocks and shares of every description, savings certificates, bonds, national instalment savings, special savings investment accounts, and money invested in a bank, building society or other type of financial institution. The first €12,694.38 of capital is disregarded and the balance is assessed.

Last October I requested my Department to undertake a review of the current arrangements for the assessment of capital, particularly in so far as they apply to SSIAs, with a view to bringing forward proposals in the budget for 2005. On budget day, I was pleased to announce that the capital disregarded for means test purposes for all schemes except supplementary welfare allowance would be increased to €20,000, an increase of over €7,300. The enhanced disregard applies to all capital regardless of where it is held, be it in an SSIA, a credit union account, with An Post or other account with a bank or other financial institution. The new arrangements will mean that a single non-contributory pensioner with no other means can have capital of up to €28,000 and still qualify for a pension at the maximum rate. This figure is doubled in the case of a pensioner couple. The improvements will come into effect in June and are designed to ensure that social

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welfare means-testing arrangements do not act as a disincentive to claimants to become savers or penalise those who have been regular savers.

Mr. Penrose: I thank the Minister for his reply and acknowledge that he has increased the capital disregards, which is very welcome. The Minister referred to the value of the home being disregarded for social welfare schemes. This is not strictly the case when applied to carers. I am aware of a carer who owns a house but who moved into her 95 year old father's home to care for him. She earns a rental income of €120 a week from her home which she has declared. Her father required full-time care and attention and she needed to stay with him in his house which is seven miles from her house.

As a result of the manner in which capital assessment is computed under the relevant legislation, the Minister's officials were forced to take into account the capital value of her house in which she was unable to live because she was providing full-time care for her elderly father. The departmental officials would not take into account the income arising from the rental value of the house. The Minister is an accountant and will be aware that the rental value of the house is the actual as opposed to the imputed value arising in capital.

Is it not time to change that rule? That calculation deprived the lady, herself in her late 40s, of the carer's allowance. Is this not grossly unfair? She was saving the State approximately €600 a week, was seeking a carer's allowance of approximately €150 a week but lost out. Bureaucratic capital evaluation bears no relationship to the actual income deriving from the house. Although it was let to an auctioneer, it was still regarded as the woman's income.

Mr. Brennan: I will examine the individual case. However, the present rules are that a person's home is not taken into account. I presume that means a person's home in which a person lives. If the home is an investment, the owner does not live in it and it is available for rental, then the present rules, as I understand them, mean the property is not exempt. Cash income, the value of capital and property, except one's own home, is assessed. In the case cited by the Deputy, it seems one person has left their home and lives in another home to care for somebody. The rented house is then regarded as part of the person's capital assets because, even though technically it is the person's home, they do not live in it. I accept that scenario will arise. As the rules are made to apply across the board, discretion is limited with regard to major decisions of this nature. It would not be fair to start exempting homes which are uninhabited or not available for rental, although I accept that anomalies and hard cases of the type the Deputy describes can arise. The supplementary welfare allowance was introduced to act as an ultimate safety net for people who may be caught out by various anomalies. The Department examines cases such as those outlined by the Deputy on an ongoing basis to determine whether we can learn general rules. Under the current rules a house available for rental or already rented out would have to be included in the capital value.

Mr. Stanton: Are carers treated less favourably than pensioners when assessments of capital means are carried out?

Mr. Brennan: To my knowledge, that is not the case. I will check the position but I understand the same rules, including a means test, apply.

Social Welfare Benefits.

69. **Mr. Penrose** asked the Minister for Social and Family Affairs his views on the recent error which led to some social welfare recipients receiving a double payment in one week and no payment the following week; if he has taken steps to ensure that this does not happen again; and if he will make a statement on the matter. [5888/05]

87. **Mr. Crowe** asked the Minister for Social and Family Affairs if he will report on the system breakdown whereby 47,000 clients received double payments in error (details supplied); and if he has satisfied himself at the arbitrary nature of the recovery of the payment that was put in place. [5905/05]

99. **Mr. McGinley** asked the Minister for Social and Family Affairs if his Department has made changes to procedures or to the process of reclaiming overpayments following an error made by his Department over the new year 2005 period which resulted in thousands of welfare recipients not receiving their payments for one week; and if he will make a statement on the matter. [6062/05]

101. **Mr. Sargent** asked the Minister for Social and Family Affairs the way in which additional social welfare payments were made to 47,000 pensioners; and his views on whether the method of repayment sought was properly handled. [6079/05]

115. **Mr. Bruton** asked the Minister for Social and Family Affairs if he will report on the procedures for claiming overpayments; if he has satisfied himself that this procedure was followed correctly in regard to social welfare overpayments made in January 2005; and if he will make a statement on the matter. [6034/05]

Mr. Brennan: I propose to take Questions Nos. 69, 87, 99, 101 and 115 together.

My Department issues payments each week to approximately 1.1 million customers in respect of 49 separate schemes. This requires implementing a complex set of procedures to ensure payments are produced accurately and on time. At Christmas time the process is more complex as additional procedures are required to pay double payments around that period. Arrangements are

put in place to make payments in advance to ensure that customers are not inconvenienced by the closure of banks over the holiday period.

Approximately 667,000 customers are in receipt of long-term benefit on schemes such as old age, lone parent and invalidity pension. Some 168,000 of these customers receive their payment entitlements by way of electronic fund transfer, EFT. This facility allows customers to receive their payment into their bank account. The EFT facility is available to customers living in Ireland or abroad. Customers living here receive their payments on a weekly basis, while those living abroad receive their payments on a four-weekly basis.

During the Christmas period in 2004 my Department put arrangements in place to make a payment covering two weeks of entitlement to our weekly paid customers. This was to ensure that such customers were not adversely affected by the limited bank opening hours over the holiday period. Payments for 15, 16 and 17 December, inclusive, included the Christmas payments for 22, 23 and 24 December, respectively.

On Thursday, 23 December 2004 an error occurred during the production of payments for 47,977 of my Department's weekly paid customers. An incorrect set of instructions was entered in the computer programme resulting in the issuing of a payment for two weeks to the customers in question instead of the single weekly payment intended. Unfortunately, when the error was discovered the payments had already been credited to the customers' bank accounts. The customers concerned received payment of their entitlement one week early and due to the holidays it was not possible to contact them immediately to advise them of the position. As soon as possible after Christmas, my Department wrote to all the affected customers to explain the position and apologise for the inconvenience caused.

My Department has established additional interim control measures to prevent recurrence of such errors. A more comprehensive review of all payment generating procedures for customers is nearing completion and will lead to improvements in these procedures. My Department regrets any inconvenience caused to customers and is satisfied that implementation of the review recommendations will prevent a recurrence.

Mr. Penrose: While errors can happen, this error was unfortunate because it affected recipients of the weekly retirement pension, carer's allowance, invalidity pension and lone parent's allowance. One cannot blame them for assuming they had received a bonus and proceeding to spend the money on various items at Christmas, as is the propensity at that time of year. It came as a major shock to them to learn that an error had been made.

The Department's handling of the issue was harsh, insensitive and wrong. Those affected received a letter on the Thursday following the payment informing them that they would not receive payment that day. Why could the additional payment not have been paid back at a rate of, say, €10 per week, as is the case with income tax moneys, particularly given that the people in question have been in receipt of payments over a prolonged period and the error was made by a computer in the Department? With money flowing in from all sources, it would have done no harm not to recoup the payment and instead give recipients an opportunity to spend money they probably should have received years ago.

What guarantee do we have that this error will not recur? Many individuals and families struggling to pay off post-Christmas debts and high household utility bills at this time of year were left in the lurch. Did many of those affected apply for social welfare allowance payments to bail them out because an error occurred and they genuinely believed they were entitled to the additional payment? The Department did not take cognisance of the fact that many people were in dire financial straits in the first week of January.

Mr. Brennan: I regret if hardship was caused to anybody as my intention is to ensure the opposite. What occurred was not an overpayment but an advance of entitlements. To put the issue in context, of more than 1 million recipients of a weekly payment from the Department, 47,000 who have bank accounts were paid in advance for an additional week. Given that the Christmas bonus had been paid several weeks previously, they could not have believed it was a Christmas bonus.

Mr. Penrose: Santa often arrives twice.

Mr. Brennan: While I accept that those who received a double payment may have been upset by the decision, it arose because recipients received an advance payment for the following week. I took the decision to skip a week's payment to catch up with the advance. The Department took the view — I make this point advisedly — that given that the customers in question receive payment via a bank account facility, they were by and large likely to be able to manage a bank account and funds generally. They were informed as soon as possible after the double payment was made that it was an advance. I decided it was preferable to deal with the matter immediately, rather than drag out repayments by 47,000 customers for more than a year. The matter is now done and dusted and I hope it did not discommode too many people. We will move the computer elsewhere.

Mr. Crowe: The Minister accepts the mistake was made by the Department. An arbitrary decision was taken as a result. It is not necessarily the case that people with bank accounts are more solvent. Many of those who contacted me genuinely believed the payment was a bonus. No consultation took place with representative organisations, such as Age Action Ireland, the Carers Association of Ireland and others, before the letter was sent out and the Department did not offer people leeway. Many elderly people went without for the week in question because they are too proud to seek money from a community welfare officer. This has been the difficulty. I agree with Deputy Penrose that it was wrong to take this course of action. The clawback should have been spread over a number of weeks, regardless of the administrative difficulties this may have caused. It was the Department that made the mistake, not the recipients with bank accounts.

Whether one calls it an advance or a double payment, the reality is that people suffered. Many welfare recipients contacted me to relate the difficulty they experienced as a consequence of this arbitrary action. I hope it will not happen again. Does the Minister agree there should have been consultation on this issue with the groups that represent those affected?

Mr. Brennan: This is one of those events I wish had never happened. The Department and I regret that payments were made to the bank accounts of 47,000 welfare recipients a week in advance. Deputies may have different experiences but my understanding is that social welfare customers are generally increasingly aware of their rights and entitlements and increasingly able to manage money and budgets.

Mr. Crowe: Some 30% of those entitled to welfare benefits do not claim them. That is a sizeable proportion.

Mr. Brennan: To put the matter in perspective, what happened was that people were paid a week in advance. The worst that could have happened is that a significant proportion of that number could have believed this to be a bonus. I have no way of knowing how many recipients understood this to be the case but I take on board Deputy Crowe's information that he received many complaints to that effect.

I contend, however, that most of those recipients who saw a double payment in their bank accounts were intelligent enough to investigate this by, for example, calling the Department's helpline. They could not have believed it to be a Christmas bonus and must have realised quite quickly that something was amiss. It is certain there would have been much more of a panic if they had received only a half payment. This was a matter of double payment, however, and the error was corrected immediately.

I regret that some hardship may have been caused. However, the increasing financial literacy, if I may apply such a grandiose term, of the customers with whom we deal is improving dramatically. Many are fully *au fait* with their entitlements. I hope not too many experienced difficulties because of this genuine error and the Department has taken steps to ensure such an eventuality does not recur.

Mr. Stanton: Will the Minister clarify the difference between an advance and an overpayment? Is the Minister aware and did his Department take cognisance of the Social Welfare (Code of Practice on the Recovery of Overpayments) Regulations 1996 when this action was taken? For instance, did the Minister and his officials note the requirement in these regulations that where an overpayment has been assessed against a welfare recipient, he or she should be advised of the factors that gave rise to it, advised of the amount involved and the proposed method of repayment, and afforded an opportunity to bring to the Department's notice any views he or she wishes to offer on the assessment of the overpayment, proposed method of repayment and any facts or circumstances he or she considers relevant to the repayment of the overpayment? In addition, under the regulations, repayment of an overpayment may be deferred where the person liable is unable to do so at the time.

The Minister has acknowledged this issue may have caused hardship. However, the regulations exist within the Department to deal with such occurrences. I do not agree with the Minister that it is a case of an advance rather an overpayment. The former is a new term, conveniently trotted out to alleviate the consequences of this mistake. This was an overpayment whereby people received more than they were entitled to in that particular week. Why were the relevant regulations not followed?

Why were people not advised of their rights in this matter to communicate with the Department as to how the money could be paid back? If recipients decided, for example, to use all the money in one week to pay a bill, they were left with nothing for the following week. Is the Department entitled not to make a payment on a week in which they are entitled to that payment? I understood a person was entitled to receive a payment each week from the Department and the latter does not have the right to stop a payment, as happened in this case, because of an overpayment. Are the relevant regulations still in force and have they been consulted? If the Minister was aware of them at the time, why did he not bring them to the notice of the social welfare customers involved?

Mr. Brennan: There is a difference between an overpayment and an advance and there is scope for political argument in this regard.

Mr. Stanton: The Minister is splitting hairs.

Mr. Brennan: In referring to a "method of repayment", Deputy Stanton suggests that I should have pursued the 47,000 welfare recipients in question in an attempt to secure weekly repayments of some fixed amount. I did not pursue anybody for repayments but took the view that recipients should keep the money they had been given in advance. Why should I attempt to get money back? It would only make the situation worse if I were to contact the 47,000 recipients through my officials and demand that they must repay a specified amount over a fixed number of weeks.

Having erroneously made a double payment, it was better to explain the situation immediately and trust the recipients' common sense and intelligence in handling it. It would have only exacerbated the difficulty to take the approach that, because we want to live within the letter of the law, recipients must repay €40 per week, which arrangement might require the completion of 47,000 forms and the involvement of inspectors. By taking the action we did, the entire matter was done and dusted in five or six days, without reclaiming money from any recipient. I fail to understand Deputy Stanton's reasoning on this matter. I took the view that the best approach was to explain and deal with the situation immediately, leave the funds with the recipients and apologise for the genuine data input error that had taken place.

I do not regard this error as representing an overpayment. The latter refers to moneys one receives to which one is not entitled. Perhaps it is a Jesuitical argument.

Mr. Stanton: Yes.

Mr. Brennan: This payment represented something to which the recipients were entitled, though not until the following week. Whether such a payment constitutes an advance or an overpayment is a matter for debate.

Mr. Boyle: The Presentation Brothers rather then the Jesuits educated me and I cannot understand the distinction. The Minister seems to be saying that an overpayment is something that an individual welfare recipient may fall foul of and for which he or she must make restorative arrangements, but that when the case relates to a collective group of recipients, it equates somehow to an advance payment by the Department. This is far too subtle a distinction.

On foot of his decision in this matter, the Minister must put in place some optional repayment facility in view of the circumstances in which people have found themselves. This should include the option of immediate payment or a repayment term of three or six months, depending on an individual's circumstances. I disagree with the Minister's contention that recipients could not have understood the extra money to be a special Christmas payment. His predecessor was well known for making special once-off payments that were not linked to the calendar year. Such special payments included those to centenarians and those in regard to child support in certain circumstances, for instance. Because of this, there may have been an expectation among welfare recipients. Many in this country would not put anything past this Government in terms of winning favour for electoral purposes and might have understood this extra payment as a favour for whatever purpose.

Mr. Penrose: The constituents of Kildare North and Meath may get some special payments if they only hold their breath.

Mr. Boyle: On those grounds, the Minister should acknowledge that what happened was wrong and that the subsequent handling of the case was also wrong. A system must be put in place to give people the option of an easier repayment system that might better suit their circumstances.

Mr. Brennan: Perhaps we should give social welfare recipients an option as to when they will be paid. I have already dealt with the repayment issue. We did not regard this as a case in which any amount was due to be repaid to the Department. The double payment was explained to the recipients and we communicated that there would be no attempt to reclaim the extra moneys. Repayment was not an issue because it would have involved us in significant administrative and negotiation efforts, all to the purpose of reclaiming money to which the recipients were entitled seven days later. Some common sense must be applied in such instances.

However, I have observed in the past that there may be a case for looking at the issue of payment options. There may be people, for example, who are well able to manage their money on a monthly basis and would prefer to receive welfare payments by the month. I am working from the assumption that anybody who is receiving any type of benefit or entitlement is intelligent and possessed of common sense. Perhaps we should accommodate this by building some element of choice into the system. Not everyone insists on a seven-day payment, such as those recipients abroad who are paid on a four weekly basis. We can arrange to pay people in advance if that suits them and other people on certain days. Choice and options should be extended to our customers rather than having a one size fits all approach based on the view that everyone who receives a payment cannot be relied upon to manage their money for seven days. That is an unfair premise

[Mr. Brennan.]
but some people are unfortunately in that situation. Most recipients have common sense and are well able to manage their funds.

Mr. Ring: The Minister did not answer the question raised by Deputy Stanton. Was the code of practice broken when the payment was withdrawn from the recipients the following week? I do not agree with the Minister's argument on paying people on a monthly basis. These are people on low incomes.

Mr. Brennan: Only by choice.

Mr. Ring: I admit it is by choice. The Minister's actions, however, create a temptation. A social welfare recipient will——

Mr. Brennan: I trust them.

Mr. Ring: ——take the monthly payment. The problem is that he or she will be visiting the community welfare officer two weeks after payment.

Mr. Brennan: They are better than that.

Mr. Ring: That is not the issue. The difficulty is that these recipients cannot afford to live on what they receive from the State.

Mr. Brennan: What about common sense?

Mr. Ring: The recent increases in ESB charges have resulted in more constituents attending my clinics than ever before. The company calculated its latest bills to include an extra ten days in the last month which created many problems for people on social welfare benefits.

I became aware of a case recently of an individual who began a job in the Department of Education and Science. There are 12 grades for the position and although the individual was to start at grade one, payment was at grade 12. After the individual corrected this, the Department demanded the €16,000 overpayment be paid back.

When the nursing home charges were deemed illegal, the Government claimed it did not matter what it owed as it was only prepared to pay back €2,000 to those affected. What if these social welfare recipients informed the Department that it had made the mistake and they could only pay back 50% of the overpayments? They did not get that opportunity because the Department broke its regulations on the collection and payment of moneys back to the Department.

Mr. Brennan: No regulations were broken because a code of practice applies to overpayments. As this was not viewed as an overpayment, the regulations did not apply. The overpayment category is clearly defined and categorised by the Department. Some overpayments are considered to be fraud and are dealt with in a particular way. There is overpayment that is the Department's fault. This occurs when a recipient receives more than that to which he or she is entitled. In the case in question, people received that to which they were entitled to but received it a week earlier.

Mr. Ring: The Minister is good. He is consistent.

Mr. Brennan: I rest my case.

Mr. Penrose: And now he has finished.

Social Welfare Code.

70. **Mr. O'Dowd** asked the Minister for Social and Family Affairs the procedures and process for the recovery of child maintenance payments within his Department; the way in which the payments are calculated; and if he will make a statement on the matter. [6097/05]

Mr. Brennan: Applicants for the one-parent family payment are required to make ongoing efforts to seek adequate maintenance from the other parent of the child. Such maintenance is normally obtained by way of negotiation or court order. Increasingly separated couples are using my Department's family mediation service, which is being progressively extended nationwide, to reach agreement.

Where social welfare support is provided to a one-parent family, the other parent is legally liable to contribute to the cost of this payment. Where a one-parent family payment is awarded, the maintenance recovery unit of my Department seeks to trace the liable relative involved to ascertain whether he or she is in a financial position to contribute towards the cost of one-parent family payment. This follow-up activity takes place within two to three weeks of award of payment.

All liable relatives assessed with maintenance liability are notified by the Department and issued with a determination order setting out the amount of contribution assessed. The amount can be reviewed where there is new information about or changes in the financial or household circumstances of a liable relative. The Department requires regular payment, normally weekly, of the contributions assessed in this way.

There are 1,868 liable relatives contributing directly to my Department. Since 2001, one-parent family payment claimants are allowed to retain 50% of maintenance received without a reduction in social welfare entitlements. This acts as a further incentive to them to seek support. The maintenance recovery unit of my Department, through its follow-up activity with liable relatives, achieved savings of €8.5 million in 2002, €14.2 million in 2003 and €16.6 million in 2004. These savings are composed both of direct cash payments by liable relatives to the Department and savings on scheme expenditure. The latter

arise where maintenance recovery activity leads to the liable relative paying maintenance in respect of a spouse and children and the consequent reduction or termination of a one-parent family payment. In 2004, 722 one-parent family payments were cancelled while 512 payments were reduced as a result of maintenance recovery activity.

Additional information not given on the floor of the House.

In implementing maintenance recovery provisions my Department has concentrated on those cases where the liable relatives concerned, being in employment or self-employed, would be in a better financial position to make a contribution towards the support of their families. Legislation allows the Department to seek recovery from liable relatives through the courts in appropriate cases. A total of 182 cases have been submitted for court action from 2001 to date. The majority of these cases have resulted in orders being written against the liable relative in court or, alternatively, in the liable relative agreeing to pay a contribution to either the Department or the lone parent. Further cases are being prepared by the Department for court action.

Written answers follow Adjournment Debate.

Adjournment Debate Matters.

An Leas-Cheann Comhairle: I wish to advise the House of the following matters in respect of which notice has been given under Standing Order 21 and the name of the Member in each case: (1) Deputy Keaveney — the need for extra beds to be allocated at Letterkenny General Hospital; (2) Deputy Howlin — the need for the Minister to sanction the extension to Loreto secondary school, Spawell Road, Wexford; (3) Deputy Blaney — to ask the Minister the position with the provision of extra beds and an accident and emergency department extension at Letterkenny General Hospital; (4) Deputy Connaughton — the matter of minimum speed limits to apply outside national schools on regional and country roads to ensure the safety of children attending such schools; (5) Deputy Cowley — to ask the Minister if he will comment on what part road conditions have played in fatal road accidents in recent years; (6) Deputy Healy — the need for the Minister to approve the relocation of the Tipperary Institute from its current location to the Watson Estate, Ballingarrane, Clonmel; (7) Deputy Enright — to ask the Minister if he is aware of the change of use of a power station from the combustion of peat to the combustion of meat and bonemeal in Edenderry, County Offaly; (8) Deputy Eamon Ryan — to ask the Minister how he intends to decide on the appropriate level for the wild salmon catch for 2005 given the conflicting scientific advice he has received; (9) Deputy Hogan — the need for additional teaching staff to be appointed to Urlingford national school, County Kilkenny; (10) Deputy Deenihan — the need for the Minister to put in place a radon remediation plan for the Castleisland and Tralee areas of County Kerry; (11) Deputy Neville — the construction of a national school at Kilfinane, County Limerick; and (12) Deputy Gogarty — that the Minister investigate the need for a circular rail line to link the outer suburbs of Dublin city.

The matters raised by Deputies Keaveney, Blaney, Howlin and Deenihan have been selected for discussion.

Criminal Justice (Terrorist Offences) Bill 2002: From the Seanad (Resumed).

The Dáil went into Committee to resume consideration of Seanad amendment No. 3:

In page 55, before section 59 and Part 7 of the Bill, the following new section inserted:

"PART 7

COMMUNICATIONS DATA

59.—(1) In this Part—

'Act of 1993' means the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993;

'aggregated data' means data that cannot be related to individual subscribers or users;

'data' means communications data;

'data retention request' means a request made under *section 61* for the retention of traffic data or location data or both;

'designated judge' means the person designated under section 8 of the Act of 1993;

'Directive' means Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and protection of privacy in the electronic communications sector;

'disclosure request' means a request under *section 62* for the disclosure of traffic data or location data retained in accordance with *section 61(5)*;

'Garda Commissioner' means the Commissioner of the Garda Síochána;

'processing' has the same meaning as in the Data Protection Acts 1988 and 2003;

'Referee' means the holder of the office of Complaints Referee under the Act of 1993;

'service provider' means a person who is engaged in the provision of a publicly available electronic communications service by means of fixed line or mobile telephones.

(2) A word or expression that is used but not defined in this Part and is defined in the

Directive has the same meaning in this Part as in the Directive.".

Mr. J. O'Keeffe: The safeguards referred to by the Minister for Justice, Equality and Law Reform include the appointment of a High Court judge. There is a precedent for this and I have confidence in such a process. However, while not part of the Mullingar accord, I support Deputy Costello's proposal that a report to Parliament will give more confidence in the safeguard system.

The section provides for a report to the Taoiseach. While not casting aspersions on the integrity of the present incumbent, given that Geraldine Kennedy and Bruce Arnold had concerns about the operation of phone taps, one may not have full confidence in such a process. My concerns for the safeguards would be allayed if the report were to the Oireachtas as opposed to the Taoiseach. The latter is a member of the Executive while Parliament is the last bastion of democracy. Will the Minister accept Deputy Costello's proposal?

Minister for Justice, Equality and Law Reform (Mr. McDowell): I share Deputy Jim O'Keeffe's view that Deputy Costello's points are valid on this matter. I was therefore relieved to know the point has been covered by the provisions of the 1993 Act which we are amending. We are inserting a new subsection (1) and (1)(*a*) into section 8 of the 1993 Act. The remainder of that section goes on to deal with various matters. It reads:

(2) A person designated under this section (referred to in this Act as "the designated judge") shall hold office in accordance with the terms of his designation and shall have the duty of keeping the operation of this Act under review, of ascertaining whether its provisions are being complied with and of reporting to the Taoiseach—

(*a*) at such intervals (being intervals of not more than 12 months) as the designated judge thinks desirable in relation to the general operation of the Act, and

(*b*) from time to time in relation to any matters relating to the Act which he considers should be so reported.

(3) For the purpose of his functions under this Act, the designated judge—

(*a*) shall have power to investigate any case in which an authorisation has been given, and

(*b*) shall have access to and may inspect any official documents relating to an authorisation or the application therefor.

(4) The designated judge may, if he thinks it desirable to do so, communicate with the Taoiseach or the Minister on any matter concerning interceptions.

(5) Every person who was concerned in, or has information relevant to, the making of the application for, or the giving of, an authorisation, or was otherwise concerned with the operation of any provision of this Act relating to the application or authorisation, shall give the designated judge, on request by him, such information as is in his possession relating to the application or authorisation.

(6) If the designated judge informs the Minister that he considers that a particular authorisation that is in force should not have been given or (because of circumstances arising after it had been given) should be cancelled or that the period for which it was in force should not have been extended or further extended, the Minister shall, as soon as may be, inform the Minister for Transport, Energy and Communications and shall then cancel the authorisation.

(7) The Taoiseach shall cause a copy of a report under *subsection (2)* of this section together with a statement as to whether any matter has been excluded therefrom in pursuance of *subsection (8)* of this section to be laid before each House of the Oireachtas.

(8) If the Taoiseach considers, after consultation with the designated judge, that the publication of any matter in a report under *subsection (2)* of this section would be prejudicial to the prevention or detection of crime or to the security of the State, the Taoiseach may exclude that matter from the copies of the report laid before the Houses of the Oireachtas.

We get a report from this judge whose powers will be extended by subsection (1) and (1)(*a*). I am rarely asked about it, although I may be asked in written parliamentary questions. I do not remember any follow-up on it in the past two years. Perhaps the Taoiseach receives questions about it, but I do not. That safeguard is in place. The duties cast upon the judge are extended by the amendment to cover the matters in question.

Mr. J. O'Keeffe: I am relieved to learn that the existing provisions cover a report to Parliament. That matter has not been brought to our attention recently. Does the Minister know when the last such report was laid before the Houses? Must the Taoiseach, under his power to exclude matters, point out that he is excluding certain aspects of the report and the reason therefor?

Mr. McDowell: The Taoiseach is not required to relate that he has excluded material. He must consult the designated judge on the issue that the publication of any matter would be prejudicial to the security of the State, the prevention of crime or whatever. He can then exclude that matter from the copies of the report submitted to the Oireachtas. I suppose the reason I and the Deputy are unaware of this is that the report is given to the Taoiseach each year and is laid

before the Houses of the Oireachtas. It is not a departmental function of mine so I cannot say when the last report was laid before the Houses. Nobody has raised any point about it.

Mr. Costello: The Minister has gone some distance to allay some of our fears on the matter. In the context of the annual report from the judge which, in the first instance, is given to the Taoiseach, what about an annual report on the complaints mechanism, that is, the referee established in section 59? Is there a similar requirement for that person to provide an annual report to the Taoiseach? Section 7 states that he should make a report of the referee's findings to the Taoiseach, although that is after investigating a matter. Have statistics been produced on the number and types of complaints along with the number which are vexatious and frivolous or is there a requirement to do so?

There will now be a requirement on a service provider of a fixed line or a mobile telephone to retain data. Where and how will that data be retained? I could access the Internet and use a fixed line 50 or 60 times in an evening to look for information on a number websites. We talk about the definition of electronic communications as being a fixed line or a mobile telephone, but what about a laptop computer with an in-built modem which has an internal system of telecommunications that does not seem to be covered by the Bill?

In terms of the bureaucracy required to store and retain information, has anybody envisaged how and where the information will be stored? What safeguards for safe storage will be in place? Earlier I instanced the case of firearms. The Minister has included a provision in the Criminal Justice Bill to ensure firearms are kept secure. Surely sensitive data such as this need to be kept equally secure even though it is electronic data. The mechanisms for doing so and the onus on the service provider should be set out in the legislation.

We must remember that most service providers are multinational companies. For example, Vodafone is a multinational company which not only covers this jurisdiction but also Britain, other European countries and countries outside Europe. Will the onus only be on the Irish section of that company? What about calls made abroad or which originate abroad? Although the calls will be billed abroad, the onus will be on the domestic wing of the service provider. It seems as if it will be a mess. It will be incredibly complex and bureaucratic. It seems the only way it could be done is in the European context but, as the Minister said, there are problems with the European Union coming to terms with it, I presume because there are problems with member states and the conditions in which they will allow the retention of this type of data, that is, the period of time and so on. Have discussions taken place with the service providers to determine whether they can do this? Is the Minister satisfied that sufficient safeguards exist to ensure the service providers do not abuse the storage of this sensitive material, which is now being entrusted to them?

Will the Minister explain section 61, which states: "Subject to subsections (2) and (4), the Garda Commissioner may request a service provider to retain, for a period of 3 years, traffic data or location data or both." Does this mean that when this Bill becomes law, the Garda will write to all service providers informing them that they must retain data for three years or will it be left to each individual case for the three-year period? Will it be a general request or will this be done on an individual basis? Can we take it that the Garda Commissioner will make no contact until a particular incident arises at which point the request is made?

4 o'clock

Mr. McDowell: I will address the last point first. We are dealing with a situation that exists at the moment; nothing dramatically new is about to take place. Under this provision, the Garda Commissioner will be in a position to make a formal request to every service provider carrying out a volume of business of interest to the Garda. In those circumstances the service providers will be obliged to keep the data in accordance with the terms of the request.

As this is happening already, the prophecy of doom, gloom and mess are not valid.

Mr. Costello: No proper statutory basis exists for this.

Mr. McDowell: The main service providers have received direction from the Minister.

Mr. Costello: We should consider what happened in the case of nursing homes.

Mr. McDowell: Data of this kind are in any event of independent use and a necessity for a service provider. For example, if I were to get an enormous bill next month which I query, the service provider must be in a position to outline the occasions on which my phone was used to contact specific chat lines. It must be in a position to stand up its claim for money. At the end of a billing period it must be in a position to verify that I owe it the money.

Mr. Costello: However, it does not get a call from the Garda Commissioner identifying such a person.

Mr. McDowell: Any telecommunications service provider must keep this kind of material to avoid being at the mercy of any subscriber who could claim that the bill was a complete invention and that the provider's machine had gone mad and was just thinking up bills to throw at a subscriber. These data already exist. If people want to contest their bills or claim that something extraordinary has happened, service providers can confirm that a phone in a household was used

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to contact the talking clock in Tokyo and left off the hook for 36 hours, which explains the enormous bill. This is how the world works at the moment. They keep such records for the purpose of their business. This will inevitably be the case. A service provider could not possibly function commercially without a contract term, which would probably be struck down as an unfair contract term if it said that nobody could ever query a bill and had to accept the bill as posted to them as being conclusive of their liability to a phone company.

This material is not being collected for the first time under this legislation. It is already subject to the supervisory functions of the Data Protection Commissioner. It is information in electronic form that refers to an individual. The Data Protection Commissioner is entitled to have access to that material to ensure it is not being abused. Under the data protection law it is unlawful to abuse that material in a way that infringes people's privacy or to make it available improperly to people who should not have access to it. These issues are all matters of law already. It is not true to suggest that this measure is creating either a new database or one that is uncontrolled.

Deputy Costello asked whether this would be safely kept. It is in the exclusive interest of a service provider to keep this information for its own purposes. It would not be possible to run a phone service without keeping data of this kind. The only variable issue is the length of time the data are kept before being erased. That is the only issue that arises in terms of storage. However, it must be stored for the purposes I mentioned. I do not know whether the service providers will now reduce their holding time to three years as a matter of fact. They need to be advised by their lawyers as to whether the Statute of Limitations applies and whether it would be wise for them to keep data for six years, which, I understand, would be the normal contract period for querying a bill, rather than for three years. However, that is a matter for them. I do not need to worry about it as they can look after themselves.

However, none of this imposes an obligation with which they are not already complying. No new expense is being cast on them by this measure. In so far as data of this kind are kept, this is a particular statutory provision allowing the commissioner of the Garda Síochána to request its retention and to allow senior Garda officers access to it. This does not mean it is open to a telephone service provider to put details of Deputy Costello's or my bill on the front page of *The Irish Times* and reveal whom we had rung two days previously. Existing privacy laws and data protection laws prevent a service provider from giving, for example, to a private detective an account of whom a subscriber has rung. All that material is covered by general privacy law as well as by data protection law. I do not believe this measure has any civil liberties implication. To the extent to which there is, it is no change on the present situation.

In preparation for the independent legislation, which I had anticipated, the Department of Justice, Equality and Law Reform engaged in a major consultation process involving at least two public meetings. The Department effectively invited all parties it believed had a direct interest in the matter to communicate with it. This was attended by the media and was the subject of wide publicity at the time. It was accessible on the Department's website. It is not as if this process or the issues have been kept in secret. We went through a very extensive consultation procedure. At that time, I intended to introduce legislation in this area that would be separate from the Bill before the House. As I said earlier, this legislation is the appropriate vehicle for making these changes because the Data Protection Commissioner metaphorically put a gun to my head and the EU took away a gun that I thought would be pressed to the other side of my temple.

I know the Deputies are concerned about the procedure when a Bill initiated in the Dáil is amended in the Seanad. Deputy Ó Snodaigh is labouring under a particular disability in this regard because he does not have any colleagues in the Seanad who could have kept him informed of the progress of this Bill in that House. I acknowledge, to some extent, his argument that the new sections of the Bill have come out of the blue from his perspective. If one's party is not represented in the Seanad, it is desirable to keep one's eye on that House's consideration of legislation that is likely to be sent back to this House. One's researchers should be able to follow the debate legislation of this kind on the Internet, for example. In the absence of close co-ordination between Deputies and Senators, I accept that legislation that is returned to this House in an amended form may appear like a bolt from the blue.

Aengus Ó Snodaigh: I tried to follow what was being done in the Seanad in this case. I usually wait until that House has completed its deliberations on a Bill, which in this case did not happen until 10 February last. Deputies were given a short period of time to deliberate on and research this matter. I reiterate that the timeframe for this aspect of the legislation was short. The new provisions should have been introduced in a separate Bill. This House and the Seanad have been able to deal with all Stages of emergency legislation in a relatively short period of time, and that could and should have been done in this instance.

The Minister has admitted that this was intended to be a stand-alone Bill. He did not originally intend to insert parts of a Bill he planned on introducing at a later stage in the middle of this legislation. The new sections of the Bill have not been accompanied by an explanatory memorandum. According to a Government White Paper, Regulating Better, regulatory impact analysis is needed when measures which will have

a major effect on people's lives are being introduced. Such analysis should be published at the same time as Bills, for example. The Minister has a habit of introducing substantial rafts of amendments to Bills. In such circumstances, an explanatory memorandum immediately becomes out of date and a regulatory impact analysis becomes worthless because it does not relate to the amended form of the Bill.

The way in which the Minister has introduced the new sections of the Bill is contrary to Regulating Better, which states: "we will require higher standards of evidence before regulating". Existing provisions allow for data to be retained for six months, or for a longer period under warrant. It is not correct to claim that we need to introduce these measures because the Data Protection Commissioner plans to interfere with a ministerial order for the retention of data. Such an order has been made for the past three years, since it was originally introduced by the former Minister, Senator O'Rourke.

The Minister said that consultation has taken place, but that claim is rebutted in an article in *The Irish Times*, which I was able to source in the little time available to me for research. The headline on the article in question, which was written by Karlin Lillington, is "Consultation over data Bill is a farce". She outlines why she thinks the consultation process was a farce. An article in another newspaper reiterates her argument. The process was a farce because this part of the legislation was not made available to Deputies until recent times. Perhaps the Minister is right when he says that events overtook us, but he cannot deny that there was no consultation on this aspect of the Bill, which is brand new. The sections of the legislation dealing with data retention should be rejected. We should revisit the issue in the fullness of time, in the context of the debate the Minister expects to take place when the European Union decides to interfere further in people's lives.

I mentioned earlier that the Bill does not provide for a punishment. I ask the Minister to elaborate on that. Perhaps penalties are provided for in the existing legislation, which we are specifically amending. I would like to ask about the designated judge, who will be given certain duties under section 65. Why does section 64 state that the president of the High Court will invite a judge to take up this role "from time to time"? Why is it not a permanent position, which is required to be filled on an ongoing basis, other than when the person in question is incapacitated or has retired? The president of the High Court should ensure that the position is filled on a continuous basis.

I note from certain reports that during the original consultation to which the Minister referred, the Irish Council for Civil Liberties raised some concerns about potential interference with people's right to privacy. Similar problems have been encountered by the Irish Human Rights Commission, which has been specifically tasked with examining legislation that has implications for human rights — in this case, the right to privacy. As I said, the Garda is allowed to apply by warrant to retain data for longer than the six-month period that is currently allowed, if the Minister wishes it to do so. We should reject Seanad amendment No. 3 as well as the eight related amendments until the Minister has proven that we need to extend the provisions. I do not think he has proven that case. We can return to this matter at a later stage when we can have proper consultation and debate on it.

Seanad amendment put and declared carried.

Seanad amendment No. 4:

In page 55, before section 59 and Part 7 of the Bill, the following new section inserted:

60.—This Part applies to data relating to communications transmitted by means of a fixed line or mobile telephone, but it does not apply to the content of such communications.

Mr. McDowell: This amendment was discussed substantially.

Seanad amendment put and declared carried.

Seanad amendment No. 5:

In page 55, before section 59 and Part 7 of the Bill, the following new section inserted:

61.—(1) Subject to *subsections (2)* and *(4)*, the Garda Commissioner may request a service provider to retain, for a period of 3 years, traffic data or location data or both for the purposes of—

(*a*) the prevention, detection, investigation or prosecution of crime (including but not limited to terrorist offences), or

(*b*) the safeguarding of the security of the State.

(2) The data retention request must be made in writing.

(3) Traffic data and location data that are in the possession of a service provider on the passing of this Act and that were retained by the service provider for the purposes specified in *subsection (1)* are deemed to have been the subject of a data retention request, but only if the 3 year retention period for the data has not elapsed before the passing of this Act.

(4) For the purposes of this Part, the 3 year retention period begins—

(*a*) in the case of traffic data or location data referred to in *subsection (3)*, on the date before the passing of this Act on which the data were first processed by the service provider, or

(*b*) in the case of any other traffic data or location data, on the date on or after the

passing of this Act on which the data were first so processed.

(5) Notwithstanding any other enactment or instrument, a service provider shall retain, for the purposes and the period specified in *subsection (1),* the data specified in a data retention request made to the provider.

(6) Nothing in this section shall be taken as requiring a service provider to retain aggregated data or data that have been made anonymous.

Seanad amendment put and declared carried.

Seanad amendment No. 6:

In page 55, before section 59 and Part 7 of the Bill, the following new section inserted:

62.—(1) Subject to *subsection (7)*, a service provider shall not access data retained in accordance with *section 61(5)*, except—

(*a*) at the request and with the consent of the person to whom the data relate,

(*b*) for the purpose of complying with a disclosure request under *subsection (2)* or *(3)* of this section,

(*c*) in accordance with a court order,

(*d*) for the purpose of civil proceedings in any court, or

(*e*) as may be authorised by the Data Protection Commissioner.

(2) If a member of the Garda Síochána not below the rank of chief superintendent is satisfied that access to any data retained by a service provider in accordance with *section 61(5)* is required for the purposes for which the data were retained, that member may request the service provider to disclose the data to the member.

(3) If an officer of the Permanent Defence Force not below the rank of colonel is satisfied that access to any data retained by a service provider in accordance with *section 61(5)* is required for the purpose of safeguarding the security of the State, that officer may request the service provider to disclose the data to the officer.

(4) A disclosure request must be made in writing, but in cases of exceptional urgency the request may be made orally (whether by telephone or otherwise) by a person entitled under *subsection (2)* or *(3)* to make the request.

(5) A person who makes a disclosure request orally must confirm the request in writing to the service provider within 24 hours.

(6) A service provider shall comply with a disclosure request made to the service provider.

(7) Where all or part of the period specified in a data retention request coincides with the period during which any of the data specified in the request may, in accordance with law, be processed for purposes other than those specified in the request, this section does not prevent that data from being processed for those other purposes.".

Seanad amendment put and declared carried.

Seanad amendment No. 7:

In page 55, before section 59 and Part 7 of the Bill, the following new section inserted:

63.—(1) A person who believes that data that relate to the person and that are in the possession of a service provider have been accessed following a disclosure request may apply to the Referee for an investigation into the matter.

(2) If an application is made under this section (other than one appearing to the Referee to be frivolous or vexatious), the Referee shall investigate—

(*a*) whether a disclosure request was made as alleged in the application, and

(*b*) if so, whether any provision of *section 62* has been contravened in relation to the disclosure request.

(3) If, after investigating the matter, the Referee concludes that a provision of *section 62* has been contravened in relation to the disclosure request, the Referee shall—

(*a*) notify the applicant in writing of that conclusion, and

(*b*) make a report of the Referee's findings to the Taoiseach.

(4) In addition, in the circumstances specified in *subsection (3)*, the Referee may, if he or she thinks fit, by order do either or both of the following:

(*a*) direct the destruction of the relevant data and any copies of the data;

(*b*) make a recommendation for the payment to the applicant of such sum by way of compensation as may be specified in the order.

(5) If, after investigating the matter, the Referee concludes that no provision of *section 62* has been contravened, the Referee shall notify the applicant in writing to that effect.

(6) A decision of the Referee under this section is final.

(7) For the purpose of an investigation under this section, the Referee is entitled to access to and has the power to inspect any official documents or records relating to the relevant application.

(8) Any person who was concerned in, or has information relevant to, the making of a disclosure request in respect of which an application is made under this section shall give the Referee, on his or her request, such information relating to the request as is in the person's possession.".

Seanad amendment put and declared carried.

Seanad amendment No. 8:

In page 55, before section 59 and Part 7 of the Bill, the following new section inserted:

64.—Section 8 of the Act of 1993 is amended by substituting the following subsections for subsection (1):

'(1) The President of the High Court shall from time to time after consulting with the Minister invite a person who is a judge of the High Court to undertake (while serving as such a judge) the duties specified in this section and *section 65* of the *Criminal Justice (Terrorist Offences) Act 2005* and, if the invitation is accepted, the Government shall designate the judge for the purposes of this Act and the *Criminal Justice (Terrorist Offences) Act 2005*.

(1A) Subsection (1) does not affect the functions of the Data Protection Commissioner under section 10 of the Data Protection Act 1988.".

Seanad amendment put and declared carried.

Seanad amendment No. 9:

In page 55, before section 59 and Part 7 of the Bill, the following new section inserted:

65.—(1) In addition to the duties assigned under section 8 of the Act of 1993, the designated judge shall—

(*a*) keep the operation of the provisions of this Part under review,

(*b*) ascertain whether the Garda Síochána and the Permanent Defence Force are complying with its provisions, and

(*c*) include, in the report to the Taoiseach under section 8(2) of the Act of 1993, such matters relating to this Part that the designated judge considers appropriate.

(2) For the purpose of carrying out the duties assigned under this section, the designated judge—

(*a*) has the power to investigate any case in which a disclosure request is made, and

(*b*) is entitled to access to and has the power to inspect any official documents or records relating to the request.

(3) Any person who was concerned in, or has information relevant to, the preparation or making of a disclosure request shall give the designated judge, on his or her request, such information relating to the request as is in the person's possession.

(4) The designated judge may, if he or she considers it desirable to do so, communicate with the Taoiseach or the Minister concerning disclosure requests and with the Data Protection Commissioner in connection with the Commissioner's functions under the Data Protection Acts 1988 and 2003.".

Seanad amendment put and declared carried.

Seanad amendment No. 10:

In page 55, line 10, "section 13" deleted and "section 13, or produced under section 14(7)," substituted.

Seanad amendment put and declared carried.

Seanad amendment No. 11:

Section 60: In page 55, before section 60, the following new section inserted:

60.—The Act of 2003 is amended by the insertion of the following section:

'4A.—It shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown.'.".

Mr. McDowell: This amendment introduces a new section 60, which in turn inserts a new section 4A in the European Arrest Warrant Act 2003. Its purpose is to provide for a general presumption that the state issuing a European arrest warrant will comply with the requirements of the framework decision on the European arrest warrant unless the contrary is shown. This new section provides a general indication on the broad approach a court should adopt in its examination of all aspects of the European arrest warrant.

The amendment draws attention to the fact that the European arrest warrant involves a different process from extradition. It is not merely a variation on the procedures that apply to extradition cases. The European arrest warrant was introduced to facilitate closer co-operation between countries that have a common interest and are closely bound by their shared membership of the European Union. Concepts such as mutual trust and good faith — or, in American terms, full faith and credit — are therefore the cornerstones on which the European arrest warrant is based. In particular, the European arrest

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warrant gave practical effect to the principle of mutual recognition in this area of the criminal law.

This is not an irrebuttable presumption but it suggests to our court that an inquiry does not have to be held into an issue unless there are substantial grounds raised before the court by the person to whom the warrant relates indicating that there exists an issue to be investigated by the court. It puts an onus on the person in respect of whom the arrest warrant is made to raise such substantial grounds. The alternative view would be that the High Court, in considering a European arrest warrant, would have to start summoning witnesses or inviting submissions on whether France, for example, proposed to comply with its undertakings as a requesting state. It must be made clear that the High Court is safe to proceed unless the person sought raises a substantive issue of sufficient materiality, weight and force so as to put the court on its guard regarding the matter in question. The European arrest warrant would never really work if the High Court had to ask what would happen to the person in question when he got to France if the French were acting in bad faith and were in breach of the rule of specialty, for example.

A person before the court cannot simply state he wants the French to prove that they will comply with A, B and C. He must raise a substantial case that requires an answer rather that simply raise paper issues and demand rebutting evidence from the authorities seeking to execute the European arrest warrant.

Mr. J. O'Keeffe: I sympathise with the principle of this amendment but the Minister should provide further clarification. How fair is it to place the onus of proof on the individual? What constitutes a substantive issue of sufficient materiality, weight and force? How high is the barrier for the individual? If one felt one had a genuine case to make, what sort of hoops would one have to go through and what assistance would be available to one? Although I feel sympathetic towards the case made, I would like to be convinced that we are fair and just regarding a person with a reasonable case to make.

Mr. McDowell: I fully empathise with the Deputy's concern that this amendment be fully understood before we accept it. If a European arrest warrant is issued in respect of Joe or Josephine Soap and is delivered to the Irish State for the purpose of having it executed against him or her while he or she is in Ireland, the issue that then arises is whether the requesting state intends to comply with its obligations under the legislation. One such obligation concerns the rule of specialty. This provides that if extradition is sought in respect of Joe or Josephine Soap, on a charge of car stealing, for example, the requesting state cannot contend that it wants to try him or her for further named offences.

Subject to statutory exceptions, which are provided for in the legislation, there is an obligation on the requesting state to comply with the rule of speciality, which is a principle of extradition law and also applies to rendition on warrants. If one left it up to a High Court judge in the Four Courts to decide whether the Polish or French states, for example, would comply with this obligation, the judge would have to ask how he could determine this, given that the person before the court had raised the matter as a substantial issue. Should the Polish or French ambassadors give an undertaking that their countries would comply? Should we have a debate in the House on whether Poland or France had breached the rule of specialty in the past? Should the prosecuting policeman, *juge d'instruction* or examining magistrate be brought before the court to promise faithfully that the rule would be applied?

This legislation is to produce a workable system. Deputy Jim O'Keeffe asked what standard of proof is required.If someone could raise a substantial point and say he or she has a plausible case, that he or she is being sought on a charge of stealing a car but that the real motive was a charge of treason or whatever, that would rebut the presumption that Poland, France or wherever, was compliant with its obligations under international law. It is impossible for me to say what would amount to sufficient evidence in each such case. Leaving this blank, however, would allow a judge take the view that unless there was a mountain of evidence that the requesting state had never breached this rule before, he or she would not grant an extradition. That would put the State in an impossible position *vis-à-vis* our colleague states in the European Union.

Section 37 of the European Arrest Warrant Act states:

> 1) A person shall not be surrendered under this Act if:
>
> (*a*) his or her surrender would be incompatible with the State's obligations under:
>
> (i) the Convention, or
>
> (ii) the Protocols to the Convention,
>
> (*b*) his or her surrender would constitute a contravention of any provision of the Constitution [This would apply if somebody was going to be treated brutally or]
>
> (*c*) there are reasonable grounds for believing that:
>
> (i) the European arrest warrant was issued in respect of the person for the purposes of facilitating his or her prosecution or punishment in the issuing state for reasons connected with his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation, or

(ii) in the prosecution or punishment of the person in the issuing state, he or she will be treated less favourably than a person who:

(I) is not his or her sex, race, religion, nationality or ethnic origin,

(II) does not hold the same political opinions as him or her,

(III) speaks a different language than he or she does, or

(IV) does not have the same sexual orientation as he or she does

or

(iii) were the person to be surrendered to the issuing state:

(I) he or she would be sentenced to death, or a death sentence imposed on him or her would be carried out, or

(II) he or she would be tortured or subjected to other inhuman or degrading treatment.

That is a prohibition in the Act. Since the European Convention on Human Rights Act came into law, in addition to these explicit obligations there is a requirement that a court interpret this Act, and this Act as amended, in accordance with the European Convention on Human Rights. Adequate rebuttal of a presumption must be proportionate to the case. If someone is in a foreign country it may be very difficult to prove every comma of an intention to breach some obligation.

The courts will interpret this in a sensible way. If a case indicated a substantial reason to apprehend that the obligations of the requesting state were likely to be breached, the court would deem that sufficient rebuttal to require further material from the requesting state. We cannot have a situation in which someone presents a tick box form saying he or she wants evidence proving 25 propositions about the French legal system leaving the court in the position that it will not order an extradition unless the French Government moves half of some department of state to Dublin to prove how its system works.

The purpose of this amendment is to make clear that one cannot raise an issue by raising a flag on it. One must give it substantial force before the courts intervene and require further material from the requesting state.

Mr. J. O'Keeffe: Would there be a right of appeal from an adverse decision?

Mr. McDowell: Yes, it could be appealed to the Supreme Court.

Mr. Costello: Why is this new amending section needed when section 60 outlines the procedures whereby an issuing state seeks arrest and surrender? It states that it must be done in accordance with the provisions of the Act and the framework directive. Why build in a presumption there instead of leaving it as it is? The Minister is shifting the onus very rapidly.

Mr. McDowell: This is a new creature. Until this law came into effect we had a twin-track approach to extradition issues: the conventional international law of extradition which was a state to state request implemented by courts pursuant to international law agreements; and in regard to the United Kingdom, the Isle of Man, the Channel Islands and other places, there was rendition on warrants, which was a different concept. This was not state to state extradition, it required only that a policeman appear before a court in Ireland, produce a warrant and ask that it be endorsed for execution in this State. That was the arrangement in 1965 and we slowly developed a series of protections around that legislation as it applied to warrants.

In our relations with the United Kingdom for example, the rules of specialty and of proving a substantial case to meet were introduced by statute and dealt with on the basis of a certificate from the Attorney General for England and Wales. Unless the Irish Attorney General intervened that condition was met. Therefore, we have jurisprudence on a specific form of rendition on warrants and international jurisprudence dealing with extradition law.

The question that arose here, and in the minds of the officials in my Department, was how will an Irish court deal with someone raising a point for debate in a court here, and where will it say the onus of proof lies. It was not clear in considering the law on rendition on warrants, or the international law, where the Irish courts would go on the issue. We want to give them guidance so that in general terms to make this system work they do not engage in debate for debate's sake and that they deal only with these issues if substantial cases are raised meriting some strong reason to doubt that the requesting state would comply with its obligations under the framework decision.

Seanad amendment agreed to.

Seanad amendment No. 12:

In page 55, before section 60, the following new section inserted:

61. The Act of 2003 is amended by the substitution of the following section for section 5:

'5.—For the purposes of this Act, an offence specified in a European arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State.'

Mr. McDowell: Where an offence specified in the European arrest warrant corresponds to an offence in Ireland the dual criminality requirement is considered to be met. This requirement arises for all offences other than those on what is termed the positive list which is set out in article 2.2 of the framework decision. In that case the dual criminality requirement does not apply.

The amendment provides a specified point in time by reference to which correspondence of offences under Irish law and the law of the issuing state is to be established. That is, it provides that the correspondence is to be established by reference to the position on the date of the European arrest warrant. This amendment clarifies the law on the matter. If somebody raises the question of whether an offence is a corresponding one the requesting state need only prove there was correspondence at the time the arrest warrant was issued. There is no ongoing target which requires us to prove what happened to the law in the meantime. Based on this amendment, correspondence for arrest warrant purposes occurs where the offence in the warrant is an offence under the law of both the issuing state and of Ireland on the date of the issue of the European arrest warrant. Establishing the date of issue is a simple matter. One can just check the date on the warrant without additional evidential proofs.

There are two broad approaches to establishing the point at which correspondence occurs. The first approach would be that the correspondence can be established where the act is an offence under the law of both states on the date of commission of the act. However, that approach may facilitate persons evading justice for offences under international agreements, such as torture, sex tourism, trafficking etc. The second Pinochet ruling in the House of Lords demonstrated this approach. If, as in that instance, both states had not implemented the relevant agreement at the time of the alleged offence, then correspondence could not be said to exist as the act in question was not an offence under the law of one of the parties on the date of the commission.

The second approach is to take the view that the correspondence should be established by reference to the position at the time of issue or receipt of the request. That is the approach under our extradition law since 2001 and is the basis for the amendment to ensure that principle applies in European arrest warrant cases. This approach to correspondence represents the best public policy option if it will prevent the kind of abuse to which I have referred where a person evades justice merely because the two states involved ratify the relevant agreements at different times. Under the amendment, all that is required is that both states would have done so at the time the warrant is issued. This line of thinking reflects the first House of Lords decision in the Pinochet case.

Mr. J. O'Keeffe: What is the Minister providing now that was not provided previously? Are we solely dealing with the issue of the dates of dual criminality?

Mr. McDowell: The Act was silent as to which approach in principle was to be adopted by the court, that is, was it dual criminality on the date of commission of the offence or was it dual criminality on the date of the warrant. What we are doing here is fixing that the latter principle is the one the court is to follow. Until now the Act was silent on this issue. One could have two people arguing as to what the Act meant. Under the terms of the statute enacted in 2003, a court could ask for guidance on whether it should take course A or course B. Course B is the more normal and conventional one which will make the system more workable and definite than course A.

Mr. J. O'Keeffe: I take the Minister's point that it is wise to have clarity on the issue. Is there a danger that if we relate the date to the issue of the warrant, we may co-operate in a situation where someone is being extradited to deal with an issue which was only criminalised subsequent to the date of the commission of the act?

Mr. McDowell: The short answer to that question is "No" for the reasons I outlined earlier. This framework decision is subject to certain constitutional principles. The framework decision must be interpreted in accordance with the European Convention on Human Rights which is imported into European law by Article 6 of the European Union treaty. If murder were a criminal offence in Ireland and we brought in a statute criminalising murder, we could not make it retrospectively criminal because that would breach our Constitution and the European Convention on Human Rights. It would be grounds for a member state to resist extraditing a person if another state, where until the day before yesterday it was legal to carry out a certain act which was now a criminal offence, were to seek the Irish State, for example, to extradite that person so that it could try him retrospectively on that criminal offence in breach of the provisions of the European Convention on Human Rights. It would be mandatory on an Irish court, if that situation were drawn to its attention, to say that, in effect, it was a breach of the European convention and the person should not be extradited in such circumstances for the reasons set out in the main text of the statute which oblige an Irish court to uphold the person's rights in any decision it makes.

Mr. J. O'Keeffe: The Minister referred to murder, which is regarded a major crime in every civilised state. If new legislation were introduced to deal with sex tourism or trafficking, I would be concerned about the possibility of breaching the retrospective principle. While I would regard such activities as heinous, in many countries the necessary legislation may not have been enacted until relatively recently or may not be on the stat-

ute book in some countries. No matter how bad an offence is, we cannot and should not extradite someone to a jurisdiction in respect of the commission of an act which was not an offence at the time the act was committed. Otherwise I am happy to accept the provision as proposed. If the Minister can give me some assurance on that point, I will be happy to agree to the amendment.

Mr. McDowell: I can give the Deputy that assurance. This would not operate to make someone liable to be prosecuted in breach of the terms of the convention, in other words, on a charge and a law which was trumped up afterwards to cover something that was in breach of that. There are many different complications to that principle. If, for instance, a state decides to extend its jurisdiction to deal with extra-territorial matters, it is not as clear-cut as that. If Ireland were to say that, under a genocide convention, it would either prosecute people in Ireland or send them away and in prosecuting them in Ireland it assumed jurisdiction to try them on a crime against humanity wherever in the world it happened, that would be a complexity which might or might not be affected by all this.

Seanad amendment agreed to.

Seanad amendment No. 13:

Section 63: In page 58, between lines 15 and 16, the following new paragraph inserted:

"(*b*) the substitution of the following subsection for subsection (7):

'(7) Where, in relation to a person who has been remanded in custody under subsection (3), a European arrest warrant is transmitted to the Central Authority in the State in accordance with section 12—

(*a*) that person shall be brought before the High Court as soon as may be, and

(*b*) the European arrest warrant, or a facsimile or true copy thereof, shall be produced to the High Court,

and the High Court shall, if satisfied that the person is the person in respect of whom the European arrest warrant was issued—

(i) remand the person in custody or on bail (and for that purpose the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence), and

(ii) fix a date for the purposes of section 16 (being a date that falls not later than 21 days after the date of the person's arrest).'.".

Mr. McDowell: This inserts a new paragraph after paragraph (*a*) in section 3 of the Bill. Its purpose is to amend section 14(7) of the European Arrest Warrant Act. Section 14 of that Act deals with arrest without warrant on the grounds of urgency. This is a technical amendment following an amendment to section 12 of the European Arrest Warrant Act, which was inserted in the Dáil and which clarified the status of a European arrest warrant which is received by fax. The amendment to section 12 is inserted by section 62 of the Bill. The present amendment clarifies that faxed copies, which were provided for by this House when it was considering the Bill, are also acceptable in cases where the person has been arrested on grounds of urgency on foot of a Schengen alert. It is extending the same principle to a slightly different situation.

Mr. J. O'Keeffe: It is a technical amendment.

Mr. Costello: My memory of the European arrest warrant was that it did not make provision for bail but rather that people would be remanded in custody alone. Are we now being somewhat more generous? We debated the fact that there could be health and other circumstances where a person could be granted bail, but my memory is that the Minister did not accept that amendment. Are we going a step further here?

Mr. McDowell: No, the point to which the Deputy is referring is a debate we had on the last occasion this legislation went through this House regarding whether somebody should be capable of being sent to another state effectively on bail.

Mr. Costello: The debate was that the person concerned did not have to be held in custody.

Mr. McDowell: It related to whether the person did not have to be held in custody for the purpose of being sent to another state.

The principle of the European arrest warrant is that one is deprived of one's liberty for the purpose of putting oneself somewhere else. I have no doubt that someone who is faced with a European arrest warrant could possibly informally contact the police on the other side and say "I'm coming to Paris anyway, forget about this" and by agreement there might be no further proceedings on the arrest warrant. Somebody who wants to get to the requesting state in those circumstances will not be prevented from coming to an agreement with that state to forget about proceedings in the Irish High Court because the person will turn up in Warsaw, Paris, Madrid or wherever he or she is wanted.

If push comes to shove and the Irish State is pushed to the point of saying in respect of an accused person that it wants that person in Madrid tomorrow and that person has contested the accusation all the way down the line to that point, the Irish court effectively has to deprive that person of his or her liberty. The idea is that the accused person is surrendered in custody to the

[Mr. McDowell.]
other state and it is for the other state, in terms of its law, to decide whether that person is set at liberty or to take an interlocutory decision about his or her status, pending trial in that state.

Seanad amendment agreed to.

Seanad amendment No. 14:

Section 68: In page 63, lines 10 to 15 deleted and the following substituted:

"21A.—(1) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of an offence specified therein, the High Court shall refuse to surrender the person if it is satisfied that a decision has not been made to charge the person with, and try him or her for, that offence in the issuing state.

(2) Where a European arrest warrant is issued in respect of a person who has not been convicted of an offence specified therein, it shall be presumed that a decision has been made to charge the person with, and try him or her for, that offence in the issuing state, unless the contrary is proved.".

Mr. McDowell: This amendment amends section 68 of the terrorist offences Bill and its purpose is to amend section 21A — which was inserted in the Dáil — of the European Arrest Warrant Act 2003. This is an amendment to an amendment this House made.

Section 21A deals with the question of ensuring that persons are not surrendered for the purpose of investigation and it provides that the High Court shall refuse to make a surrender order if it is satisfied in the case of a person who has not yet been convicted that a decision has not been made to charge the person with and to try him or her for the offence concerned.

The revised section 21A allows the arrested person to raise a question about the intentions of the issuing state, in this case about its intention to proceed with a prosecution so that it is a matter for the High Court to adjudicate on the substantive hearing of the case. However, this amendment adds a presumption that there has been compliance by the member state with the terms of the framework decision unless the contrary is proved by the party making the claim of non-compliance. In other words, the complainant will have to do more than merely claim that there has been a failure by the issuing state to comply with the framework decision. The complainant will have to overcome the presumption before the court can examine the claim of non-compliance.

The presumption of compliance provision takes account of the mutual recognition concept which is at the heart of the European arrest warrant system. It represents an assumption that we are entitled to make about our closest partners, that is, that they are acting in a bona fide manner in operating the framework decision. It also clarifies the threshold that needs to be met before further information will have been sought from the issuing state. If a person is sought in Ireland on a European arrest warrant, the person cannot simply say that this could be for the purpose of getting him or her to Spain to question him or her only and not for the purpose of a trail, and that by simply raising the issue the Irish court will be obliged to tease out that issue to the nth degree.

As I mentioned in regard to the rule of specialty and other obligations, the person accused would have to raise some substantial reason with some weight as to why the court should commence an investigation on that issue, otherwise the court should presume that, for example, the Spaniards know what we expect of them and what the European law expects of them and, therefore, there is some substance and weight to the point before the court is required to conduct an inquiry.

Mr. Costello: It seems there is a contradiction in this section. In the first instance, section 21A(1) provides that the High Court shall refuse to surrender the person if it satisfied that a decision has not been made while subsection (2) contains an in-built presumption that a decision has been made. Surely the way to resolve that would be that the European arrest warrant would include a statement, or be accompanied by a cover note, to the effect that the intention is to prosecute. We are watering down unnecessarily the jurisdiction and process of the High Court by having such a presumption in the legislation and then giving the court powers to refuse to surrender the person if it is satisfied that a decision has not been made. Will the court act on a presumption when it does not know whether a decision has been made? Will it take the request purely on faith? What powers will be given to the High Court in this respect?

Mr. McDowell: In an ideal world we would love if every country had a European arrest warrant which dealt with the Irish declaration that was made at the time the framework decision was adoption unanimously by the European Council, but Ireland was on its own in regard to this matter. We were the only country which made a declaration at the time we were taking this provision as not applying to extradition effectively for the purpose of an arrest for inquiry in other countries.

We had to defend our corner in Europe on that occasion and we did so with some difficulty. The view at the time was that all member states should have a single approach to this matter. There was strong pressure in Ireland not to have such a declaration. I agree with Deputy Costello that if all member states thought the way the Irish do and they all adopted the same approach to this matter as we do, it would probably be recited in every standard form European arrest warrant that this was the situation. However, these arrest

warrants are issued and addressed not simply to Ireland but to all member states of the European Union. We are not in a position to require our fellow member states to adapt common forms and to insert paragraphs which have no relevance to the demands they make of each other to satisfy a particular position which Ireland adopted at that time.

We have to deal with this matter in our own law and not rely on the form of the warrant to set out that provision. This is the factual position. I agree with the Deputy that it is slightly less satisfactory than it would be if other member states agreed with our position, but none of them agreed with us at the time. We were on our own on this issue. Therefore, this is how we have to deal with the matter.

Mr. Costello: The Minister did his best at the time.

Mr. McDowell: I was the Attorney General at the time.

Mr. J. O'Keeffe: Is this the nexus or meeting point between our adversarial system of law and the inquisitorial system of criminal law on the Continent? Arising from this amendment, are we trying to confront the situation whereby somebody is brought before a magistrate to inquire into that person's possible involvement in a crime? In that context, are we presuming that a decision has been made to charge when, effectively, the legal system in some continental countries may be that they want to bring somebody before a magistrate in the normal way to inquire into that person's possible involvement in a crime? Is this the Minister's response to that situation, that despite the fact that we are providing for the extradition of a person to another jurisdiction, we are providing in law for a presumption that a decision has been made in that country to charge that person?

Mr. McDowell: It comes down to workability. Having taken this unilateral stance when the framework decision was adopted, we wanted it to be clear that we were not agreeing to a proposition that mere suspects could be arrested in Ireland whatever other countries wanted to do and that warrants would only be used to remove people to foreign states on the basis that a decision had been made to arrest, charge and try them for the offence. We regard that as fundamental.

5 o'clock

The Deputy asked if this arises from our adversarial system — that is one way of putting it. In another European country it might be possible to arrest someone on suspicion of murder and deprive him of his liberty while he went through a criminal justice process which could take a couple of years. It is fine telling a Frenchman in Ireland that is the system in France and to go back and face it. It would be different, however, if an Irish person was walking down the Champs Élysées and someone concluded he might have done something and wanted to know more about it. We were forced into the position where we had to act unilaterally.

We do not, however, want to make our unilateral provision unworkable, where half of France would have to come to Ireland to submit affidavits to make the system work. In such a case, if the person says he was walking down the Champs Élysées and has no idea what this is about, the French cannot possibly have decided to charge him. If he is one of numerous people who could have committed the offence, then the presumption that they are seeking him for trial can be rebutted.

If it was necessary to lay the case out before an Irish court every time and for argument to take place as to whether that was sufficient basis to put someone on trial in Ireland, however, we would render the system unworkable. This amendment states that a substantial issue must be raised on that point before that unilateral protection can be invoked.

Mr. J. O'Keeffe: If after a Munster game in Biarritz there was too much celebration and, as a result, a person was wanted in accord with the system in France, it would be normal for that person to come before the examining magistrate. The presumption will apply under the amendment. The person who is wanted could go to the High Court and say that the French want him because they want to bring him before an examining magistrate. The French will not charge a person until he has been before the examining magistrate and, therefore, they could have not decided to charge him although they want him to appear in accordance with their normal system. Where does that leave the law? Will the High Court decide if the warrant should be executed or are we leaving an area of doubt in our efforts to bridge the gap between the two systems?

Mr. McDowell: It is difficult. We do not want it to be the case that if a European member state has a system where people can be arrested, subjected to the criminal law process and deprived of their liberty on mere suspicion and without a decision to charge them, it can as an extension require any Irish citizen anywhere in Ireland to be plucked from his or her job and brought to that state in custody without ever once having the opportunity to say that he is just going through a process to be excluded as a suspect in a case and is being deprived of his liberty in a way that is totally disproportionate to the effect on that person.

When the Minister acceded to this framework decision, the Government made a unilateral declaration that Ireland accepts its obligations under it, subject to the understanding that warrants would not be enforceable in Ireland simply because a law was passed in some other member state or the criminal justice system in another state was one where people could be requested

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from all over Europe to come to participate in a process to weed out suspects. That is what we are doing. It may not be the most satisfactory arrangement but it was the best we could do at the time.

Having put this safeguard in Irish law, I do not want to make it unworkable and to have the European Commission say that we have made the European arrest warrant unworkable in Ireland. I want it to work on a presumption of good faith on the part of our colleagues. To avail of the Irish declaration, an issue cannot just be raised simply to require a rebuttal, there must be a substantial reason before the court can be moved to investigate this issue.

Mr. J. O'Keeffe: On the basis that this is the best achievable outcome, I will accept that.

Seanad amendment agreed to.

Seanad amendment No. 15:

Section 69: In page 63, lines 18 to 26 deleted and the following substituted:

"'22.—(1) In this section, except where the context otherwise requires, "offence" means, in relation to a person to whom a European arrest warrant applies, an offence (other than an offence specified in the European arrest warrant in respect of which the person's surrender is ordered under this Act) under the law of the issuing state committed before the person's surrender, but shall not include an offence consisting, in whole, of acts or omissions of which the offence specified in the European arrest warrant consists in whole or in part.'.".

Minister of State at the Department of Foreign Affairs (Mr. C. Lenihan): This amendment relates to the application of the rule of speciality in respect of persons surrendered by Ireland and entailed an amendment to section 69 which inserts a revised section 22 in the European Arrest Warrant Act.

The rule of speciality provides that a person may be proceeded against only in respect of the offence for which he or she was surrendered. Article 27 of the framework decision provides that the rule shall generally apply under the European arrest warrant arrangements except where a member state declares that as an executing state it shall not require its application or where any of the exceptions in article 27 apply. Ireland has not made a declaration on this matter so as executing State we will apply the speciality rules.

The amendment seeks to ensure that the speciality rule will not operate to prevent the conviction, sentencing and detention in the issuing state of persons surrendered by Ireland in respect of an alternative but lesser offence within the same group of offences, murder or manslaughter being the most notable example of this. To achieve this it is necessary to amend the revised section 22 inserted by section 69 to allow that the prohibition for proceedings for other offences, ie., the normal effect of the speciality rule, does not go so far as to prevent a conviction in the issuing state for an alternative but lesser offence where that offence arises from the same facts or circumstances as gave rise to the charge for which the person was surrendered.

This amendment has the effect of restoring the position that applied under the extradition laws in place prior to the European arrest warrant coming into force.

Seanad amendment agreed to.

An Leas-Cheann Comhairle: Seanad amendments Nos. 17 and 18 are consequential on amendment No. 16. Seanad amendment No. 19 is related. Seanad amendments Nos. 16 to 19, inclusive, may be debated together.

Seanad amendment No. 16:

Section 69: In page 63, line 28, "if" deleted and "if it is satisfied that" substituted.

Seanad amendment agreed to.

Seanad amendment No. 17:

Section 69: In page 63, line 29, "it is satisfied that" deleted.

Seanad amendment agreed to.

Seanad amendment No. 18:

Section 69: In page 63, line 36, "the High Court is satisfied that" deleted.

Seanad amendment agreed to.

Seanad amendment No. 19:

Section 69: In page 63, between lines 40 and 41, the following inserted:

"(3) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to—

(*a*) proceed against him or her,

(*b*) sentence or detain him or her for a purpose referred to in subsection (2)(*a*), or

(*c*) otherwise restrict him or her in his or her personal liberty,

in respect of an offence, unless the contrary is proved.".

Seanad amendment agreed to.

An Leas-Cheann Comhairle: Seanad amendments Nos. 21 and 22 are related to Seanad

amendment No. 20 and all may be discussed together by agreement.

Seanad amendment No. 20:

Section 69: In page 64, lines 27 and 28, "Central Authority in the State" deleted and "High Court" substituted.

Seanad amendment agreed to.

Seanad amendment No. 21:

Section 69: In page 65, line 21, "consent."." deleted and "consent." substituted.

Seanad amendment agreed to.

Seanad amendment No. 22:

Section 69: In page 65, between lines 21 and 22, the following inserted:

"(6) The High Court may, in relation to a person who has been surrendered to an issuing state under this Act, consent to—

(*a*) proceedings being brought against the person in the issuing state for an offence,

(*b*) the imposition in the issuing state of a penalty, including a penalty consisting of a restriction of the person's liberty, in respect of an offence, or

(*c*) proceedings being brought against, or the detention of, the person in the issuing state for the purpose of executing a sentence or order of detention in respect of an offence,

upon receiving a request in writing from the issuing state in that behalf.

(7) The High Court shall not give its consent under subsection (6) if the offence concerned is an offence for which a person could not by virtue of Part 3 or the Framework Decision (including the recitals thereto) be surrendered under this Act.'.".

Seanad amendment agreed to.

Seanad amendment No. 23:

Section 70: In page 65, lines 26 to 32 deleted and the following substituted:

" 'offence' means, in relation to a person to whom a European arrest warrant applies, an offence under the law of a Member State (other than the issuing state) committed before the person's surrender to the issuing state under this Act;".

Mr. C. Lenihan: This amends the current text of section 23(1) of the European Arrest Warrant Act as inserted by section 70 of this Bill. Section 23 deals with the question of onward surrender to a third member state of a person surrendered by Ireland to the first member state. It gives effect to Article 28 of the Framework Decision. The essential position under this section is that a person must not be surrendered to another member state without the first executing state consenting to that onward surrender.

Subsection (1) of section 23 provides a definition of offence in respect of which a person may be subject to onward surrender to another member state. The new definition simplifies the one in section 23(1). It provides that an offence for which the person may be surrendered must be an act that was committed before the person's surrender to the issuing state, pursuant to the original European Arrest Warrant Act, and that it was an offence at that date under the law of the member state that is now seeking his or her surrender. In particular, it guards against any possibility of retrospective penalisation, that is, it prevents a situation where the third state might try to pursue a person for an act committed before the original surrender but where that act was not an offence at the time of the person's original surrender but was subsequently criminalised.

Mr. J. O'Keeffe: We discussed that issue earlier. I am satisfied that the points we made are covered.

Seanad amendment agreed to.

Seanad amendment No. 24:

Section 70: In page 65, line 36, "if" deleted and "if it is satisfied that" substituted.

Seanad amendment agreed to.

Seanad amendment No. 25:

Section 70: In page 65, line 37, "it is satisfied that" deleted.

Seanad amendment agreed to.

Seanad amendment No. 26:

Section 70: In page 65, line 43, "the High Court is satisfied that" deleted.

Seanad amendment agreed to.

Seanad amendment No. 27:

Section 70: In page 65, between lines 46 and 47, the following inserted:

"(3) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to surrender him or her to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State in respect of an offence, unless the contrary is proved.".

Mr. C. Lenihan: Seanad amendment No. 27 inserts a new subsection (3) in section 70 of the Bill which relates to section 23 of the European Arrest Warrant Act 2003. Section 23 of that Act deals with requests for the surrender of a person by the issuing state to another member state. Section 26 gives effect to Article 28 of the Framework Decision. That article dealt with the question of a person being surrendered to a third member state.

The core position is that a person must not be surrendered to another member state without the first executing state consenting to that onward surrender. The new subsection (3) contains the presumption of compliance by the issuing member state with the terms of the Framework Decision, in this case, that it will respect the rules relating to onward surrender. This presumption will arise where the arrested person claims that the issuing state does not intend to respect those rules. The effect of the presumption is to ensure that the mere making of a claim will not suffice. Something more will have to be offered to support the claim. The presumption of compliance provision takes account of the mutual recognition concept that is at the heart of the European arrest warrant system. It represents an assumption we are entitled to make about our closest partners, that is, that they are acting in a bona fide manner in operating the Framework Decision. It also clarifies the threshold that needs to be met before further information will have to be sought from the issuing state.

Seanad amendment agreed to.

An Leas-Cheann Comhairle: Seanad amendments Nos. 29 and 30 are related to Seanad amendment No. 28. Seanad amendments Nos. 28 to 30, inclusive, may be taken together.

Seanad amendment No. 28:

Section 70: In page 66, lines 5 and 6, "Central Authority in the State" deleted and "High Court" substituted.

Seanad amendment agreed to.

Seanad amendment No. 29:

Section 70: In page 66, line 48, "consent."." deleted and "consent." substituted.

Seanad amendment agreed to.

Seanad amendment No. 30:

Section 70: In page 66, after line 48, the following inserted:

"(5) The High Court may, in relation to a person who has been surrendered to an issuing state under this Act, consent to the person being surrendered by the issuing state to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State, upon receiving a request in writing from the issuing state in that behalf.

(6) The High Court shall not give its consent under subsection (5) if the offence concerned is an offence for which a person could not by virtue of Part 3 or the Framework Decision (including the recitals thereto) be surrendered under this Act.'.".

Seanad amendment agreed to.

An Leas-Cheann Comhairle: Seanad amendments Nos. 32 and 33 are consequential on Seanad amendment No. 31. Seanad amendment No. 34 is related. Seanad amendments Nos. 31 to 34, inclusive, may be taken together.

Seanad amendment No. 31:

Section 71: In page 67, line 4, "if" deleted and "if it is satisfied that" substituted.

Seanad amendment agreed to.

Seanad amendment No. 32:

Section 71: In page 67, line 5, "it is satisfied that" deleted.

Seanad amendment agreed to.

Seanad amendment No. 33:

Section 71: In page 67, line 11, "the High Court believes upon reasonable grounds that" deleted.

Seanad amendment agreed to.

Seanad amendment No. 34:

Section 71: In page 67, between lines 13 and 14, the following inserted:

"(2) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to extradite him or her to a third country, unless the contrary is proved.".

Seanad amendment agreed to.

Seanad amendment No. 35:

Section 72: In page 67, after line 23, to insert the following:

"72.—The Act of 2003 is amended by the substitution of the following section for section 42:

'42. A person shall not be surrendered under this Act if—

(*a*) the Director of Public Prosecutions or the Attorney General is considering, but has not yet decided, whether to bring

proceedings against the person for an offence, or

(*b*) proceedings have been brought in the State against the person for an offence consisting of an act or omission of which the offence specified in the European arrest warrant issued in respect of him or her consists in whole or in part.'.".

Mr. C. Lenihan: Seanad amendment No. 35 provides for the insertion of a new section 72 in the Bill which in turn replaces the existing section 42 of the European Arrest Warrant Act 2003. Section 42 of that Act sets out one of the grounds for refusal to surrender a wanted person. It provides that a person shall not be surrendered while the Director of Public Prosecutions or the Attorney General are considering a prosecution for any offence or where proceedings have been brought in the State in respect of the offence set out in the European Arrest Warrant. Neither of those grounds is being changed.

However, the DPP has sought a review of section 42(*c*) which provides that where there is a decision to enter a *nolle prosequi* or a decision not to bring proceedings in respect of the offence in the European arrest warrant, the person may not be surrendered. The DPP is concerned that section 42(*c*) as currently set out could have undesirable results. He has pointed out that a number of circumstances can arise where the decision not to proceed here or to terminate proceedings is taken because of insufficient evidence or witnesses in this jurisdiction. Under the existing provision such a decision would mean that a wanted person would not be surrendered for the offence in question and that the person would as a result evade justice even though there is adequate evidence and witnesses available in another member state. There is no good reason in principle why this should be so. The present provision also creates a difficulty if a decision were taken not to prosecute here because of the lack of evidence without any knowledge at that time that the evidence was or might be available in some other jurisdiction.

It might be useful to refer to some examples of the type of situation the DPP had in mind when he requested a review of this provision. Offences relating to sex tourism or trafficking in persons are among the most notable examples of what the DPP is concerned about. Offences relating to torture or war crimes or similar offences arising under international conventions also apply. In such cases Ireland may have jurisdiction to try the offence but the best evidence and witnesses may be elsewhere. We must not prevent the effective prosecution of such offences. The present amendment will ensure that a potential barrier to effective prosecutions is removed. It relates to lack of witnesses or evidence here that may be available in another jurisdiction.

Mr. J. O'Keeffe: I am glad the DPP has requested a review. I fully agree with his approach on this. In those circumstances we would want to ensure that a person could be extradited to a member state where the best evidence and witnesses were available, particularly in respect of the types of heinous crimes outlined by the Minister of State. I am prepared to agree to this amendment.

Seanad amendment agreed to.

Seanad amendment No. 36:

Section 72: In page 67, to delete lines 24 to 28.

Seanad amendment agreed to.

Seanad amendment No. 37:

Title: In page 7, lines 9 and 10, "AND TO MAKE PROVISION FOR RELATED MATTERS" deleted and "AND THE EUROPEAN ARREST WARRANT ACT 2003, AND TO MAKE PROVISION FOR RELATED MATTERS, INCLUDING THE RETENTION OF COMMUNICATIONS DATA" substituted.

Seanad amendment agreed to.

Mr. C. Lenihan: I thank the Members for their co-operation. As they know, I am not a lawyer and this is not my area.

Seanad amendments reported.

Safety, Health and Welfare at Work Bill 2004: Report Stage.

An Leas-Cheann Comhairle: I draw the attention of Members to an error in amendment No. 14. The reference to (*a*) is incorrect and should read (*b*).

Mr. Howlin: I had spotted it.

An Leas-Cheann Comhairle: Amendments Nos. 1 and 29 are cognate and may be discussed together.

Mr. Howlin: Agreed. Are there other groupings of amendments or will each amendment be discussed separately?

An Leas-Cheann Comhairle: There are groupings. We can arrange to get the list.

Mr. Howlin: I move amendment No. 1:

In page 9, line 22, after "AS" to insert the following:

"AN TÚDARÁS SLÁINTE AGUS SÁBHÁILTEACHTA, OR, IN THE ENGLISH LANGUAGE,".

[Mr. Howlin.]

I would have liked to have sight of it because it is hard to examine groupings if they are handed to one when one is on one's feet. As on Committee Stage the Minister of State might bear with us in respect of groupings which it may not necessarily be useful to take together.

I begin with what is an easy amendment for the Minister of State to accept, being the successor of de Valera in the constituency of Clare. I propose that the Irish version be inserted "AN TÚDARÁS SLÁINTE AGUS SÁBHÁILTEACHTA, OR, IN THE ENGLISH LANGUAGE", which is right and proper.

I sincerely thank the Minister of State for the way in which he has approached the Bill. It was most helpful to have reasoned responses to many of the Committee Stage amendments sent to the Opposition. It is not something that one normally gets from a Minister because in a sense it is showing his hand in advance. It is only a Minister who is particularly competent and confident who can do that.

Mr. Hogan: Hear, hear.

Mr. Howlin: I am grateful to him because it has helped us understand the reasoning behind the Minister's position and in more than one instance punctured our own logic when we see the case set out. That is a useful way of dealing with legislation and I thank and commend the Minister of State for that approach. After that plámás I am sure the Minister of State will accept the amendment.

Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen): I too appreciate the input of the two Deputies opposite in particular and others who were active on Second and Committee Stages because, ultimately, the job of the Oireachtas is to produce the best Bill possible and that is the business we are all in.

In regard to the amendments proposed by Deputy Howlin, glacaim leis ar leibhéal amháin, ba mhaith liom go mbeadh an leagan Gaeilge ann ach moltar dom go mbeadh fadhb ag baint leis b'fhéidir dá mbeadh cás os comhair na cúirte. Ní thuigim cén fáth go mbeadh an fhadhb sin ann ach moltar dom go mbeadh. In the event that the amendment was accepted there is a possibility that if a case came before the courts, which happens frequently in this area, that the Irish language version of the English language version of the Bill would be a complicating factor. I understand there will be a full Irish version of the Bill which will address my concerns and, perhaps, those of Deputy Howlin also.

Mr. Howlin: Tá sé deacair a thuiscint conas a mbeadh deacracht ar bith ag baint leis an moladh atá os comhair na Dála an t-údarás a ainmniú as Gaeilge. I do not see how it could be difficult to put in an English version of the Bill the official title of the agency in the Irish language. The Minister of State has not proposed anything. He said he was advised that there might be deacrachtaí ag baint leis. Where are these deacrachtaí? We do not see the particular difficulties in achieving this.

As a matter of principle, not long ago we established in Bille na Gaeilge the right of citizens to do their business in Irish más mian leo and, as a matter of course, we should have in normal parlance the use of either the Irish or English versions of all State agencies. It should not be that there is an official title of an agency that is in English. If one wishes one can look at the Irish version of it and use an Irish version of the official title. I am strongly of the view that the Irish version of the title of any agency is as valid and should be inserted as valid in the primary legislation going through the House. That should be the norm rather than the kneejerk reaction from some drafters to say it will be covered in the Irish version and that there will be an Irish version of all legislation in any event.

Mr. Morgan: I am in favour of amendment No. 29 in the names of Deputy Howlin and I. I cannot think of a single reason the Minister of State would refuse to include the Irish language in the title of the agency. I accept there is a copy of the Bill as Gaeilge but the title of the agency will be referred to across the board. Why cannot the Irish language version of the name be included? I support also amendment No. 1.

Mr. Killeen: We had a close look at these amendments and discussed the matter on Committee Stage. I am satisfied that the Act, when enacted, which will be available in both Irish and English, covers the genuine point raised by the Deputies opposite. In view of the advice I have received it is better in this instance to have a full Irish version as well as a full English version of the Bill.

Mr. Howlin: I am disappointed that a Minister of State who has a particular regard for and great competence in the Irish language would not accept this amendment. It is important occasionally to send a signal to the drafters that this is the will of the Oireachtas.

Amendment put and declared lost.

An Leas-Cheann Comhairle: Amendments Nos. 2, 3 and 4 are related and may be discussed together.

Mr. Howlin: I propose that they be taken individually rather than together.

An Leas-Cheann Comhairle: They can be discussed and the question can then be put individually.

Mr. Howlin: I wish to have them discussed individually.

An Leas-Cheann Comhairle: Fine.

Mr. Howlin: I move amendment No. 2:

In page 9, line 33, to delete "Safety, Health and Welfare" and substitute "Health and Safety".

This matter was discussed on Committee Stage. Given that the Bill is renaming the National Authority for Occupational Safety and Health as the Health and Safety Authority it is appropriate that the Bill should be a health and safety at work Bill. I have had regard to the Minister of State's comment on Committee Stage which was not convincing. Basically he said welfare was important. The amendment proposes to change the reference only in the Short Title but not in the Long Title, at page 9, line 7 of the Bill. The change seems appropriate and right. I do not see a compelling reason for it other than it is not in the original Bill therefore there has to be a contrived reason for not accepting the amendment.

Mr. Killeen: I understand the point being made by Deputy Howlin but as I said on Committee Stage, there is in this Bill and also in the 1993 Regulations a certain emphasis on the welfare of workers besides their health and safety. While health and safety are the principal underlying reasons for this Bill, under the 1993 Regulations there is provision for rest-room sanitary equipment, changing rooms and showers and so on, in some work places. There are welfare elements in the legislation which should not be lost sight of. To some extent it is true that the health and safety elements are the very important and central elements of the Bill. However with a more modern view of the rights of employees that pertain today, the benefit of having welfare included in the Title — and I accept the point made by Deputy Howlin about the Short and Long Title — considerably outweigh the disadvantages.

Amendment, by leave, withdrawn.

Mr. Howlin: I move amendment No. 3:

In page 9, between lines 34 and 35, to insert the following:

"(2) Pending the repeal of the existing enactments, those enactments and this Act may be cited together as the Health and Safety at Work Acts 1882 to 2005.".

The purpose of this amendment is to highlight that the Safety, Health and Welfare at Work Act 1989 repealed all the previous health and safety legislation, going back to 1882. However, the section that was passed by the Oireachtas in 1989 was never brought into operation. Consequently, the old legislation, despite the decision of the Oireachtas a considerable time ago, to repeal it, is still in force. The 1989 Act states that these Acts are repealed but in fact they have never been repealed because that section of the Act was never brought into force.

The Bill now before the House repeats this farce by listing yet again the legislation that the House made the decision to repeal in 1989. How can there be any guarantee, therefore, that this legislation will ever be repealed? Is it a case of three strikes and one is out?

This amendment is designed to highlight the undesirability of retaining the old Victorian legislation which these Houses thought they had repealed in 1989.

The Minister of State addressed the issue on Committee Stage but failed to give a clear or watertight timetable for doing the business. The Minister of State may recall some reference to manpower shortages and other difficulties that caused the delays to date. I acknowledge the Minister of State's reasoned answer to the House subsequent to Committee Stage but we need to be seen to be doing our business. If the Oireachtas decides on something, it really is not a matter for manpower or for the Executive to delay the doing of those things. I know there is generally a catch-all phrase to allow for sections of the Bill to be brought in at different times and this issue will be dealt with later in the debate. The Oireachtas should be the body that sets the law. There must be an expectation that the decisions of the Oireachtas are carried through into legislation in a reasonable period of time.

Mr. Killeen: One of the difficulties is that certain elements of some of these previous and very old enactments, as Deputy Howlin stated, have already been repealed while some are under review and will be repealed.

There are, however, other elements of the Acts which—

Mr. Howlin: The Boiler Explosion Act 1992 is to be repealed shortly.

Mr. Killeen: I think the Deputy means the 1882 Act, which makes it even worse.

There are other elements which still have a relevance. It is an ongoing procedure over a considerable period of time and it is a considerable period of time since the 1989 Act was enacted. However, it is not possible at this stage to give a definite date. The Department would accept the signal from Deputy Howlin that some of the work in this area could be done more quickly but the timescale proposed in his amendment is not realistic.

Mr. Howlin: I am not satisfied with the Minister of State's response. Decisions made by the Oireachtas as long ago as 1989 cannot be brought into force for administrative or manpower reasons and in the year 2005, the House has not been given a definite timeframe. The Minister of State is not even proposing a different timetable to mine in order to do the business which the Minister of State has indicated it is necessary to do. It undermines the Oireachtas when this happens. I will not make more of an issue of this

[Mr. Howlin.]
because there are bigger issues to be addressed in this Bill. As a general principle, it is important that the Executive acts on the decisions of the Oireachtas once they have been made by both Houses. I regret there is not a clear timeframe laid down in this Bill.

Mr. Killeen: There are specific areas where some of the provisions of the remaining statutes, including the Mines and Quarries Act 1965, the Dangerous Substances Acts 1972 and 1979 and the Safety, Health and Welfare (Offshore Installations) Act 1987, continue to be relevant and applicable. Certain elements are under review with the possibility of eventual replacement but it is not quite as straightforward as thinking it can all be done very quickly. I assure the House that every effort will be made, in so far as possible, to replace these enactments within a reasonable timescale.

Amendment, by leave, withdrawn.

Mr. Howlin: I move amendment No. 4:

In page 10, line 6, after "enactments" to insert the following:

"provided that *section 4(2)* shall be fully brought into operation within 2 years from the date of passing of this Act".

The purpose of this amendment is to highlight the need to repeal the existing old legislation within a defined timeframe, given that it has been repealed once before by these Houses in the 1989 Act but it has never been brought into force. If the Minister of State rejects a twelve-month timetable, why is it so unreasonable to have a two-year timeframe?

Mr. Killeen: I inadvertently addressed this amendment when I answered on amendment No. 3, to the extent that there are a considerable number of previous enactments to be addressed and certain parts of them are still relevant. This is an ongoing process which involves a significant amount of work and in some cases consultation with relevant interests. This deadline could not be met. It would be foolish to accept it in the primary legislation when my judgment is that in respect of at least some elements, it cannot be met.

Mr. Howlin: I find it a little peculiar that a section is set out in legislation and the view is that it is foolhardy to expect that it might be enacted within two years. This is the Minister of State's Bill, not my Bill. If he regards the introduction of the sections in the timeframe of two years as being foolhardy, why is the House debating it at all?

Mr. Killeen: My predecessor who was in this position in 1989 would have thought that a two or three-year timescale for doing exactly this might have been reasonable. There were many reasons this was not possible in respect of some aspects of the various enactments. Work is ongoing and considerable progress has been made. I am confident that a large proportion of the work will be done within the timescale. However, I am not happy to accept the amendment because I am not sure that the entire repeal of enactments proposed can be completed within that timescale.

Mr. Howlin: I will reluctantly withdraw the amendment.

Amendment, by leave, withdrawn.

An Leas-Cheann Comhairle: Amendments Nos. 5, 13 and 19 are related and may be discussed together by agreement.

Mr. Hogan: I move amendment No. 5:

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

"'accredited trainer' means a trainer or assessor whose competence, skills and ability have been evaluated by an independent system of appraisal established by Ministerial regulations under this Act;".

The purpose of the amendment is to establish, on a statutory footing under the act, a system of accreditation for people acting as trainers or assessors. The Minister of State will be aware of matters I raised on Committee Stage and during Questions regarding the construction industry. It has emerged that employees did not receive proper training or certification of their training under the FÁS schemes established for this purpose. The Health and Safety Authority delegated to FÁS responsibility for the provision of such training, which is recognised by the Further Education and Training Awards Council.

There has been considerable activity since I raised this issue, with some of those assigned by FÁS to provide training and assessment for workers in the construction industry delisted from the panel. It is a serious matter that hundreds of workers were employed on building sites without proper training. Under building regulations, it is obligatory for those engaged in a range of duties on building sites, for example, working with scaffolding and driving machinery, including tower cranes, to receive training. It is horrendous to believe that the State was engaged in a practice whereby assessors and trainers did not carry out work they were assigned to do.

This amendment is necessary to ensure that this sort of activity will not go unchallenged. It proposes to establish a statutory process in which the accreditation of trainers is set out in defined terms and the competence, skills and training of certain construction workers are laid down by ministerial regulation.

I ask the Minister of State to take a serious view of the matters I have raised. He indicated in

reply to a question that the Garda was conducting an investigation. Perhaps he will enlighten the House on the progress of the investigation. Does he have anything to report with regard to untrained people who allegedly set the requirements of the skills training package for employees in the construction trade?

I appeal to the Minister of State to learn from this experience by ensuring we enshrine in legislation the requirement to have appropriate accredited trainers. This type of unsavoury activity must cease because accidents involving an untrained employee on a construction site, for example, the driver of a tower crane, would put employees and members of the public at risk.

Mr. Killeen: I sincerely thank the Deputy for bringing this matter to my attention. I assure him that on each of the occasions he raised it, I have provided him with all information available to me at the time. We discussed how the accreditation of trainers could be provided for at considerable length on Committee Stage. As I explained, considerable progress has been made on having FETAC and HETAC recognised qualifications. Both bodies are doing considerable work in this area across a range of educational attainments and it would not be appropriate for the Department to engage in a parallel system of accrediting awards in the manner prescribed. FETAC and HETAC are best placed to carry out this function. In light of this, the amendment is not relevant.

With regard to amendment No. 13, the accredited trainer requirement proposed by the Deputy is adequately covered in the FETAC and HETAC systems. An example of this type of approach is the health and safety guidelines on first aid, under which, in association with the National Ambulance Council and others, a scheme provided for the recognition of trainers following completion of and assessment under an agreed course syllabus. This type of approach will be brought under the auspices of FETAC and HETAC.

With regard to amendment No. 19, which seeks the introduction of regulations establishing an independent system, my concern is that the Department would seek to establish a parallel system alongside the system operated under the auspices of the Department of Education and Science with FETAC and HETAC. There are considerable advantages in having the accreditation carried out by these two bodies, which operate under a different Department. It has been pointed out in the past, for example, that a body directly involved in training should not give the accreditation.

As regards the Deputy's other questions, cases are being pursued and, as he correctly noted, a number of trainers have been delisted. This decision is being contested in the courts in at least one case. Interestingly, I have also had a substantial body of representation indicating that FÁS is much too hard on trainers and demands unreasonably high standards of them. Nevertheless, I agree with the Deputy that, as a principle, we should be able to stand over the qualifications of trainers and ensure that competent people deliver Safe Pass and other courses are delivered. This is best done in the context of FETAC and HETAC, rather than through establishing a parallel system under the Department.

Mr. Hogan: The Minster of State's reply indicates that nobody will take responsibility for what occurred in FÁS, namely, a clear breach of the regulations leading to the delisting of trainers. It is criminally negligent that workers in the construction trade were employed on sites without proper training. FÁS is the agency delegated under the Health and Safety Acts with carrying out training and assessment, which FETAC is authorised to certify. As the delegating agency of the State, FÁS has not covered itself in glory.

Hundreds of building site workers are being retrained using a voucher system and trainers have received thousands of euro for work they did not do. Despite this, the State does not appear to regard recouping this money — up to €100,000 — as a matter of urgency. Through no fault of their own, unfortunate employees paid an average of €450 for training which amounted to no more than filling in forms. No training was provided and the State sees nothing wrong with trainees being placed on sites to carry out certain duties under the building regulations. It is criminally negligent for the State to have allowed this to happen. In addition, the Government is not prepared to close a loophole to ensure it does not recur.

In view of recent events and the fact that the Minister of State was let down by a delegated agency under the Health and Safety Acts, the House should take steps to ensure such events are not repeated in the future. Having examined the loophole, strong regulations and guidelines must be enshrined in the Bill to ensure trainers are accredited and we can stand over them in law if an investigation arises in the future. FÁS, the Health and Safety Authority and others should not kick the issue into touch.

Recent events call into question the certificates issued by FETAC. As the Minister of State is aware, an investigation is under way to determine how this could have happened. We should take cognisance of the recruitment of Mr. Cromien, former Secretary General of the Department of Finance, by FETAC for the purposes of investigating and producing a report on this serious problem and loophole in the process for accrediting trainers. I am anxious that this issue be covered in the legislation because we do not get many chances to tidy up this serious problem of a criminal nature whereby the safety of employees and the general public has clearly been put at risk in the recent past. That recent experience should be treated seriously.

Mr. Howlin: I support my colleague, Deputy Hogan, who is to be commended on his persistence in addressing what is a serious issue on a number of fronts and one which we have a responsibility to address in legislative terms. I am not sure the Minister of State's response could not be accommodated within the proposals set out in the amendment tabled by Deputy Hogan.

We are talking about a clear validation system so that "accredited trainers" has a meaning we all understand. Responsibility for setting this out in law would belong to the Minister through regulations which he would draw up under this proposal. Since the difficulties that have arisen under the current regime are clear, as consistently outlined by Deputy Hogan both on Committee Stage and by means of parliamentary questions, it would be extraordinary if there were not a significant and robust parliamentary response during our discussion of this health and safety legislation.

In essence, it is the building blocks such as the system of accreditation for trainers that will be crucial in this area. There is no point enacting volumes of legislation if the building blocks on which the system will be based are in any way deficient. There clearly is a deficiency, as described in the well-argued analysis of Deputy Hogan. I strongly support the amendment and see no coherent reason the Minister of State could put forward for not accepting the obligation to set out the standards for an accreditation system by means of ministerial regulations which have the force of law.

Mr. Killeen: It is important to point out that there were difficulties with some of the courses which Deputy Hogan has mentioned. However, in those instances, the people whose training was deficient were provided with alternative training. Arising from these and other experiences, the procedures now in place are considerably more robust and far less likely to be circumvented than was the case in the past.

Mr. Howlin: What are these procedures?

Mr. Killeen: They are not amenable to short explanations. Since that time, FÁS has put in place—

Mr. Howlin: Do they have the force of law?

Mr. Killeen: ——a much more stringent system for evaluating the qualifications of trainers in the first instance and, more importantly, for overseeing the training itself.

However, it must be acknowledged that it was necessary to do so and that Deputy Hogan's pursual of this issue has had an impact on the quality of training that will be provided in the future. There is no doubt there were a number of employees whose training was deficient and for whom alternative training had to be provided. The judgment I am required to make is whether it is the best approach to further develop the system and to operate under the 1999 Act by taking advantage of the considerable expertise of FETAC and HETAC in the training area, which has proven to be successful in the case which I outlined earlier. Building on what has been a negative experience, we have moved to a stage where the quality of training is now monitored far more closely and where the involvement of FETAC and HETAC will ensure that the quality of training in the future is of a much higher standard than heretofore.

It should be noted that the numbers of people presenting for training over the last three years have been considerably in excess of the highest estimates at the time. This has levelled off at this stage. However, this does not in any way serve to justify what happened. As a result of the attention this issue has received, I am confident that, within the parameters of the Bill as set out, it has been dealt with adequately.

Mr. Hogan: The Minister of State would like to be reassured through FÁS that this will never happen again. However, his acknowledgement that it has happened should convince him to take this opportunity to enshrine in legislation a provision to ensure it will not recur. This is a better approach than relying on the word of a State agency which did not cover itself in glory by including on its panel of assessors and trainers some who did not meet the required standards.

No significant changes in procedure have arisen as a consequence of the Spollen report. The same situation could recur, depending on the personnel in FÁS and the calibre of trainers and assessors who are appointed. It is down to these individuals whether another such issue can arise in the future. Nobody seems to have lost their job in the wake of this matter and there does not seem to have been any attempt to compensate those employees who paid money to trainers but did not receive any training. We hear nothing of these matters.

6 o'clock

A white-wash has taken place and I am pressing this amendment on the basis that it represents a means of ensuring this will never happen again and that attempts will not even be made to bring about a similar situation. The only way to do this is by including a definition of "accredited trainers" in legislation and by imposing robust penalties on those who step out of line.

Amendment put.

The Dáil divided: Tá, 43; Níl, 66.

Tá

Allen, Bernard.
Boyle, Dan.
Broughan, Thomas P.
Burton, Joan.
Connaughton, Paul.
Connolly, Paudge.
Crawford, Seymour.
Crowe, Seán.
Cuffe, Ciarán.
Deenihan, Jimmy.
Enright, Olwyn.
Ferris, Martin.
Gormley, John.
Gregory, Tony.
Hayes, Tom.
Healy, Seamus.
Higgins, Joe.
Hogan, Phil.
Howlin, Brendan.
Kehoe, Paul.
Lynch, Kathleen.
McGinley, Dinny.
McGrath, Finian.
McGrath, Paul.
Mitchell, Olivia.
Morgan, Arthur.
Neville, Dan.
Ó Caoláin, Caoimhghín.
Ó Snodaigh, Aengus.
O'Keeffe, Jim.
O'Shea, Brian.
O'Sullivan, Jan.
Pattison, Seamus.
Penrose, Willie.
Perry, John.
Quinn, Ruairi.
Rabbitte, Pat.
Ryan, Seán.
Sargent, Trevor.
Sherlock, Joe.
Stanton, David.
Twomey, Liam.
Upton, Mary.

Níl

Ahern, Michael.
Ahern, Noel.
Andrews, Barry.
Ardagh, Seán.
Blaney, Niall.
Brady, Johnny.
Brady, Martin.
Brennan, Seamus.
Browne, John.
Callanan, Joe.
Callely, Ivor.
Carey, Pat.
Cassidy, Donie.
Collins, Michael.
Cooper-Flynn, Beverley.
Coughlan, Mary.
Cregan, John.
Curran, John.
Davern, Noel.
Dempsey, Tony.
Dennehy, John.
Devins, Jimmy.
Ellis, John.
Finneran, Michael.
Fitzpatrick, Dermot.
Fleming, Seán.
Gallagher, Pat The Cope.
Glennon, Jim.
Hanafin, Mary.
Haughey, Seán.
Hoctor, Máire.
Jacob, Joe.
Keaveney, Cecilia.
Kelleher, Billy.
Kelly, Peter.
Killeen, Tony.
Kirk, Seamus.
Kitt, Tom.
Lenihan, Conor.
McDaid, James.
McDowell, Michael.
McEllistrim, Thomas.
McGuinness, John.
Moynihan, Donal.
Moynihan, Michael.
Mulcahy, Michael.
Nolan, M.J.
Ó Cuív, Éamon.
Ó Fearghaíl, Seán.
O'Connor, Charlie.
O'Donnell, Liz.
O'Donovan, Denis.
O'Flynn, Noel.
O'Keeffe, Ned.
O'Malley, Fiona.
O'Malley, Tim.
Parlon, Tom.
Power, Seán.
Roche, Dick.
Sexton, Mae.
Smith, Michael.
Treacy, Noel.
Wallace, Dan.
Wilkinson, Ollie.
Woods, Michael.
Wright, G.V.

Tellers: Tá, Deputies Kehoe and Broughan; Níl, Deputies Kitt and Kelleher.

Amendment declared lost.

An Ceann Comhairle: Amendment Nos. 8 and 9 are related to amendment No. 6. Amendments Nos. 6, 8 and 9 will be taken together by agreement.

Mr. Hogan: I move amendment No. 6:

In page 10, line 37, to delete "*subsection (2)*" and substitute "*section 3*".

Mr. Killeen: These amendments were discussed on Committee Stage and propose to change the provisions on a competent person, including changing the provision from a subsection to a section. Section 2(*a*) sets out precise requirements under which the persons are deemed to be competent. The formula in this subsection is based on negotiations and agreement with the European Commission in the context of the recent opinion on the EU directive. That is what

[Mr. Killeen.]

we set out previously in this regard. If it were taken into consideration, it would be very open and would have the effect of lessening the force of what is provided in the Bill. The prevention of accidents and ill-health depends on adequate and competent persons being available. The relevant bodies under the Act are FETAC and HETAC. It is far better to go down that road where there is an established route for doing so.

Amendment, by leave, withdrawn.

Mr. Killeen: I move amendment No. 7:

In page 11, to delete lines 14 and 15 and substitute the following:

"(*d*) any unintentional ignition or explosion of explosives,

as may be prescribed;".

This is a drafting amendment. The words "as may be prescribed" apply to subsections (*a*), (*b*), (*c*) and (*d*). In the format in the Bill, it might be read as referring only to subsection (*d*).

Amendment agreed to.

Amendments Nos. 8 and 9 not moved.

Mr. Killeen: I move amendment No. 10:

In page 14, line 40, to delete "*subparagraph* (*a*)" and substitute "*paragraph* (*a*)".

This is a technical amendment.

Amendment agreed to.

Mr. Howlin: I move amendment No. 11:

In page 17, line 37, to delete "except" and substitute the following:

"but the application of this Act to the Defence Forces in the following areas shall be subject to the operational requirements of the Defence Forces, viz".

I debated this matter on Committee Stage and the Minister of State very helpfully sent me a note on his reasoning. The purpose of the amendment is one in which the Acting Chairman, Deputy Sherlock, would be interested. It is to modify the blanket exemption for the Defence Forces from safety legislation. The Defence Forces should, except in exceptional circumstances, have the protection of the same health and safety regulations as everybody else. It would be better to apply the Act generally to the Defence Forces but to provide exceptions regarding operational requirements. That is the logic from which we are coming, that is, that all workers, including members of the Defence Forces, would be included but that we would specify the exceptions where members of the Defence Forces would be required, in set circumstances and for operational purposes, to be exempt.

The Minister of State did not have the Defence Act to hand on Committee Stage, so he did not clarify the matter. As the Minister of State will see, our amendment has been amended to make it clear that my wish is to retain what the Bill states but to extend its provisions to provide some safety obligation in respect of training, aid to the civil power, duties at sea and active service matters, that is, the issues set out in paragraphs (*a*) to (*d*) of the subsection. It is a different approach to the one I took on Committee Stage. I hope to take the spirit of what the Minister of State indicated but not have the blanket, non-application of health and safety legislation to the Defence Forces.

The Minister of State explained in his note to me that health and safety provisions apply fully when members of the Defence Forces are not on active service. He said the provisions of the 1989 Act have had a significant influence on health and safety provisions in the Defence Forces. I am delighted to hear that, as it is important. God knows, the State has paid a fairly hefty bill in regard to health and safety matters in respect of the Defence Forces and I hope we are not still making mistakes in the same area.

The type of exclusion about which the Minister of State is talking is compatible with Article 2(2) of the EU directive on safety and health 89/391 and, therefore, it is not appropriate to amend the Bill. I hope the Minister of State will have regard to the amendment I have tabled and will see it meets the operational requirements of the Army and provides some obligations on the authorities in regard to training and the other duties which fall to the Defence Forces to carry out in our name.

Mr. Killeen: I acknowledge the amendment differs from that tabled on Committee Stage and I understand what Deputy Howlin is trying to achieve. I looked carefully at the implications of this because I did not have the defence legislation to hand on Committee Stage. However, I am still of the view that it is better dealt with in the terms presented in the Bill. While I acknowledge the new amendment from Deputy Howlin is closer to what I would have liked, the Bill deals adequately with this, particularly since section 5 of the Defence Act 1954 and section 4(1) of the Defence (Amendment) (No.2) Act 1960 are relevant in this regard.

In particular circumstances, for example, a state of emergency, the use of the term "active service" in the Health, Safety and Welfare at Work Bill rather than "operational requirements" is more appropriate in the context of situations covered by the Defence Acts to which it is not appropriate to apply the provisions of this Bill. Perhaps on reflection, the Deputy will acknowledge there is a strong case in regard to maintaining the current terminology in the Bill. Having considered it very carefully, I believe the

outcome with the current wording is likely to be better than if I agreed to the Deputy's amendment. However, his point about the Defence Forces and the difficulties that arose previously is well made. Lessons have been learnt in that regard.

Mr. Howlin: I am obliged to the Minister of State, who has made a coherent case. I have read a briefing document he provided for me, which was helpful. It is a question of approach. I approach the matter on the basis that everybody should have the protection of the highest standards of health and safety in their normal employment. It is possible to say that armies go to war, from which in terms of health and safety they cannot exactly be protected. That is understood and we can provide for that. I will not push the matter further because the Minister of State has at least taken time to reflect on it. Before I withdraw my amendment I would like the Minister of State to give me an assurance that: the highest standards of health and safety are being applied to members of the Defence Forces in all the areas covered in paragraphs (*a*) to (*d*); it is understood that members of the Defence Forces are workers with the same obligations falling on the State as an employer as we would expect of the State and other employers; having regard to the exceptional nature of the work of the Defence Forces, the State does its best to provide the safest possible environment for that unique workload.

Mr. Killeen: I looked very carefully at what the Deputy proposed and I take the point he has made, which is very important. We raised this matter with representatives of the Defence Forces regarding the enactments that affect them. On balance I judged it was better addressed as the Bill stands.

Amendment, by leave, withdrawn.

Mr. Hogan: I move amendment No. 12:

In page 18, between lines 5 and 6, to insert the following:

"8.—(1) Within 6 months of the commencement of this Act, the Minister shall commission the publication of a regulatory impact assessment of the impact which this Act is having on business.

(2) When conducting a regulatory impact assessment under *subsection (1)*, particular regard shall be paid to the impacts which this Act has on small businesses."

This amendment relates to a regulatory impact assessment. Some time ago the Government published a White Paper entitled, Regulating Better, which advocated the use of regulatory impact assessments. I am sure the Minister of State will have no difficulty in accepting this amendment as it forms part of the policy of the Department of the Taoiseach. The cost implications of the Bill's provisions cause some concerns for employers. The burden imposed by legislation of this kind particularly on small businesses is of some concern to me. While the aims of the Bill are laudable, we need to strike a balance between these aims and the cost of implementation. My amendment would require a regulatory impact assessment six months after the commencement of the Act to ascertain whether any expensive costs are unwittingly imposed without having the desired effect of improving health and safety. If the Government is to heed its own advice in these matters I am sure the Minister of State will consider this sympathetically.

I do not take much comfort from the correspondence I received from the Minister of State on the matter, in which he assured me that he is committed to having a competitiveness study undertaken. He could do so on a statutory basis if he is committed to some kind of assessment.

Mr. Howlin: The sins of the senior Minister are beginning to rub off with another study.

Mr. Hogan: An assertion in the explanatory memorandum that better management of health and safety will result in savings to the State and business is a long way from a statutory guarantee. I ask the Minister of State to reflect carefully on the matter and to implement his Government's policy.

Mr. Killeen: The Deputy made a very strong case on the matter on Committee Stage and I have reflected on it in the meantime. An argument exists as to whether we should have a regulatory impact assessment or a competitiveness impact assessment. I agreed to undertake a competitiveness impact assessment. We are at the early stages of considering how we might do this. One of the difficulties is that a huge element of this Bill is a restatement of previous enactments, particularly the 1989 Act and others. We are not starting from a green field from a regulatory point of view. However, I believe Deputy Hogan and others accept that very considerable savings will be made for business and the State, when one considers that the loss to the economy annually is conservatively estimated at €1.6 billion from ill-health, injuries and deaths in the workplace. There is scope for benefits to industry and business in that regard through better health, safety and welfare provisions. I accept the Deputy's general point and I will commission a competitiveness assessment. As all the Deputies know, it would be most unusual to have a provision such as this in the primary legislation. I will undertake that review.

Mr. Morgan: I support the amendment. A review of the regulatory regime would be extremely beneficial. I take the point made by the Minister of State about the efficiencies and the savings from improved conditions in the workplace, which I have no doubt will save industry a

[Mr. Morgan.]

significant amount of money through not losing so much workers' time. I would greatly value a regulatory impact assessment to establish the cost particularly to small industry, as highlighted in the amendment. Big industry has its own way of assessing these positions and of gathering information. However, the smaller companies would have difficulty carrying out their own regulatory impact assessment. I hope the Minister of State will accept the amendment. While I accept his statement in good faith that he will carry out a competitiveness assessment, unfortunately one never knows how long a Minister will remain in any position.

Mr. Hogan: The Minister of State might be promoted.

Mr. Morgan: Why not build it in to ensure it will happen.

Mr. Hogan: I thank Deputy Morgan, who made the valid point that the assurances of a Minister or Minister of State might not be honoured by his or her successor. We expect the Minister of State to go on to greater things and he might not be in the Minister of State ranks.

Mr. Morgan: Will the Government win the two by-elections?

Mr. Hogan: That would not impact on the Minister of State. I take his point about the competitiveness study to be undertaken. What are his preliminary views on the scope of the study? How and when will it be taken relative to the enactment of the legislation?

Mr. Killeen: I intend to commence the study within 12 months. We have already considered how it might be undertaken and what kind of terms of reference might apply. We are also considering whether a national or an international body should undertake it. We are considering all those points arising from the strong case made by Deputy Hogan. While I do not know about my longevity in the Department, I hope to last at least 12 months to get this started formally. It is a reasonable point and deserves action within 12 months of the enactment of the legislation.

Amendment, by leave, withdrawn.

Amendment No. 13 not moved.

Mr. Hogan: I move amendment No. 14:

In page 18, between lines 20 and 21, to insert the following:

"(*a*) publish, and revise annually, an Alcohol and Drugs Policy directed at employees;".

This section could be contentious under the areas of privacy and human rights. The purpose of the amendment is to ensure that employers prepare an alcohol and drugs policy for their workers. It is in the interest of both employers and employees to have certainty about the policy on alcohol and drugs and the procedures to be adopted to give the necessary assurances to their fellow employees as well as to employers that no abuse of alcohol or drugs is evident in any format within the employees' working conditions. I am sure the Minister of State shares my concern in this regard. This amendment gives him an opportunity to show he is serious about tackling drugs and alcohol problems in the workplace. Its acceptance would help employers to be certain about the process they need to follow to ensure that the provision is not being abused. Genuine concerns exist about the protection of people's privacy and legitimate human rights. The publication and annual revision of a company's alcohol and drugs policy would be in the interests of employers and employees.

Mr. Killeen: The Deputies opposite raised this and related matters at considerable length on Committee Stage and even on Second Stage.

Mr. Howlin: There are more amendments to come.

Mr. Killeen: I suppose they are somewhat related. I am trying to be careful to circumscribe and isolate the provisions of section 13, to ensure that something that should be specific does not become of general application. Some Opposition Deputies are worried that will happen. Section 20 of the Bill obliges employers to prepare a safety statement. It might be appropriate, in some circumstances, for such a statement to contain an alcohol and drugs policy, as proposed by Deputy Hogan. While I understand the reasons for the Deputy's suggestion, I would be unhappy to include such a provision in safety, health and welfare legislation. We need to state clearly where we are directing the provisions of section 13, in particular. Section 20 covers that more than adequately.

Amendment, by leave, withdrawn.

Mr. Killeen: I move amendment No. 15:

In page 21, to delete lines 17 to 25 and substitute the following:

"(*d*) in the case of—

(i) a class or classes of particularly sensitive employees to whom any of the relevant statutory provisions apply, or

(ii) any employee or group of employees exposed to risks expressly provided for under the relevant statutory provisions,

the employees concerned are protected against the dangers that specifically affect them.".

This drafting amendment corrects a similar error to that corrected in a previous amendment. The alignment of the final two lines of section 10(1)(*d*) has an effect on its sense.

Amendment agreed to.

Acting Chairman (Mr. Sherlock): Amendments Nos. 16, 17, 18 and 36 may be discussed together, by agreement. If amendment No. 16 is agreed, amendment No. 17 cannot be moved.

Mr. Morgan: I move amendment No. 16:

In page 23, to delete lines 32 to 36.

We had a lengthy discussion on Committee Stage about this amendment, about which I feel strongly. It is grossly unreasonable that section 13(1)(*c*) attempts to deal with the issue of testing for intoxicants in a mere 24 words. In other jurisdictions, such as the United States, the conditions in which tests may be conducted are outlined in regulations which extend to lengthy tomes. Many countries have enacted primary legislation to specify the conditions in which drug testing can take place. Such regulations need to be lengthy, specific and comprehensive to avoid the misuse of section 13(1)(*c*), as it stands. I am concerned about this matter. If the Minister insists on maintaining the Government's current minimalist position, how will employees be protected from the small number of employers who might seek to use the provisions of section 13(1)(*c*) to harass or bully workers? That is a real concern for me.

The Bill does not restrict drug testing to persons who hold safety-specific positions. On Committee Stage, I referred to Part 9 of the Railway Safety Bill 2001, which is eight pages long. Almost an entire page of that Bill is devoted to safety-specific positions of employment. Section 13(1)(*c*) of this Bill makes no provision for such restrictions, however. It will apply across the board. I am also concerned that the Bill does not mention specific forms of testing. Can tests other than breath, blood or urine tests be carried out? If the testing will be confined to the three forms I have mentioned, what level or degree of the intoxicant will be specified? No such matters are mentioned in the Bill. Part 9 of the Railway Safety Bill 2001 refers specifically to levels of alcohol in one's blood, breath or urine. Section 13(1)(*c*) is of such weight that specific matters of that nature should be included in it.

I am also concerned that section 13(1)(*c*) states than an employee should submit to a test "if reasonably required by his or her employer". It does not mention "reasonable suspicion", which is mentioned in the Road Traffic Acts, for example. Gardaí must have "reasonable suspicion" if they wish to test drivers whom they suspect of being over the legal alcohol level. The Garda is not allowed to set up road blocks and check points and start to test randomly. During the recent Committee Stage debate on the Road Traffic Bill 2004, which will allow gardaí to test without "reasonable suspicion", I said I understood from leaks in the Department or the comments of advisors that it might not be constitutional. This Bill is being passed with the exact same void.

I am in favour of this Bill, generally speaking, and I am anxious for it to be implemented as quickly as possible. It is very good, on balance, and will be a great asset to employers and employees. I have significant concerns about section 13(1)(*c*), however. I ask the Minister of State to include a reference to "reasonable suspicion", even at this stage.

Mr. Howlin: I wish to discuss my amendments Nos. 17, 18 and 26. When we debated this matter on Committee Stage, I thought the Minister of State acknowledged to an extent that real issues need to be addressed in this regard and I half-expected a ministerial amendment to this section.

I would like to examine the basic principles of this legislation. Chapter 2 of the Bill sets out the general duties of employees and persons in control of places of work. Section 13(1) states that an employee "shall", while at work, "if reasonably required by his or her employer, submit to any appropriate, reasonable and proportionate tests for intoxicants by, or under the supervision of, a registered medical practitioner who is a competent person, as may be prescribed". It is a bald and far-reaching provision. Any employee at work "shall" submit to any appropriate, reasonable and proportionate tests for intoxicants. If we are to step across the threshold of the rights of individuals in that manner, we will need a very compelling reason to do so. We will have to adopt a balanced approach. My honest contention is that the bald statement in the Bill is not balanced. It clearly gives all employers a statutory right to test all employees for drugs. The provision is too broad and too strong and it intrudes on civil liberties to too great an extent.

I do not object to specific drug testing provisions being collectively negotiated with employers and trade unions in the workplace on the basis of individual occupations. It is clear that some forms of employment can be considered to be much more onerous than others, in terms of the likelihood of danger being presented to the relevant employee and his or her colleagues. I hope my amendments are in line with the strong argument made by the Minister of State on Committee Stage. If safety is to prevail, employers are not to be held liable and people are to be protected in their places of work, there is a need to identify people who come to their places of work in a state of intoxication and to give employers rights. I am not suggesting the blanket exclusion suggested by Deputy Morgan in amendment No. 16, but, I hope, a *via media*. I suggest the following in amendment No. 17: "In page 23, line 32, to delete "if" and substitute "subject to *subsection (2)*, if"." The new subsection (2)(*a*) would read: "*Subsection (1)(*c) shall apply only to such categories of employee and in such circumstances as

[Mr. Howlin.]
are prescribed by regulations made by the Minister,". The Minister would have to have regard to the categories of employees and the circumstances in which it would be appropriate to require mandatory drug testing. Amendment No. 36 reads:

> In page 56, after line 43, to insert the following:
>
> "(2) Regulations for the purposes of *section 13(1)(c)* shall not be made unless a draft thereof has been approved by both Houses of the Oireachtas.".

In essence, I am giving scope to the Minister to reflect further so he will not give a catch-all legal right to all employers in all circumstances to test all employees for drugs. I know the Minister of State will point out the phrase "appropriate, reasonable and proportionate." However, what does that really mean? It allows all employers to come up with a set of circumstances to justify the drug testing of all employees. That is a very big step to take. No doubt the Minister of State can point to jurisdictions in which such a law prevails, but I am not keen on replicating in this jurisdiction many of the laws that prevail in others.

I hope my compromise amendment will allow the Minster to make regulations for drug testing that are appropriate but which will also give this House powers of review. This is important in a democracy.

There is always a balancing of rights involved in the provision of security of citizens in a State, whether this is security at work, on the road or elsewhere. The other obligation on the State, either through this House or through the Executive, is to protect the constitutional rights of individuals to privacy and freedom of action. There is now a strong belief, rather than a perception, that the nanny state is too casual in its trampling on the rights of individuals in the belief that it knows best and that it must protect people from themselves. It believes it must intrude in people's lives in such a way as to ensure they are protected in all circumstances. We are constantly narrowing the private space and room for manoeuvre of individuals. I detect on the ground a positive reaction against this incipient restriction of the rights of individuals — I do not know if the Minister of State can perceive it. We must therefore be careful about all provisions through which we want to be so righteous and good that we do not compromise the very privileges that define a democracy. Perhaps this sounds very grandiose in terms of the legislative provision under discussion but the provision is symptomatic of an attitude that has been prevalent in many Bills brought before this House. We push the people at a cost and if they ultimately perceive that the nanny state is going too far, there will be a reaction against all legislation.

My amendment is, in the words of the Minister of State, "appropriate, reasonable and proportionate" in respect of the requirements of health and safety. It would allow for the setting out in regulations under the Minister's control the circumstances and the employments where mandatory testing would be appropriate. It would give the final say to the Oireachtas in determining whether the Minister's judgment is correct. I ask the Minister of State, even now on Report Stage, to reflect hard on what I have said and accept the essence of what I am suggesting.

Mr. Killeen: As has been stated, amendment No. 16, which proposes the deletion of section 13, is a repeat of an amendment proposed by the Labour Party on Committee Stage. I acknowledge that Deputy Howlin has clearly given considerable thought to the points made on all sides during the Committee Stage debate, which shed much light on this subject. I made the case very strongly that there is a very limited number of employments regarding which it might be appropriate to make provision for drug testing and that, consequently, I was not minded to remove the section. Deputy Howlin has acknowledged this clearly in amendments Nos. 17 and 18.

On amendments No. 17 and 18, it is important to remind ourselves of the process by which testing would be achieved. At the first meeting of the new Health and Safety Authority, I spoke about the authority's obligations regarding the preparation of the regulations and I indicated to it that it would have a central role. I also indicated to it that it will be required to consult the social partners, in the first instance, and also any others with an interest in drawing up the regulations. I consulted the Irish Council for Civil Liberties and the social partners on the public concern over these provisions.

There is an acknowledgment that there are circumstances in which it is appropriate to provide for testing of one kind or another. It is also very important that the phrase "appropriate, reasonable and proportionate", which Deputy Howlin quoted, be reflected very strongly in the regulations when they appear.

Amendment No. 18 in particular, which is related to amendment No. 17, seeks to set out criteria already provided for in section 58(4)(*b*) for the making of regulations related to section 13(1)(*c*) and requiring prior approval by both Houses of the Oireachtas. However, I went considerably further than that. Owing to the public debate initiated on this issue, there was extensive involvement on the part of the Health and Safety Authority, the social partners and others. We also consulted the national drugs advisory board and other bodies in this area. The role of Parliament in the approval and consideration of the regulations ought to be centre-stage and therefore I undertook to present the draft regulations to the members of the Oireachtas Committee on

Enterprise and Small Business. I will certainly do so as soon as a fairly advanced draft becomes available.

No matter how we change the terms of section 13(1)(*c*), in particular, or those of any other section, the detail will be in the regulations. The best we can do in this regard is ensure that any interested parties, including the social partners, the national drugs advisory board and those involved in the national drugs strategy, are consulted by the Health and Safety Authority when preparing the draft. There should be a further undertaking that Parliament would have a key role, through the relevant committees, in considering the draft proposals before they are signed into law. It is not possible to go further than this, regardless of what detail we include in the Bill. Ultimately, regulations will have to be drawn up. As a Member of the Oireachtas, I am certainly prepared to say that such important regulations should be laid before the relevant committees. I will ensure that this is done.

Mr. Morgan: It is fine that regulations are to be drawn up but we should know when because this blunt instrument may come into effect long before they are available.

The Minister of State said he consulted the Irish Council for Civil Liberties. The council said that section 13(1)(*c*) is not compatible with the European Convention on Human Rights. I wonder what the Irish Council for Civil Liberties said to the Minister of State. Did it change its view on this section? If so, that would be a significant move and I would like to hear the outcome of the consultation. We all know what can happen at consultations.

My amendment seeks to delete that section. I accept the point that it is a blanket exclusion. I opted for that because a blanket exclusion would be more appropriate and we can come back to it on another occasion with a proper amendment when the full detail in terms of reasonableness of the approach to this issue has been teased out and agreed between employers' organisations and trade unions, as well as other agencies such as the Irish Council for Civil Liberties. This is much too bland to be accepted.

The words "appropriate, reasonable and proportionate" sound good but they refer only to the test, not to the conditions under which the test could be required. That is a fundamental point because any test could meet those criteria but the person might be called to have that test under unreasonable or inappropriate conditions, which, for example, raises the issue of invasion of privacy. This also involves a major issue of the dignity of workers that is not fully recognised under this paragraph. That is why I am so concerned about it.

I am disappointed the Department did not make a greater effort to find some way by amendment to ameliorate this draconian section. If this Bill is passed workers' rights will have suffered a grievous blow, which is worrying for all of us.

Mr. Howlin: The Minister of State has drawn our attention to section 58, namely the regulation and codes of practice that will be drawn up, under Part 6. I always break out in a cold sweat when I read this part of any Bill because here, after all the detail has been debated, the draftsman writes that notwithstanding the detail the Minister may do all sorts of things that he or she deems appropriate. It is a catch-all phrase supplying the belt and braces just in case of a problem.

The Minister of State has indicated that regulations will be required for the enactment of section 13 which includes subsection (*c*) and that under section 58(4)(*d*):

> subject to subsection (5) and to any conditions that may be prescribed, exempt from all or any of the provisions of the relevant statutory provisions any specified class of work activity, employment, article or substance or any specified class of person or place of work, where, having regard to the class of work activity, employment, article, substance, person or place of work, the Minister is satisfied that the application of those provisions is unnecessary or impracticable and that adequate protective measures are in place.

That is a catch-all clause and I am concerned that the Minister of State points to this as his solution to the specific points I raised. I would prefer to have a specific requirement that the categories of work subject to mandatory drug testing would be laid out by the Minister of State and approved by the Oireachtas. Is that the Minister of State's intent? Will he use the provisions of section 58(4)(*d*) to do that, as I suggest?

Does he intend to specify categories of work and to exempt any categories of work or will all workers be subject to testing regardless, as baldly stated in section 13(1)(*c*)? We need to know the Minister's intention. I would prefer that it be laid out in the Act rather than be captured by a catch-all section at the end.

It is always dangerous to point out these catch-all sections because section 58(4)(*a*) states that Regulations under this Act may:

> (*a*) contain any incidental, supplementary and consequential provisions that appear to the Minister to be necessary or expedient for the purposes of the regulations,

Acting Chairman: The Deputy has far exceeded his two minutes. I want to give the Minister of State an opportunity to reply to this debate.

Mr. Howlin: We will return to this on another day. This is a difficult issue to encompass in two minutes.

[Mr. Howlin.]

The Minister of State needs to give a very clear indication of his intent on this. I am not content with an indication that it will be captured by a general provision. I do not know whether the Minister of State intends to exempt any category of work or specify a category of workers that will be subject to mandatory drug testing.

Mr. Killeen: The Deputies have raised two central points. Deputy Morgan asked about the implementation of section 13(1)(*c*). This will come into effect only as may be prescribed. There is no question of any element coming into place until the regulations prescribed in the primary legislation are in place.

Mr. Morgan: What about the consultation with the Irish Council for Civil Liberties?

Mr. Killeen: It would be grossly unfair of me to say what the council's feelings were after the meeting. I am not aware it issued any statements condemning me afterwards.

Mr. Morgan: The Minister of State employed the council in his argument.

Mr. Killeen: I said I consulted with the council but it would be unfair of me to use this forum to speak on its behalf.

Mr. Morgan: I thought the Minister of State did speak on the council's behalf.

Mr. Killeen: I did not. I said I consulted with the council.

Mr. Morgan: I took the Minister of State to mean that he spoke on the council's behalf.

Mr. Killeen: Absolutely not.

Deputy Howlin read out a subsection which is a long list of exemptions. The Deputies make a reasonable point in that I am not able to say what are the regulations. This is for the very good reason that I have undertaken to consult various groups, including the social partners and the drugs advisory groups, and return to the Oireachtas through a committee with draft regulations.

Mr. Howlin: Does the Minister intend to exempt some categories and focus on other categories where it would be appropriate?

Mr. Killeen: I hope the draft regulations which will be prepared by the Health and Safety Authority will follow that route. If not, Members will have an opportunity in the committee to say what they think about them before they are signed. No matter what was in this section the test would be what is in the regulations. That is why it is better to deal with it as it is and deal with the regulations through the consultation process, and in the Oireachtas.

Debate adjourned.

Private Members' Business.

Special Educational Needs: Motion (Resumed).

The following motion was moved by Deputy Crowe on Tuesday, 22 February 2005:

That Dáil Éireann:

— noting that progress has been made in the area of special needs education, including the passage of the Education for Persons with Special Educational Needs Act 2004;

— expresses its concern that families still find it necessary to seek redress in the courts for the failure of the State to meet the educational needs of their children;

— urges the Government to ensure that there is further progress in delivery of promised improvements, including allocation of the resources required to meet the special needs and equal rights of all pupils and to reduce the pupil-teacher ratio in primary schools;

— notes the widespread concern among parents, teachers and principals that the proposed weighted system of allocation of special needs teachers to schools would, in practice, be a "quota" system which would result in the loss of teachers to many schools, especially in disadvantaged and rural areas, and loss of support to many pupils with special needs;

— acknowledges the statement of the Minister for Education and Science that she wishes to see a system introduced that would not result in loss of services to any child;

— calls on the Minister for Education and Science to immediately conclude her Department's review of the proposed weighted system, to publish the outcome of the review and to initiate a revised and improved system for deployment of special needs teachers as soon as possible;

— urges that such deployment of teachers be based on the right of each individual pupil to have his or her special educational needs assessed and on the right of each pupil to the resources required

to ensure that each can reach his or her full potential;

— calls on the Minister for Education and Science to immediately approve the enhanced support and investment essential for existing schools catering exclusively for pupils with special needs;

— calls on the Minister for Education and Science to recruit the additional 650 teachers needed to implement the programme of improved education for persons with special needs;

— urges the full implementation of the recommendations of the Report on Educational Provision and Support for Persons with Autistic Spectrum Disorders, the report of the task force on autism 2001;

— calls for the immediate provision by the Irish and British Governments of all the necessary additional financial, personnel and other resources required to accelerate delivery of the Middletown Centre for Autism, County Armagh; and

— urges the Government to take immediate steps to fulfil its commitment to reduce class sizes for children under nine to less than 20 and to plan for future teacher supply requirements, including by the immediate establishment of a forum on teacher supply.

Debate resumed on amendment No. 1:

To delete all words after "Dáil Éireann" and substitute the following:

"— notes that progress has been made in the area of special needs education, including the passage of the Education for Persons with Special Educational Needs Act 2004;

— commends the Government for the significant additional resources made available for the education of pupils with special educational needs; and welcomes the legislative and administrative measures being taken by the Government to improve the framework within which services are delivered to pupils with special educational needs, their parents and schools; and

— further acknowledges that there are over 4,000 more teachers in our primary schools and over 2,000 in our post-primary schools than there were in 1997, that these extra teaching resources have been used to reduce class sizes, to tackle educational disadvantage and to provide additional support for children with special needs, and that the Government is committed to reducing class sizes further."

—(Minister for Education and Science).

Mr. Carey: I wish to share time with Deputies Michael Moynihan, Keaveney, O'Connor and Hoctor.

Acting Chairman: Is that agreed? Agreed.

Mr. Carey: I am pleased to have an opportunity to speak briefly on the motion tabled by Sinn Féin. I welcome the opportunity to discuss with Sinn Féin a policy-driven issue. It is a wide-ranging and worthwhile motion, which provides an opportunity for a useful debate in this House, if only to highlight the fact that much of what is included in the motion has either been delivered already or is in the process of being delivered.

When I was first elected to the House in 1997, I came from a teaching background, having spent 30 years as a primary teacher. There was no legislative base for primary education since the foundation of the State. We were governed by a raft of circular letters, and much of my time was spent trying to find relevant circular letters. This Government, and the previous Government, put in place a range of legislative measures which underpinned significant investment in education at primary, post-primary and third level education. It went a long way towards the progressive implementation of all our aspirations, particularly in the area of special needs education.

I want to focus on the area of teacher supply. Before coming to that, I compliment the Sinn Féin Party on drawing attention to the report of the task force on autism and the issue of the opening and proper resourcing of the Middletown Centre for Autism in County Armagh. I expect there will be an opportunity to debate these two issues under Committee D's report at the plenary session of the British-Irish Interparliamentary Body meeting in Bundoran. I note Deputy Morgan will attend it and I hope he will have an opportunity to participate in the debate. We can all learn from our experience here and in other parts of the various islands in this part of Europe.

On teacher supply, it is important to reiterate what is proposed in the Government's amendment. There is currently more than 4,000 additional teachers in our primary schools and more than 2,000 in post-primary schools in comparison to 1997. Additional teacher resources have been used to reduce class sizes, tackle educational disadvantage and provide additional support for children with special needs and the Government is committed to reducing further class size. I have no doubt the Minister, Deputy Hanafin, who eloquently outlined the Government's record in her speech last night, will continue to implement all the aims contained in An Agreed Programme for Government. I am also confident they will be substantially, if not completely, implemented by the time the next election comes round. It is important to state that the

[Mr. Carey.]

pupil-teacher ratio has swollen from 22.2:1 in primary schools in 1996-7 to 17.44:1 in 2003-4. I recall a time when it was significantly higher. We should move towards a lower ratio, but it not just a question of mechanically reducing the pupil-teacher ratio; it relates to how one best uses and targets resources and measures outcomes. We have a very dedicated teacher workforce and there is an extensive range of ancillary support services in all primary schools, particularly dealing with areas of disadvantage and in areas of special need.

There has been strong and sustained investment by the Government over the years in this area, which is recognised in the motion. Considerable expertise has been developed among the teaching cohort in dealing with children with special needs. It is not that long ago since there was just one training course for special needs teachers. There were two courses at one stage but some Government closed down one of them. I am not flying the teacher flag, but I want to underline the significant commitment on the part of teachers. Over the years teachers have piloted very innovative projects, whether through youth encounter projects which began in the 1970s, Breaking the Cycle initiatives, Early Start or the integration of children with special needs into mainstream classrooms and mainstream schools. All of this has been carried out by very dedicated teachers.

Much of this expertise is only now becoming policy. I know the Minister is committed to continuing with this. It is not that long ago since there was minimal engagement with the home and families. That is the key to advancing the needs of all children, but it is crucially important in the area of advancing the needs of children with special needs. The materials and resources suitable for children with special needs were not available in this country for a long time. This is an area in which further investment ought to be made. Many of the learning resources available are imported from other jurisdictions, some of which are very appropriate and some of which are not. Curriculum development and development of resources is an area in which teachers could be used much more. It is a pity that greater use is not being made of teacher expertise and experience. Teachers should be allowed opportunities for further study, including getting into the inspectorate, because they would have much to contribute in this area.

The Minister did not touch on one other aspect last night. While the whole school completion programme is yet another pilot project, it has great potential for being mainstreamed. Even though there are just 11 of these projects throughout the country, they are important initiatives whereby children are tracked from their early childhood educational stage right through to transfer from primary to post-primary school. That includes mainstream children, as well as children with special needs. That has huge potential because they can think outside the box, so to speak. We need to be ambitious and courageous enough to acknowledge that it does not always require a teacher to implement many good educational programmes. This is happening in the whole school completion area. Much work is also being done in the areas of music therapy, the integration of children with special needs with children who are very gifted, pre-school breakfast clubs and after school clubs, involving the probation and welfare service, arts based groups and so on. These have a significant role to play.

I support strongly the Minister's amendment. The Government and the Minister are deeply committed to implementing the commitments made in An Agreed Programme for Government, including many commitments which are not included in that programme. There will be a progressive implementation of the aspirations in the recent legislation applied to a very satisfactory level before this Government completes its term of office.

Mr. M. Moynihan: I welcome the opportunity to contribute to this debate and thank Sinn Féin for tabling the motion. Provision for those with special needs, particularly in education, has been neglected by the State for a long number of years and its record on providing for children with special needs has been poor. We are now trying to catch up and in recent years considerable work has been done and resources committed to the area of special needs, including special educational needs.

It is worth noting for the benefit of the House that since we last discussed this matter four or five months ago, the National Council for Special Education has been established on a statutory basis. Some 80 special educational needs organisers now work locally with schools, parents, children and teachers. An extra 500 children got the benefit of special needs assistants, new units have been opened up and the weighted system, as announced last year, is being reviewed.

Progress made in the allocation of resources and in the provision of additional staff to this area has been immense in recent years. More than 2,600 resource teachers work in primary and post-primary schools, which is an increase from 104 in 1998. There are 1,500 learning support teachers, more than 1,000 teachers in special schools and more than 600 teachers in special classes. There are nearly 6,000 special needs assistants in our schools compared with only 300 six years ago. More than €30 million has been spent on school transport for special needs students and more than €3 million has been allocated for special equipment and materials, which represents an increase on an allocation of £800,000 in 1998.

Considerable change has taken place in the education sector at primary and post-primary level in the past seven or eight years. The work that has been done must be welcomed. We should record the commitment given by teaching staff, managers of schools and those who have been

taken on as special needs assistants. Members will be aware from their visits to schools, including special needs schools, of the work and commitment of the dedicated staff, as I am aware from visiting St. Joseph's Foundation in Charleville in my constituency. We hear much criticism about shortfalls in the system, but we should recognise that these people put in an enormous effort above and beyond the call of duty.

The National Council for Special Education was established in December 2003 as an independent statutory body with responsibilities as set out in the National Council for Special Education Order 2003. The council has 12 members, all with a special interest or knowledge in the area of special education, including children with disabilities. Since September 2004, 71 special educational needs organisers have been employed by the council and deployed on a nationwide basis, which means that at least one special educational needs organiser has been deployed in each county.

Resources are of major importance to the provision of services. There are duties on the Ministers for Finance, Health and Children and Education and Science to ensure that adequate resources are provided for the delivery of services. In particular, the Minister for Finance is obliged to have due regard to the State's duty under the 1937 Constitution to provide an education appropriate to the needs of every child and the necessity to provide equality of treatment for all children.

Parents have a right to be fully consulted and informed at every stage of their child's education. If they feel their views are not recognised or their child's education plan is not being implemented effectively, they have a right to appeal a decision concerning their child and other such matters to an independent review body. In this context, the board would have the power to compel bodies under the Health Service Executive to take specific action to address matters before it. This is to be welcomed.

For too long the education system almost excluded parents and it was frowned upon when parents took a proactive approach to their children's education. That has long since ceased to be case and that is welcome. As we move forward in providing proper resources for people with special needs, an inclusive approach is the only way forward. There is a commitment in that respect. Provision of services in this area has progressed considerably in recent years but we have a long way to go. We must ensure that in future everyone involved in the area of special needs, be they parents, children or people providing services, are consulted and that the system is inclusive.

I commend the Government's amendment to the motion. I congratulate the Minister for Education and Science on the work she is doing not only in this area but throughout the education sector.

Cecilia Keaveney: Chuala mé óráid an Aire aréir agus bhí sí go maith. Dúirt sí go bhfuil obair déanta agus go bhfuil a lán oibre le déanamh freisin. Tá sí, maraon leis an Roinn, na tuismitheoirí agus daltaí scoile, ag obair maidin agus oíche na rudaí eile a chríochnú. Tús maith leath na hoibre agus go n-éirí an bóthar léi.

It is important to keep education to the fore and I welcome this opportunity to speak on it. I come from a background of music education. As chair of the arts committee, apart from anything else, I always make the case that music education should be at the core of a child's development. It is beyond question that a child's ability in terms of co-ordination, rhythmic development, language development, ability to deal with people, development of confidence and many aspects of an unborn child's engagement with life outside the womb and following birth can be multiplied by access to and interaction with music. If I were to achieve one objective this evening, it would be to encourage the Department of Education and Science to re-examine the international proof in this area, including the two reports our committee prepared, that point to the undoubted need for the role of the arts in education to become more central.

I wish to pick up on the issue of the role of music therapy and the fact that we need to expand not only on that and the number of locations where it can occur but that when people search for what they consider alternative but which I consider central, funding is made available for that therapy to be developed. I say that in the context of supporting what takes place in this area.

When I was elected to this House in 1996 I was in Opposition. I battled to ensure a classroom assistant in a class for moderately handicapped children in Scoil Íosagáin was not re-assigned to a class for profoundly mentally handicapped, which was what was proposed. I begged for a second assistant to be appointed to ensure that those children would have the facility of a classroom assistant. I remember that well because it was the subject of an Adjournment debate and the then Minister of State, Deputy Allen, was unfortunately given a response concerning the wrong school and it was extremely embarrassing for him and for me.

Scoil Íosagáin is only one such school but is a good example of one in that period where the mainstreaming of special needs at all levels has taken place and is supported. It has 28 special needs assistants, three full-time resource teachers, two full-time learning support teachers, a principal and 21 mainstream assistants and school staff, a class for severe profound general learning disability, two classes for moderate learning disability, one class for mild learning disability, three classes for autism and two classes for specific learning disability. While I could continue to list the supports it has, I am simply outlining the change that has occurred in that school in a relatively short number of years. However, what is

[Cecilia Keaveney.]

a short number of years for people involved in legislation is a terribly long period for those involved in this area. The children that were entering school when I was elected are well on their way through the system by now. We must keep up the good work because for every parent, his or her child is the most important, not the child who will be there in 20 or 30 years time.

I welcome the fact that we are doing a lot and moving forward. It is frustrating for all of us who know the children and see the delay between an application for support and a recommendation for support on the other side, but the establishment of the NCSE will be a help in that. The Minister outlined her desire for co-ordination and unless there is co-ordination across the board, between Departments, service users, providers and funders, we will not get very far.

The new council offers local decision making so that people will be treated as individuals. There are also opportunities for collective work. Many of the children with dyslexia, dyspraxia and fragile X can be dealt with on a group basis and we should have the flexibility to bring in children and put the resources into schools, leaving them to decide how they are used. The schools know best what the needs are. I hope the slow decision making is a thing of the past.

I wish the Minister well and ask that music and art therapy become more central in education. We must keep up the good work because people are working hard to develop services for their children. It is happening all over the Inishowen peninsula, in Carn, Buncrana and Moville, where people are doing their bit to help and they deserve recognition.

Mr. O'Connor: I welcome the opportunity to contribute to this debate and I compliment Sinn Féin on its efforts in this regard, particularly my colleague, Deputy Crowe. I am happy to share a constituency with him. We have both been challenged by the Tallaght west report, which highlighted the need for the Department to respond in a positive way to educational disadvantage. I compliment the Minister for Education and Science in this regard. She has been particularly proactive since she took on this role in September. She came to Tallaght and spent a day with us, going to a number of schools in the area, including St. Thomas's junior and senior schools in Jobstown. She saw for herself the good work being done by teachers and parents in co-operation and she saw where resources can be used to telling effect. As other colleagues have said, it is important that we cherish all the children of the nation and that we do as much as possible to ensure educational resources are made available, particularly in disadvantaged areas.

I listened to the Minister last night and it was interesting that she acknowledged the poor record of the State over a number of decades in providing for children with special needs. That admission is a good starting point — the Government should be brave enough to admit where there are shortcomings and where extra resources are needed. There will always be a demand for resources in every area but it is important that we understand the needs of education, and I will always make the case in arguing for Dublin South-West that it is very important to use our resources to ensure all children are given an equal chance.

I support the view expressed in the motion about dealing with people with special educational needs. It is important that where families face challenges, they get the best possible assistance from schools and State agencies. I hope the Minister will continue her efforts in that regard and she will have my support as she does that.

I look forward to the rest of the debate and supporting the Government amendment that points out that while there are deficiencies, efforts are being made. The Minister is right to do that.

Ms Hoctor: Tá mé buíoch as ucht an tseans labhairt ar an rún tábhachtach seo. I welcome this debate that Sinn Féin has brought before the House, although I regret we do not have more time to discuss this vital issue. Deputy Crowe is behind this issue, on which he has aired his views, but the provision of adequate and enhanced services for all children in schools, particularly those with special needs, is a common cause for all Deputies.

I welcome the progress made in appointing additional staff to all schools — 4,000 extra teachers and 1,500 learning support teachers since 1997 at primary level demonstrate the progress that has been made. The model mentioned for allocating resource teachers to schools with more than 150 pupils caused alarm in some schools last year and I welcome the fact that the Minister is addressing that by putting in place a model by September 2005 at the latest. She has indicated that she hopes to have it in place before the summer of this year so that schools will know what is happening before the new school term. It is important in the allocation of resource teachers that those schools will be in a position to plan and ensure early intervention for those children who are most in need.

I welcome the Minister's initiative for children who have dyslexia and minor learning disabilities. It is important that teachers are adequately trained in all areas of disability and that such training is not just an optional module on the course but a mandatory part of it. We must impress on the Minister that this must form part of the training programme for teachers at both primary and secondary level.

The autism units have proven to be a success in all eight areas where they are located. I am familiar with one in Boher outside Nenagh in County Tipperary. The ongoing training of specialist teachers is important in addressing the needs of the growing numbers of children with autism. The management guidelines for these

units must be clearly set out so that schools that take on a unit adjoining the mainstream school are certain about what is expected of them and the rules to which they must adhere.

Parents of children with autism must be fully involved in their education and consulted about the progress the children make. An overall approach involving both home and school environment provides the best chance of early intervention. Access to all learning resources from an early age makes a difference to the children in question. I welcome the fact that Members acknowledged the Minister's statement that she wishes to see a system introduced that will not result in the loss of services to any child. That is the common ground we share, the common ground on which we will continue to work.

Ms O'Sullivan: I propose to share time with Deputies Sherlock and Lynch. I welcome the opportunity to contribute to this debate and thank the Sinn Féin Party for tabling the motion.

I have many concerns regarding the proposed weighted system and I intend to address mainly that issue. I have raised the issue many times by way of priority question, written question and so on, and the Labour, Fine Gael and Green Parties put forward a joint motion last October on this issue.

I acknowledge the Minister's announcement that she will carry out a review of the weighted system and that she hopes it will be finished quite soon. If it goes through as proposed, with the allocation of resources depending on whether the school is a boys' school, a girls' school, a mixed school or a disadvantaged school, the result will be a huge transfer of resources from some schools to other schools. The schools that will lose out will be the ones that have a verifiable need for these resources based assessments carried out by trained educational psychologists, mostly by NEPS psychologists but, in some cases by psychologists from outside the NEPS where there are not enough NEPS psychologists.

There is something wrong with a system that removes resources from children who have a verifiable need and gives them to children who have not. That is a terrible waste and maladministration of public resources. I am not sure that any type of review of the weighted system will solve that problem because there is an uneven distribution of special needs. We are talking here of the most common needs. Children who have a less common need are entitled to an individual assessment of need. The children we are talking about here are those with dyslexia, those with mild and borderline intellectual disability. I am not sure whether children with ADHD and ADD are included because that has not been clarified.

Studies have been carried out that suggest that more than 1,000 primary schools will lose resources. I accept that more schools will gain resources but the point is that the ones that are losing are ones that have a verifiable need. If the system goes ahead as intended by the former Minister for Education and Science, Deputy Noel Dempsey, 72 schools will lose a total of 40 special education resource learning support teaching post equivalents. Some 31 of these posts will be redistributed among 61 schools in the county but nine special education resource learning support teaching posts will be lost to my county. The same will happen in a number of other counties. Some counties will gain.

My point is that this system is not based on any kind of evaluation of the needs of the children in the schools. The evidence suggests that these needs are widely distributed. Therefore, any kind of quota system, as this weighted system is, will not be fair. A study was carried out in consultation with NEPS in Dundalk and Leitrim. It has not yet been published, but I understand it shows that some schools have no need of extra resources while in others up to 50% of children have resource needs. It cannot, therefore, be fair to distribute resources in this way.

Similarly, the intellectual disability database suggested wide variation. A recent study on disadvantage showed that disadvantaged schools are likely to have three times as much literacy need as schools that are not disadvantaged. No matter how well the system is weighted towards disadvantage, I cannot see that it will adequately cater for schools in disadvantaged areas. In some cases it will result in resources being given where they are not needed. I am very concerned about this. I would like the Minister of State to address this issue with her senior Minister. What will happen next year to schools where 40% of the children have a verifiable need?

I accept the point the Minister made that it is a good idea to have resources in a school when the children arrive. Surely it would be better to put in resources on the basis of a verified pattern in a school over a period of time rather than simply on the basis of numbers. That would be in some way fair if these needs have existed in a school for a time. I urge a proper and total review of the weighted system. I would scrap it and instead put in a system that is fair.

Last night the Minister referred to the fact that in 1999 the Government took a decision that has transformed the level of provision for pupils with special educational needs and that they would be entitled to an automatic response. I commend the Government for that decision. However, the current proposal takes away that right. That is wrong. The Minister said during Question Time and again last night that the children would continue to get the level of service appropriate to their needs. Will those needs be assessed by NEPS psychologists or will there be a new type of evaluation of needs? Where children had, perhaps, two and a half hours of one to one resource teaching, will they now get two and half hours in a group of six?

The SENOs will be a good addition to the system. However, the former Mid-Western Health Board area, where I come from, should have 11 speech therapists but there are only four,

[Ms O'Sullivan.]
and only six of the 16 NEPS psychologist posts are filled. I do not know about the other health board areas but I believe they may be in the same position. The service cannot be provided if we do not have the specialists. These are my main concern regarding the weighted system.

I have a few more minutes in which to touch on the other two issues that are of concern in this motion. My colleague, Deputy Lynch will address the issue of autism. However, I want to say one thing about it. I met a group of parents last week who have set up a preschool for autistic children but they fear they will run out of funds and be unable to continue. This facility has made an enormous difference to their children and they have been scraping money together to keep it going. Others around the country are in the same situation. Needed supports should be provided for a group who are particularly in need of support, and it is very effective if provided at an early stage. They need a much greater level of support, and parents' groups around the country should get the supports they need.

The issue of class size is another issue about which I am concerned. It is disappointing that one of the first things the Minister for Education and Science said when she came into office was that she would not be able to fulfil the promise in the programme for Government to reduce class sizes so that all children under the age of nine years would be in classes of 20 or less. I hope that announcement is reversed and the promise in the programme for Government fulfilled. I have received replies to parliamentary questions indicating that more than 100,000 primary school children are in classes of more than 30. That does not work. I spoke to a mother in Leixlip last week when I was canvassing, whose child is in a senior infants class of 35. That is unmanageable and must be addressed. More teachers are being trained and it should be possible to address the problem.

There is a problem regarding special needs at second level as well. There are no adequate guidelines and no adequate training. Children who had support at primary level which discontinued at second level face serious difficulties. Class size is also an issue at second level. More than 35,000 teenagers are in classes greater than 30 in second level schools according to information from the ASTI. While we tend to focus on primary level, there are problems at second level.

Mr. Sherlock: This motion is timely, coming just a few weeks before the plenary session of the British-Irish Interparliamentary Body. A motion will come from committee D of that conference on the question of special educational needs. During the past 12 months or more, much attention was paid to the issue and various countries were visited. It was decided to narrow the remit of the inquiry to provision for children with needs in the autistic spectrum. The rate of autism in Ireland is increasing at an alarming rate. Experts expect a threefold increase in autism among children of schoolgoing age in Ireland within five years. Service provision is not keeping pace. Resources have been increased but they do not meet the needs of the existing autistic population. There is an absence of planning that will have a sufficient effect on services.

Service provision will worsen and the issue will not be tackled as the increased autistic population comes through the system. The Government needs to think on a longer timescale. There is next to no investment in this area. This needs of this group must be addressed as a matter of urgency. Pre-schools dedicated to autism should be provided now.

There were visits to different countries during 2004. In early 2005, the committee may visit Northern Ireland, Scotland and England and its report will come before the British-Irish Interparliamentary Body. The key principle of the special educational needs code of practice for Wales is that children with special needs should have their needs met and the Scottish Parliament passed an Education (Additional Support for Learning) Act 2004. The Scottish Act creates a new system for dealing with special educational needs. That is the criteria we will apply here to ensure needs are met.

Who is responsible for identifying the possible special needs of a child? Is it the responsibility of the child's general practitioner, nursery school staff or other education professionals? Who is responsible for the diagnosis and determining how often should the child be assessed? Is it possible for every child identified as having special educational needs to be provided with assistance before the age of five? Is that taking place or is it likely to take place?

Ms Lynch: I appreciate Sinn Féin tabling this motion because it is timely. If it were to be tabled next week or the following week, it would be equally timely. No matter how many times we debate this issue there appears to be no great urgency on the part of the Government to put in place the supports necessary to help children and their parents. No matter what report is put in place and no matter how many times we debate the issue we are constantly playing catch-up.

I attended a St. Valentine's ball recently which was a fundraising event for a school for children with autism. Apart from me and the person who accompanied me, everyone else at our table was the parent of a child with autism. Some were not just autistic. One couple had a child who was autistic but was blind and profoundly deaf. We have no concept of what it is like to deal with that situation. Neither have we any concept of what it was like for them to go out for the night to support the school that is doing so much for their child. The mother told me she had to fight like an alley catto have the child diagnosed. One must also fight to get one-to-one tuition. When that is available the child is expected to go to school and the complications that causes are enormous. That

is the reason it is necessary to start at the beginning with preschool for children with autism, attention deficit disorder, attention deficit hyperactivity disorder, Asperger's syndrome and so on. Pre-school is necessary to prepare them for a school setting to ensure they are not taken from the security of their home and put into a school setting which can be disturbing for them and upsetting for their parents.

On Valentine's night we attended a fundraising ball. One may ask why one was present. We were there because the school is running out of money. It is incredible the Government does not realise that early intervention in special education is very important and the difference it could make not only to parents but also to children and eventually the State and society. I have seen the difference that can be made following diagnosis and intervention at an early age.

How are children diagnosed? Does one's friend suggest that something may be wrong and that, perhaps, one should take the child to a specialist? Is it the health nurse when one goes back for the 18-month check up, the preschool teacher, the grandparent, or the teacher in first class at primary school? Where is the net through which no child is supposed to fall through? Where is the desire to ensure children have the early diagnosis and intervention that is so important? It simply does not exist. This is done on the basis of a nod and a wink and of telephone calls to other parents. There is the frustration of having a child with difficulties and not knowing where to turn. It is an area in which we need to be much more proactive.

I have a submission for a second level school for children with Asperger's syndrome. It is a plea for an essential service. At the other end of the scale are parents trying to set up a pre-school. No child when he or she finishes primary school, even if it is a special needs school, should be told at 11 or 12 years of age that there is nowhere else for him or her to go. While it is expensive, it is no more expensive than other issues factored into the budget every year. Neither is it more expensive than providing public transport because the private sector will not provide it. It is no more expensive than providing free second level education to every child in the State. We must get our heads around this by saying it is simply another service the State must provide. There appears to be a reluctance to go that far. Parents who have enough on their plate have to go out on the streets, go on fundraisers and go fighting when they should be at home doing the things we all do. Any Government which allows this to continue will be judged very harshly.

Mr. Connolly: I wish to share time with Deputies James Breen, Cowley and Boyle.

I acknowledge the great advances that have taken place in special needs education in recent years such as the establishment of the National Educational Psychological Service with the appointment of 142 psychologists with regional structures. I welcome the appointment of special educational needs officers with responsibility to ensure an appropriate education for the individual child, or at least try to achieve that. However, not every school in the country has access to the services of a NEPS psychologist. The service should be expanded, particularly at primary level where most learning disabilities becomes initially apparent. Such a service plays a key role in the assessment of early indications of special needs education in small children. Just as a stitch in time saves nine, early intervention will preclude the necessity for more costly intervention at a later stage in the child's life and this cannot be emphasised enough. NEPS is critical in assessing and determining access to and deployment of essential expertise and resources to enable children to benefit from educational resources and play a positive and constructive role in society.

Providing for students with special needs in mainstream schools is a most difficult and complex task that impinges on mainstream teachers, many of whom do not possess the specialist qualifications necessary. There is a myth abroad that all children should be included in mainstream education. One school principal used to boast that his school was at the "cutting edge of the inclusion agenda". I wonder whose agenda he meant because I do not believe it was the child's agenda. Inclusion seemed to consist of putting too many children into an unadapted and unsuitable environment with too little support.

To ask a five year old with autism and moderate learning disabilities to join in with a mainstream class is unfair and difficult for the child and could be regarded as cruelty. Inclusion can be highly successful for some children in the right educational environment with the right back-up. Most pupils with special needs can function effectively in a mainstream school, provided the necessary supports exist. They need a little extra support to help them cope with mainstream education, such as further special one-to-one teaching.

The needs of some children are more complex and these children will undoubtedly thrive in a special school where the expertise and support which they require is available. School principals in mainstream schools have extreme difficulty in the allocation of staff for students with special needs. Such staff allocation usually depends on such things as the category of need or the degree of disability, which in turn requires special diagnosis and additional supports in some cases.

At present, teachers in second level schools are required to cater for children with mild disability such as mental handicap and autism. These teachers encounter significant difficulties because they are not trained or equipped with specialist knowledge. The necessary facilities should also be provided for these children. It should not just mean the provision of a ramp in a school but should take into account interior design, lighting and noise levels, for example. Support services are a prerequisite for the integration of special

[Mr. Connolly.]

needs students into mainstream schools. The student's specific needs should be the determining factor for the range of support services that are provided and services provided should match the need.

The integration of special needs children into mainstream schools is particularly difficult unless teachers with appropriate qualifications are available. The opportunity to acquire appropriate qualifications should also be made available to staff in mainstream schools. In-service training is very important. Teachers should be properly equipped and trained.

Inclusive education is a basic human right which leads to improved human development and academic outcomes for the child with special needs. Children with special needs deserve nothing less than parity of treatment with their more able-bodied peers.

Mr. J. Breen: I welcome the progress that has been made in the area of special needs education, including the passage of the Education for Persons with Special Educational Needs Act 2004. I strongly believe that it is our place to stand by children and vulnerable adults who are sometimes unable to speak up for themselves, to demand equality of opportunity and adequate resources for a first class service, which is their right.

I am deeply concerned that families who have no choice but to depend on the system still find it necessary to seek redress in the courts for the failure of our State to meet the educational needs of their children. We cannot just give equality to some, we must guarantee it to all and that includes the people with special needs seeking education and a reasonable quality of life.

A shared society will not be achieved by irrelevant words. We need real action backed up by adequate resources. I urge the Government to guarantee more development in the delivery of promised improvements. I demand stronger legislation and that the Government address the isolation felt by many in our society.

There needs to be more awareness of this condition. Teachers and health professionals must be given training to make more specialists available for the treatment of these individuals. Where are the necessary resources to meet the special needs and equal rights of all pupils and reduce the pupil-teacher ratio in our primary schools? We all have a right to choose in this society. I strongly believe that the right to choose is vital to each and every one of us.

The integration and inclusion of children with special needs is part and parcel of every mainstream school, large and small, and is welcomed as a positive development. What is not so positive is the lack of co-ordinated support that many principals and teachers face every day in providing for all children in our schools. Will our school principals continue to be faced with the dilemma of having to let special needs assistants go? Will they lose teaching posts or be in a position to employ a new teacher? We cannot afford the loss of teachers in our schools especially in disadvantaged and rural areas because it would result in the loss of support to many pupils with special needs.

I call on the Minister for Education and Science to immediately conclude her Department's review of the proposed weighted system, to publish the outcome of the review and to initiate a revised and improved system for deployment of special needs teachers at once. I also urge that such deployment of teachers be based on the right of each individual pupil to have his or her special educational needs assessed and on the right of each pupil to the resources required to ensure that each can reach his or her full potential.

I urge the Minister to immediately approve the enhanced support and investment essential for existing schools catering exclusively for pupils with special needs and to recruit the additional 650 teachers needed to implement the programme of improved education in our society.

I call for urgent action to be taken in the full implementation of the recommendations of the report on educational provision and support for persons with autistic spectrum disorders and to start a process which will allow smaller schools to respond to changes in society and be a thriving force in the educational landscape in the future.

Smaller schools have a crucial role to play in the educational and community life of Ireland. Research has shown that standards are as high in such schools as in larger schools. In many isolated rural areas we are already faced with the loss of valued services such as post offices and banks, without further losses becoming a burden. The aim should be to provide support for these areas of special needs that are marginalised due to lack of resources. Every child is of equal worth and has something positive and unique to contribute. Teachers have a responsibility to enable children to explore and fulfil their potential and the Government should stand 100% behind them in providing the sufficient resources.

Every child sitting in a classroom today deserves the best learning experience that we can provide. In determining what resources and staffing a school needs, it must be taken into account that children are individuals with individual needs and not simply part of some statistical formula.

Dr. Cowley: I refer to schools with leaking roofs, damp classrooms, poor sanitation, rotting doors and windows, inadequate toilet facilities and no access to drinking water. I am not referring to India or Africa but Ireland. A recent survey indicated that 80% of schools in the west do not have basic physical education facilities. Expenditure on education lags far behind the rest of Europe, with a recent development report placing Ireland 33rd of the top 50 nations. Primary class sizes average 24.5 pupils, the second highest figure in Europe.

The education system is failing many children on the margins. Every year more than 1,000 children fall through the net and do not reach secondary education. Our youngest children are educationally the most neglected in Europe, with access to early childhood education here the lowest in Europe. An estimated one in three children from disadvantaged areas suffers from literacy problems, while only 11% of 15 year olds in such areas are able to complete basic reading tasks.

8 o'clock

These statistics apply to so-called able-bodied people. For those with special needs, however, for whom early intervention is the most crucial factor, we fail miserably. The waiting list for people with wheelchair disabilities in need of residential services is longer than at any time in the past 15 years, with thousands waiting for spaces. Due to the appalling lack of appropriate residential care, more than 450 people with learning disabilities live in psychiatric hospitals, an entirely unsuitable setting and a national disgrace.

Disabled people are the poor relations, including children with special needs such as autism, Asperger's syndrome and dyslexia. There are horror stories of people having to wait for months or years for assessment only to wait even longer for the services they are adjudged to need. Why is access to educational and other services not a right when it is obvious that early intervention is critical? If those who are assessed do not receive the services they need, what is the point of an assessment?

This debate is all about respect for the individual, honouring and respecting people under the Constitution and taking a holistic approach to the needs of all the children of the nation. The system should serve the people and must be reformed if it fails to do so in a manner which provides a semblance of equality and serves the weakest citizens of all, namely, disabled people and those, particularly children, with special needs. A cross-departmental approach is required in which all Departments examine how they can best help individuals. Each individual must have his or her needs addressed, irrespective of whether they are in health, education or other areas. Moreover, the necessary reforms should be backed by legislation. Without legislation, no aspiration will be realised.

The vigour evident in implementing the Health (Amendment) Acts should be matched in legislation to ensure that disabled people, particularly children with special needs, receive the services they need. We must not allow the Disability Bill to create conditions in which thousands of people who have received assessments must wait for services.

Mr. Boyle: I welcome the Private Members' motion because it provides an opportunity to challenge the Government not to utter more platitudes on special educational needs or point to well-meaning but unimplemented legislation. It must not be allowed to continue to mirror unmet needs with insufficient resources, the reality facing parents of children with special educational needs.

During the Second Stage debate on the Disability Bill, the Minister for Education and Science, Deputy Hanafin, took offence at my argument that, despite the passage of the Education for Persons with Disabilities Act, the reality is that many people's educational needs are not being met. She argued that the Bill had not been long in operation, which is true. However, there appears to be no sense that the potential offered by new legislation will be matched by sufficient resources in the near future.

I acknowledge that the Minister, in one of her first tests, responded correctly in tackling the logjam in the provision of special needs assistants. Unfortunately, the measures she took offered only a short-term solution. I still do not know how she will avoid a repetition of the delays this year.

Department officials take an almost Dickensian approach to assessing whether young people need a special needs assistant. Decisions are not taken following a meeting with a child or an inspection of the environment in which he or she lives but on the basis of reports frequently written by experts in the field who represent private and voluntary organisations. The Department often chooses either to ignore or contradict these reports, which is no way to make decisions on matters of this kind. A type of lottery system operates with regard to determining, even at the most basic level, whether people receive State resources to meet their educational needs.

While early intervention at pre-school level and special intervention at primary and secondary levels is necessary, it must also be recognised that successive Governments have erected barriers to prevent people with disabilities or special educational needs having their needs met.

The constituency I represent has been a fulcrum of the debate on special needs education. Kathy Sinnott, whose son Jamie was the focus of the Sinnott case, lives in the constituency. An even more important case which preceded the Sinnott case was the O'Donoghue case taken by Marie O'Donoghue on behalf of her son, Paul. That bugbear had to be dealt with by a previous Government. These two cases represented a judicial approach to analysing and achieving the right of children to special needs education, which the political system continues to fail to deliver.

It is unfortunate that the House continues to have debates of this type. The best legal or judicial interpretation of the rights of children with disabilities was provided in the O'Donoghue case by the Ceann Comhairle's namesake, the late High Court judge, Mr. Justice Rory O'Hanlon, who gave a human judgment on what the State should do but fails to do. Among the inconsistencies and contradictions in the State's approach is the manner in which programmes are

[Mr. Boyle.]
funded. The CABAS schools to which other Deputies referred continue to be funded in pilot schemes on a roll-over basis.

The Government approach demonstrates a lack of long-term thinking and generosity as regards how long-term needs should be met. Perhaps the problem lies in a political system in which short-term decisions are made to get us over a hump, whether the most recent crisis or the next election. Such an approach does not meet the needs of young people with special educational needs. Unfortunately, I have no confidence that the Government will make the philosophical change necessary to shift its behaviour sufficiently to deliver the resources required.

Minister of State at the Department of Education and Science (Miss de Valera): I thank everybody who has contributed to the debate on these important issues. I am heartened by the acknowledgement by many Deputies that the provision of educational services for children with special educational needs has improved greatly in recent years. It is important to outline in detail the scope of these improvements.

While accepting that more can and will be done in this area, it is important to note the progress that has been made. In this respect, more than 2,600 resource teachers are now in place compared to 104 in 1998. There are now nearly 6,000 special needs assistants in our schools compared to only 300 a few years ago. In addition, there are 1,500 learning support teachers in our schools, 1,000 teachers in special schools and more than 600 teachers in special classes. In addition to the putting in place of significant numbers of additional school staff to assist children with special needs to reach their potential, legislative and structural changes have also been made which will ensure that children with special educational needs are provided in an effective and efficient manner with the required resources. In this regard, the enactment of the Education for Persons with Special Educational Needs Act 2004 provides a framework for future development of special educational needs services. The Act creates rights to assessment, individual education plans and the delivery of services on foot of those plans. It also ensures that parents have a right to be consulted and kept fully informed at all stages of the process. The Act also contains provisions regarding right of appeal where parents are dissatisfied with decisions concerning the education of their children. I am satisfied this Act provides a comprehensive approach to the future delivery of services.

The Government recognises that the traditional structures were not sufficient to deliver the services required following its decision in 1998 to introduce an automatic response to the needs of pupils with special educational needs. To overcome the structural and capacity difficulties that existed in the system, the Government established the National Council for Special Education. The council has approximately 100 staff, the vast majority of whom are special education needs organisers, SENOs, who are locally based throughout the country. The role of the SENOs is to ensure that all special educational needs in their areas are addressed in an effective manner.

In particular, the SENOs serve as a focal point of contact for parents, guardians and schools, and process applications for resources for children with special educational needs. While their work involves regular and detailed engagement with organisations such as health authorities, the Department, including administrative divisions, the inspectorate and the National Educational Psychological Service, the primary responsibility for the processing of applications for special needs resources rests with the local SENO. In this regard, all schools have been notified by the NCSE of the contact details of the SENO attached to each school. I am satisfied the establishment of the council and the work of the SENOs will ensure the delivery of special educational services.

I note the comments of some Deputies on the ongoing review of the general allocation system. The Minister for Education and Science, Deputy Hanafin, has stated that she hopes to finalise this review in the coming weeks with a view to its implementation in September of this year. Action was required to improve the allocation of resources to schools and the new model will be designed to achieve this. However, resources will continue to be allocated to children in the low-instance disability categories on an individual basis and the NCSE will be responsible for these cases.

Outside the special education area the Government has also provided a substantial number of new teachers to schools over the past several years in an effort to reduce class sizes and tackle educational disadvantage. In line with the commitment from Government, class sizes will be reduced further over the coming years having regard to available resources. The Government is committed to continual ongoing improvements in respect of all aspects of the education system. I thank Members for their contribution to this debate.

Mr. Ferris: I propose to share time with Deputy Ó Caoláin.

An Ceann Comhairle: Is that agreed? Agreed.

Mr. Ferris: I will read a number of quotes from letters I have received from parents. One states, "The Department of Education has failed miserably in its duty to educate my son who has autism." Another writer asserts, "I write this in shock, frustration and anger at the obvious inefficiency in places designed to allegedly help children with autism in Kerry." "This will be a return to the dark ages as regards the level of education that we will be able to provide if this system is implemented as it stands," according to another

writer. One writer asks, "Please inform the Minister and her office that the treatment of our correct submission through the SEN is shameful."

These are only some of the comments I have received from parents and school principals in Kerry on the subject of the delivery of special educational resources. I will forward copies of letters from parents of autistic children to the Minister of State. These parents and others wanted to be in the House to meet the education spokespersons of each party. However, it was not possible for them to do so. It is a sad indictment of the Government's policies which fail to provide for the disadvantaged and vulnerable members of society. These parents have become so physically and mentally exhausted, not only by the lack of resources and assistance but also the refusal of necessary resources, that none of them was able to leave their home and come to the House to advocate on behalf of their children.

From the result of a survey undertaken by the Sinn Féin office in Tralee, it is clear there is a great deal of dissatisfaction and frustration among principals, teachers and parents. It is apparent that most schools do not receive sufficient resources to ensure that the educational needs of all children are identified and provided for as mandated by the Education Act 1998. Despite the advances made in some areas, there are serious shortcomings in the system of allocating resources to meet the needs of children with special educational needs. In addition, children seeking assessment must endure a waiting list, some for as long as a year.

The children most affected by the shortcomings of our education system are the most vulnerable who need help to access the school curriculum, develop their skills and reach their potential. For example, the proposed weighting system for the allocation of resource teachers seems to have the potential to reduce the bureaucracy of the system and the unacceptable delays in responding to individual requests regarding children with special educational needs. However, it represents a backward step in meeting the needs of children and schools. This approach contradicts the belief in some circles that Ireland has a child-centred education system and flies in the face of the objectives set out in the Education for Persons with Special Educational Needs Act 2004 and the Equal Status Act 2000.

The structure of the new quota system, for that is what the weighted system is, discriminates between rural and urban schools and between boys' and girls' schools. Even considering the higher incidence of special needs in boys' schools, the proposed ratios are considerably out of balance. Some rural schools, many of them in my county, will end up with fewer teachers and teaching hours notwithstanding a possibly greater need. Even if we were to put these issues aside, the basic and most important concern is that the proposed system is not based on meeting the needs of children as they exist.

Some 72 schools in Kerry will lose 38 full-time special educational needs teacher positions, most of those from the smaller schools which often have a higher percentage of disadvantaged students in need of special assistance. I appreciate that the Minister of State is committed to a review of the proposed allocation system. This review must be thorough, transparent and concluded quickly so that a more equitable and realistic approach can be taken as soon as possible.

Another issue I wish to address is that of the educational resources available to children with autism. The Government is failing autistic children and their families. Providing a few hours per week of special teacher time does not address the problem. Throughout the special education system, particularly in the area of autism, there are insufficient teachers and training, inadequate facilities and a lack of support for families. I am repeatedly told that home-school-community liaison teachers, occupational and speech therapists, psychiatric assistants and respite care providers are badly needed. Every Member of this House encounters the same problems daily.

This is an issue that affects the entire family and the child with autism is not the only person who needs assistance. I have spoken to parents whose marriages are breaking down or have ended and who are so exhausted and stressed that they cannot relate to their other children. Some of these parents have had to leave their jobs. I am aware of autistic children whose behavioural problems have not been addressed, potentially leading to injury or other tragedy. One mother told me that her nine year old child is suicidal. I am not being dramatic. The situation I have described is a reality for too many families.

Recently in Lixnaw I met a teacher with a class of 25 pupils who in the first two hours of class every morning must deal with one nine year old pupil with serious behavioural problems. As he cannot give him the attention he requires, he had to suspend the child. The sentiments of a parent of an autistic child, a constituent, best sum up their plight. She claims the Government is failing our children who are our future, our hope. She feels distress and pain watching days turn into months and months into years of inaction by the Department of Education and Science to honour its obligations to educate her son.

Caoimhghín Ó Caoláin: Ba mhaith liom buíochas a ghabháil leis an gcuid is mó de na Teachtaí Dála a ghlac páirt sa díospóireacht seo. Díospóireacht dhearfach a bhí ann agus tá súil agam go gcabhróidh sé le brú a chur ar an Rialtas chun feabhas a chur ar an gcóras oideachais do dhaoine a bhfuil riachtanais speisialta oideachais acu.

On behalf of the Sinn Féin Deputies, I thank those Members who have contributed constructively to what has been a very useful debate. Sinn Féin's aim in tabling this motion was not to launch a broadside at the Government or the Minister or to seek party political advantage. I

[Caoimhghín Ó Caoláin.]

welcome the response in a similar spirit from the Minister for Education and Science, Deputy Hanafin. All Members want to see results on this issue. As our education spokesperson, Deputy Crowe, stated, "The people concerned deserve all the attention and support the Oireachtas can devote to them."

The basis of the motion is the right of each individual pupil to have his or her special educational needs assessed and the right to the resources required to ensure each can reach his or her full potential. Nothing less is acceptable. We acknowledge progress has been made on the matter. However, the Minister also acknowledged it has been progress from a low base. What is being built up comes against a background where children with special needs have been scandalously neglected by the State. I pay tribute to the heroic parents and other carers of children and adults with special needs whose determination to demand and win their rights has been responsible for the progress made. Through their tenacity and the depth of their passion for their children's future, they forced the system to listen and to act.

There is, however, a huge amount of work left to be done. After years of neglect, we now see the full extent of the special needs among our children. A growing awareness is emerging that these children can reach their full potential and play a positive role in society. As a result, a growing demand for their rights and a growing expectation that those rights will be vindicated is also emerging.

The Minister for Education and Science addressed some concerns raised over the weighted system of delivery of special needs teachers announced last year. When she became Minister for Education and Science, she undertook an immediate review, reflecting the extent of concern and anger at the likely effect of the proposed system on many schools and individual pupils. I welcome the Minister's statement last night that the revised system will not be, as announced last year. I look forward to the announcement of the revised procedure promised in the coming weeks. I hope that all the concerns raised by all Members will be taken on board and acted upon. However, the clock is ticking if an improved system is to be implemented by the commencement of the new school year in September.

Even if the revised system of allocation addresses these concerns, it cannot succeed without greatly increased resources from the Government. The Minister noted her own responsibilities and those of the Minister for Health and Children in this regard. In her speech, she made the following striking observation:

> In particular the Minister for Finance is obliged to have due regard to the State's duty to provide for an education appropriate to the needs of every child under the Constitution and the necessity to provide equity of treatment for all children.

I concur with the Minister and hope the Minister for Finance, Deputy Cowen, will note it carefully and act accordingly in his next budget.

The test of all this is delivery on the ground and in the classroom. The reality is large numbers of children are still not getting the support they need. Two years ago, I was contacted by the mother of a young boy with autism who went through a nightmare getting assistance for her son and her family. She struggled every step of the way to have her child properly assessed and to access the support he needed. Her experience made a mockery of the principle of early intervention. Despite her best efforts, the State completely failed to provide that early intervention. She simply asked that if she is doing the very best for her little boy, why the State is not doing likewise.

This mother, and other parents like her, must provide everything themselves. While she is lucky that her son is now in a special school for children with autism, many hundreds more are on waiting lists for these handful of schools. Their situation is uncertain as the Department regards the schools as pilot projects. They must rely predominantly on voluntary fund-raising and, therefore, cannot count on increased State funding in the future. I urge the Minister for Education and Science to give them the certainty they deserve and to support fully the mighty efforts of these parents and their children, some of whom are observing this debate from the Visitors Gallery this evening.

Only one school caters for children with special needs in counties Cavan and Monaghan, the Holy Family special school in Cootehill, County Cavan. It has long been in need of a major extension for existing school work to continue in a proper environment and to address the school's waiting list. It received verbal approval for access to temporary premises on an off-campus site. I strongly urge the Minister issue the required written confirmation for the temporary access and then to give full approval without further delay for the commencement of the essential works at the school site. These children and their support staff deserve nothing less. A Cheann Comhairle, I know of your long association with the school and I commend your work in supporting it.

Members on all sides of the House acknowledge the need for action in increasing the supply of occupational and speech therapists as the legislation cannot be implemented without it. Parents, whose children were assessed several years ago, inform me the situation is worse now because the waiting lists are longer and sufficient professionals are not in place. This must be addressed. We cannot tolerate a situation where so many parents must pay for psychological assessments for their special needs children or even go outside the State to access it.

I emphasise our call for the full implementation of the landmark 2001 report on the education of children with autism. Children with attention deficit disorder and attention deficit hyperactivity

disorder are often highly intelligent but fail educationally when the system fails them. While some progress has been made at primary level, a large gap remains at secondary level. I know of cases where children who have come on by leaps and bounds in primary school have, all too sadly, reached a dead end at second level. I have heard a special unit at second level described as an adult crèche because the educational needs of the child are not being met. This raises the need for long-term plans for these children and for the training and retraining of teachers.

I pay tribute to my colleague, the former Minister for Education in the Northern Executive, Martin McGuinness, and the former Minister for Education, Deputy Woods, who jointly initiated a project to establish an all-Ireland centre for autism at Middletown, County Armagh. I have a letter dated 10 February from the Department of Education in the North which notes that it is unlikely that facility will be ready until autumn 2006. I appeal to the Minister for Education and Science to help speed up that project as the need is patently there.

I urge all Deputies to support the constructive motion tabled by the Sinn Féin Deputies. While I acknowledge the Minister's positive contribution, the Government amendment does not address the breadth of our motion and we cannot accept the Government's proposed deletion of those essential elements we have included.

As I stated at the outset, we all want to see results. This is an issue on which we can leave aside party political differences and work together in the interests of those very special children in our society.

Amendment put.

The Dáil divided: Tá, 67; Níl, 43.

Tá

Ahern, Michael.
Ahern, Noel.
Andrews, Barry.
Ardagh, Seán.
Blaney, Niall.
Brady, Johnny.
Brady, Martin.
Brennan, Seamus.
Browne, John.
Callanan, Joe.
Callely, Ivor.
Carey, Pat.
Cassidy, Donie.
Collins, Michael.
Coughlan, Mary.
Cowen, Brian.
Cregan, John.
Davern, Noel.
de Valera, Síle.
Dempsey, Tony.
Dennehy, John.
Devins, Jimmy.
Ellis, John.
Finneran, Michael.
Fitzpatrick, Dermot.
Fleming, Seán.
Gallagher, Pat The Cope.
Glennon, Jim.
Hanafin, Mary.
Haughey, Seán.
Hoctor, Máire.
Jacob, Joe.
Keaveney, Cecilia.
Kelleher, Billy.
Kelly, Peter.
Killeen, Tony.
Kirk, Seamus.
Kitt, Tom.
Lenihan, Conor.
McDaid, James.
McDowell, Michael.
McEllistrim, Thomas.
McGuinness, John.
Moloney, John.
Moynihan, Donal.
Moynihan, Michael.
Mulcahy, Michael.
Nolan, M. J.
Ó Cuív, Éamon.
Ó Fearghaíl, Seán.
O'Connor, Charlie.
O'Dea, Willie.
O'Donnell, Liz.
O'Donovan, Denis.
O'Flynn, Noel.
O'Keeffe, Ned.
O'Malley, Fiona.
O'Malley, Tim.
Parlon, Tom.
Roche, Dick.
Sexton, Mae.
Smith, Michael.
Treacy, Noel.
Wallace, Dan.
Wilkinson, Ollie.
Woods, Michael.
Wright, G. V.

Níl

Allen, Bernard.
Boyle, Dan.
Broughan, Thomas P.
Burton, Joan.
Connaughton, Paul.
Connolly, Paudge.
Cowley, Jerry.
Crawford, Seymour.
Crowe, Seán.
Cuffe, Ciarán.
Deenihan, Jimmy.
Enright, Olwyn.
Ferris, Martin.
Gogarty, Paul.
Healy, Seamus.
Higgins, Joe.
Hogan, Phil.
Howlin, Brendan.
Kehoe, Paul.
Lynch, Kathleen.
McGinley, Dinny.
McGrath, Finian.
McGrath, Paul.
McHugh, Paddy.

Níl—*continued*

Mitchell, Olivia.
Morgan, Arthur.
Moynihan-Cronin, Breeda.
Ó Caoláin, Caoimhghín.
Ó Snodaigh, Aengus.
O'Keeffe, Jim.
O'Shea, Brian.
O'Sullivan, Jan.
Pattison, Seamus.
Penrose, Willie.
Perry, John.
Rabbitte, Pat.
Ring, Michael.
Ryan, Seán.
Sargent, Trevor.
Sherlock, Joe.
Stanton, David.
Twomey, Liam.
Upton, Mary.

Tellers: Tá, Deputies Kitt and Kelleher; Níl, Deputies Ó Snodaigh and Broughan.

Amendment declared carried.

Question put: "That the motion, as amended, be agreed to."

The Dáil divided: Tá, 67; Níl, 43.

Tá

Ahern, Michael.
Ahern, Noel.
Andrews, Barry.
Ardagh, Seán.
Blaney, Niall.
Brady, Johnny.
Brady, Martin.
Brennan, Seamus.
Browne, John.
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Cassidy, Donie.
Collins, Michael.
Coughlan, Mary.
Cowen, Brian.
Cregan, John.
Davern, Noel.
de Valera, Síle.
Dempsey, Tony.
Dennehy, John.
Devins, Jimmy.
Ellis, John.
Finneran, Michael.
Fitzpatrick, Dermot.
Fleming, Seán.
Gallagher, Pat The Cope.
Glennon, Jim.
Hanafin, Mary.
Haughey, Seán.
Hoctor, Máire.
Jacob, Joe.
Keaveney, Cecilia.
Kelleher, Billy.
Kelly, Peter.
Killeen, Tony.
Kirk, Seamus.
Kitt, Tom.
Lenihan, Conor.
McDaid, James.
McDowell, Michael.
McEllistrim, Thomas.
McGuinness, John.
Moloney, John.
Moynihan, Donal.
Moynihan, Michael.
Mulcahy, Michael.
Nolan, M. J.
Ó Cuív, Éamon.
Ó Fearghaíl, Seán.
O'Connor, Charlie.
O'Dea, Willie.
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O'Donovan, Denis.
O'Flynn, Noel.
O'Keeffe, Ned.
O'Malley, Fiona.
O'Malley, Tim.
Parlon, Tom.
Roche, Dick.
Sexton, Mae.
Smith, Michael.
Treacy, Noel.
Wallace, Dan.
Wilkinson, Ollie.
Woods, Michael.
Wright, G. V.

Níl

Allen, Bernard.
Boyle, Dan.
Broughan, Thomas P.
Burton, Joan.
Connaughton, Paul.
Connolly, Paudge.
Cowley, Jerry.
Crawford, Seymour.
Crowe, Seán.
Cuffe, Ciarán.
Deenihan, Jimmy.
Enright, Olwyn.
Ferris, Martin.
Gogarty, Paul.
Healy, Seamus.
Higgins, Joe.
Hogan, Phil.
Howlin, Brendan.
Kehoe, Paul.
Lynch, Kathleen.
McGinley, Dinny.
McGrath, Finian.
McGrath, Paul.
McHugh, Paddy.
Mitchell, Olivia.
Morgan, Arthur.
Moynihan-Cronin, Breeda.
Ó Caoláin, Caoimhghín.
Ó Snodaigh, Aengus.
O'Keeffe, Jim.

Níl—*continued*

O'Shea, Brian.
O'Sullivan, Jan.
Pattison, Seamus.
Penrose, Willie.
Perry, John.
Rabbitte, Pat.
Ring, Michael.
Ryan, Seán.
Sargent, Trevor.
Sherlock, Joe.
Stanton, David.
Twomey, Liam.
Upton, Mary.

Tellers: Tá, Deputies Kitt and Kelleher; Níl, Deputies Ó Snodaigh and Broughan.

Question declared carried.

Message from Select Committee.

An Ceann Comhairle: The Select Committee on Social and Family Affairs has completed its consideration of the Social Welfare and Pensions Bill 2005 and has made no amendments thereto.

Adjournment Debate.

Hospital Accommodation.

An Ceann Comhairle: As the first two items are being taken together, the Deputies will have five minutes each to speak and the Minister of State will have ten minutes to reply.

Cecilia Keaveney: It is with great disappointment that I rise to speak about the need to provide extra beds at Letterkenny General Hospital. Although the matter was discussed when I was a member of the former North Eastern Health Board, neither side ever made progress for a number of reasons.

I would like to outline why it is sad that I have to raise this issue tonight. Letterkenny General Hospital is one of the best staffed and managed hospitals in the country. There is a great feeling among its staff and its patients receive great care and attention. The hospital's problems are not caused by the type of bed blocking we hear about in other parts of the country. The population of County Donegal is increasing significantly — Letterkenny's population has increased by 42%, for example — and the population of the region is aging.

I would like to discuss two issues which are causing great difficulty, the first of which is the state of Letterkenny General Hospital's accident and emergency department, where a new 12-bay medical assessment unit is needed. The Tánaiste said in January, in response to a question from me, that the unit has been identified as a priority for attention. Since then, she has announced a ten-point action plan, the progress of which will be implemented by the Health Service Executive. The executive told me in February that an application has been made and that it is awaiting approval to proceed to the design stage.

It is important for progress to be made. Accident and emergency patients are being moved into areas where day services should be carried out, as a consequence of the lack of space in the accident and emergency unit. Day services are under pressure — they cannot absorb the number of people currently availing of such services.

It is not right that just six bays are available in an accident and emergency department that is accessed by 30,000 patients each year. There is a need to develop the hospital's accident and emergency service because 8,000 of the 30,000 people who avail of it every year are deemed to be GP referrals. Therefore, 90% of them will be looking for an inpatient bed. The 8,000 patients who are sent to accident and emergency units by their GPs are causing problems for inpatient elective surgery and day services, through no fault of their own.

In recent months, hundreds of people have been prevented from accessing such services as a consequence of the problems I have mentioned, some for the third or fourth time. There were over 100 such cases in a single week recently. In some cases, a patient who has been prepared for his or her operation has been informed that it will not take place. It is an unacceptable set of circumstances for patients, staff and onlookers. The vast majority of people in County Donegal have either used the hospital directly or are related to somebody who has done so. Of the 100 day cases which were deferred over a single week recently, 20 were serious inpatient cases which were scheduled for elective surgery. As a doctor, the Ceann Comhairle knows the difficulties such postponements cause for everybody.

A proposal has been submitted to the Department of Health and Children for the construction of an additional two storeys, providing 70 additional beds, over the new accident and emergency department. That development is as important as the extension of the accident and emergency unit, but it falls under a separate application. It is important that both plans are considered.

There have been difficulties in deciding which of the two options to pursue. Some people who were on one side are now on the other side. It is important, however, that the entire project is advanced. I asked for some information about the first option, which is to transfer the acute psychiatric unit to St. Conal's Hospital and to convert the vacated psychiatric unit to provide a maximum of 30 beds for medical patients. That would cost approximately €10.5 million. The preferred option is to refurbish the acute psychiatric

[Cecilia Keaveney.]

unit, while providing temporary accommodation, and to build the two additional floors over the proposed new accident and emergency unit. That option would cost approximately €16 million.

There is a timeframe of 18 months for the acute psychiatry service and a 36-month lead-in for the medical beds. It seems that no plans have been submitted yet. Therefore, I understand that the Tánaiste might be in a position to say that there are no plans. I would like the problems in Letterkenny General Hospital's accident and emergency department to be relieved immediately.

I am sorry that the Tánaiste is not here tonight to respond to the important issue being raised by Deputy Blaney and me. It affects every family in our constituency. I ask her to meet the Deputies who represent the area and those who are capable of moving this process forward. The HSE, the Department, the hospital and the different partners can blame each other, in one sense. I would like all those involved in progressing the two related but separate applications to come to a single table to thrash out the issues, take a decision and make progress on the basis of that decision. It is simply unacceptable that people who are ready for surgery have been denied it on three of four occasions.

The population of County Donegal is increasing and aging. A high-dependency unit needs to be opened. I appreciate that we are doing the best we can with the resources available to us. I hope a renal dialysis unit will open in October. We need the support and help of the Department of Health and Children and the Health Service Executive. They cannot be separated — they must work together, for example by talking to those involved at the coalface. They must decide that Letterkenny General Hospital is a priority. The hospital has not yet benefited from many services, such as BreastCheck. We are working in co-operation with those on the other side of the Border, such as the authorities at Altnagelvin Hospital. We need more beds and we need them now.

Mr. Blaney: I join my colleague, Deputy Keaveney, in speaking about the concern caused by the serious problems faced by Letterkenny General Hospital, which is unable to handle the current level of patient intake. It would be an understatement to say that the circumstances at the hospital, which I visited on Monday, are chronic. I have never witnessed anything like it. The day-services ward has six beds and can, therefore, accommodate six patients, but on Monday it dealt with 16 seriously ill people who were waiting for elective surgery and other surgical procedures. Those present were male and female and ranged from children to pensioners. No washing or showering facilities of any kind were available. I spoke to a consultant, Dr. Keating, who was tearing her hair out.

I support Deputy Keaveney's comments. I would like to analyse this matter from three perspectives. I will outline the causes and effects and then offer some solutions which, I hope, the Minister for the Environment, Heritage and Local Government, will pass on to the Minister for Health and Children.

It is important to state there are two major interrelated problems facing Letterkenny General Hospital. The emergency medicine department has six bays, as Deputy Keaveney said, and that is not sufficient to assess the 30,000 patients who attend each year. Six bays normally cater for only 10,000 patients. There are not enough beds to facilitate the annual number of admissions, which is just short of 10,000 per year.

9 o'clock

As Deputy Keaveney outlined, the attendance level in the emergency department is rising. In 1992, approximately 15,000 people attended whereas now more than 30,000 attend each year. This is caused by changing demographics, urbanisation and growth. As Deputy Keaveney stated, the population of Letterkenny has grown by 42% in recent years.

There have been many consultant appointments in the hospital since 2000, including a haematologist, oncologist, cardiologist, respiratory consultant, nephrologist, geriatrician, breast care surgeon, two radiologists and two anaesthetists. There have been two appointments to the accident and emergency department. Although new consultants are being appointed, we feel we are not getting a fair crack of the whip. As the Ceann Comhairle will know, each consultant needs his or her own bed in turn. Only 17 beds have been added to Letterkenny General Hospital in the past 25 years.

The effects of all these problems include the cancellation of day service procedures, elective inpatient procedures and outpatient appointments. The morale of staff is at an all-time low despite that there are good staff at the hospital. Public confidence in the hospital is also at an all-time low. The effects are also such that patients admitted overnight are put in inappropriate accommodation. Some 340 patients were put in inappropriate accommodation so far this year. Already in 2005, 250 procedures have been postponed owing to the unavailability of beds. Twenty-two of the procedures were cancelled twice. This will increase the number of patients on the day case waiting list for next month by up to 10%. Waiting lists will get even longer if the problem persists.

On the cancellation of elective inpatient procedures, 52 procedures were cancelled during January 2005 owing to the lack of a recovery bed. Cancelled procedures included boil, bladder and breast cancer cases. Some patients' procedures were cancelled two, three or four times. The inpatient waiting list grew by 22% during 2004 and it is growing further as we speak. On the cancellation of outpatient appointments, 315 patients had their appointments cancelled between 5 January 2005 and 12 January 2005.

Deputy Keaveney outlined some solutions. In this regard, I refer to the ten-point plan announced by the Minister for Health and Children and the uniqueness of the problem faced by Letterkenny General Hospital. All the points in the plan that can be implemented in the hospital have already been. The others cannot be implemented until the two issues we have identified are addressed, namely, the need for approximately seventy extra beds and the need for an adequate extension to the emergency medicine department.

We already have a transit lounge to be employed in respect of the second consultant appointed to the emergency medicine department. A joint management consultant group has been in place since 1998 and there are additional nursing staff in the accident and emergency department. The triage service has been introduced and extended and there are additional non-consultant hospital doctors in the emergency department. There is an air tube system for the delivery of samples and a digital X-ray system has been introduced. A bed manager and discharge liaison nurse have been appointed to maximise bed turnover.

Among the medium-term to long-term solutions are additional accommodation to house 70 beds and an extension to the accident and emergency department. These are essential. The 11 oncology and haematology beds also comprise part of the solution and they will need to be fully funded if they are to be commissioned in 2005. I ask the Minister of State at the Department of Health and Children or the Minister, if she is available, to come to Donegal to see at first hand the severe circumstances that prevail at Letterkenny General Hospital and note how the hospital is different from those in Dublin to which the ten-point plan relates. Circumstances are different in Donegal.

Minister for the Environment, Heritage and Local Government (Mr. Roche): I welcome the opportunity to clarify the position on the development of services at Letterkenny General Hospital on behalf of the Minister for Health and Children, Deputy Harney, who, unfortunately, cannot be present tonight. Deputies Keaveney and Blaney will be aware that the Health Act 2004 provided for the Health Service Executive, which was established on 1 January 2005. Under the Act, the executive has the responsibility to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. This includes responsibility for the provision and development of services at Letterkenny General Hospital.

The Department of Health and Children is advised by the executive that the increasing capacity pressure at Letterkenny General Hospital has arisen from the recruitment of additional consultants in recent years, as mentioned by Deputy Blaney, and as a consequence of demographic change and advances in modem medicine which have resulted in greater life expectancy. The most recent consultant appointments to the hospital, including a consultant cardiologist, haematologist, oncologist, geriatrician and a consultant in respiratory medicine, have meant that more patients now access more services locally. These developments are to be welcomed but it is acknowledged that they have led to an increase in the local demand for services.

To assist the hospital in addressing the issue of capacity, the Department gave approval in 2003 to what is now the HSE north-western area to proceed with the planning of an extension to the emergency medicine department at the hospital. The HSE north-western area appointed a design team to carry out an option appraisal or feasibility study to determine the preferred location for the facility on the hospital site. The study, which examined eight options, has been completed and is under consideration by the HSE. The proposal also includes the provision of two shelled-out floors over the emergency medicine department for the future provision of up to 70 beds. The Minister for Health and Children has identified the delivery of emergency services as a priority area for attention.

Many of the difficulties and delays experienced in emergency medicine departments reflect system-wide issues. It is therefore necessary to adopt a whole-system approach, involving primary, acute, sub-acute and community care in tackling the problems in such departments. In November 2004, the Minister announced additional funding of €70 million to implement a ten-point action plan to improve the delivery of emergency services. She has met senior management of the HSE, and the Department of Health and Children is working closely with the executive to ensure early implementation of these measures.

I thank Deputies Keaveney and Blaney. I understand their concerns and will certainly draw to the attention of the Minister for Health and Children the very cogent case they made for Letterkenny General Hospital.

Schools Building Projects.

Mr. Howlin: I thank the Ceann Comhairle for affording me the opportunity to raise this issue in the absence of the Minister for Education and Science, who explained to me why she could not be present tonight. I am very pleased her substitute is a Wexford man who is very familiar with the school to which I want to draw attention, the Loreto secondary school, Spawell Road, Wexford.

Mr. Roche: I have a particular affection for the Loreto secondary school.

Mr. Howlin: That is very good. The Minister will be aware that the school is one of the most successful secondary schools not only in County Wexford but in the country. On the principle that the meek inherit the earth, I am afraid the school

[Mr. Howlin.]
accepted a situation in which facilities were allowed to deteriorate over a period of years to an unacceptable level while expecting that the Department of Education and Science would eventually recognise the righteousness of its case and it would get the decent facilities it requires.

The school began negotiations with the Department in 1997. A revised schedule of overall accommodation was issued on 30 May 2001 following protracted negotiations. That was based on a long-term enrolment of 600 students. Officials from the Department met school management and the design team in the school in July 2001 when the schedule was fleshed out in detail. The design team submitted a stage two report to the Department in July 2002, for which the cost of the extension and refurbishment required and agreed was of the order of €6 million to €7 million.

In January 2003 the Department's website showed that the project was not to be progressed that year. The pupils, staff and parents remained quiet and waited till the next year. In January 2004, however, the website indicated that it would not progress in that year. These people are angry that their project did not appear on the website last January. I submitted a parliamentary question to the Minister to which the reply was that this project is in the early stages of architectural planning.

The school has 660 pupils, although the plan subsequent to the refurbishment and investment was to cater for 600. It is expected that total enrolment by September 2006 will be 700 students. The 660 students have no sports hall and access to only two science laboratories. In May 2001, the schedule gave the school entitlement to three laboratories and a demonstration room. The existing laboratories are in chronic need of refurbishment. They have been upgraded since they were built in 1970 but are unsuited to some of the present curriculum demands.

The school is inaccessible to wheelchair pupils or staff. It has no lift. The middle block of the building is so unsuitable for school use that, after a visit by officials of the Department, the design team recommended its demolition and replacement with a purpose-built building as part of the stage two report. Despite numerous letters to the Department from the board of management and the parents' council, and representations from all my colleagues, there has been no progress on this project for the past two and a half years.

I attended a very angry meeting of staff, pupils, parents and Wexford people who feel absolutely neglected. The Minister may have received direct representations because one of the most coherent speeches that night was made by a very eloquent and focused teacher with strong convictions who happens to be a close relative of the Minister present. I am sure she has made direct representations to him.

I put the case to the Minister for the Environment, Heritage and Local Government and to the Department of Education and Science that this is a fine school with a fine reputation but it is at risk for lack of basic facilities. This is unacceptable in a time of plenty when education is a cornerstone of our development.

Mr. Roche: I thank the Deputy for raising this issue. As he said, it is a school in which I have a particular interest. I endorse all his points about its excellence and superb teaching record. I will outline the response of the Minister for Education and Science to the query about the school.

The design process is under way for a large-scale building and refurbishment project at the school to cater for a long-term projected enrolment of 600 girls, although according to Deputy Howlin that figure has already been overtaken. The planned extension consists of a total area of 1,588 sq. m. and will include specialist rooms such as a PE hall, and general classroom accommodation.

The project is at an early stage of architectural planning and a stage two submission has been received. It has been given a band rating of 2.4 in accordance with the 2005 published criteria for prioritising large-scale projects. This project was not sufficiently advanced in architectural design to be considered for inclusion in the recently announced 122 major school building projects that will progress to tender and construction phase over the next 12-15 months under the €3.4 billion multi-annual funding secured for the years 2005 to 2009.

The Minister for Education and Science is anxious to ensure that a consistent flow of projects to tender and construction can be sustained. The Minister also plans to make several announcements soon on the schools building and modernisation programme, including details of those school projects which will progress through the design process. All projects in architectural planning, including the school in question, will be considered as part of this process.

I will pass on the Deputy's comments and cogent arguments. These were echoed by my sister-in-law when she spoke to me privately on the issue. I thank the Deputy once again for raising the matter and I will draw his concerns and my own to the attention of the Minister.

Radon Gas Levels.

Mr. Deenihan: I thank the Ceann Comhairle for allowing me raise this matter on the Adjournment. The Radiological Protection Institute of Ireland found during the course of a national survey, published in 1999, that in parts of County Kerry, particularly the Tralee and Castleisland areas, there were inordinate levels of the potentially dangerous radioactive gas, radon.

In July 2003 a test carried out by the Radiological Protection Institute of Ireland found the highest levels of radon ever identified in Ireland in a house in the Castleisland area. The householder had requested this survey. The house had radon concentrations of approximately 49,000 becquer-

els. This was almost 250 times higher than the national reference level for radon in homes and one of the highest values ever recorded in Europe.

The householder's wife had died five years earlier from lung cancer and in 2002 the householder was diagnosed with lung cancer. As both people were young, healthy and non-smokers, a medical expert advised them to have their home tested for radon gas. Last November the householder died. He said publicly that radon was the cause of his wife's death, and no doubt it was the cause of his own death.

A radon expert likened exposure to one day's radon in this household to one week's exposure to the radioactive plant in Sellafield. Along a one-mile stretch of road, which includes this household, nine people, many middle-aged and younger, have died from cancer over the past decade. This should surely be enough for the Departments of the Environment, Heritage and Local Government, and Health and Children to take appropriate and urgent action to deal with this problem.

Owing to the discovery in this household, the Radiological Protection Institute of Ireland carried out a survey of 377 homes in the Castleisland area. Of those surveyed, 52 were found to have radon concentration above the recommended level, six had five times the recommended level while one had the highest concentration ever found in Ireland. The fact that of the 2,500 households contacted by the RPII, just 413 requested radon test kits and 377 sent the kit back for analysis, gives rise to serious concern. The possibility is that, based on this sample, up to 400 homes could have radon levels over the recommended level and the people living in them could be exposed to the risk of contracting lung cancer.

In the survey, eight homes in Tralee were found to have radon levels ten times over the recommended level. Last November, the town council advised every householder in the Tralee area to test their house for radon levels. I understand the council will provide the testing equipment free to their own tenants. The reason for the extraordinarily high levels of radon gas in the Castleisland-Tralee-Fenit areas of County Kerry is due to underlying karstic limestone overlain by shale, known to contain high uranium concentration levels. Karstic limestone contains underground caves and streams which facilitate the movement and accumulation of radon gas.

There is a need to carry out tests in all schools in the area. In the 1999 survey, 22% of schools in Kerry were found to have radon levels over the recommended level. In 2001, the RPII initiated a programme to direct employers responsible for above ground workplaces in high radon areas to measure radon concentration levels. The institute issued 1,800 such directions to employers in the Tralee area. The response at the time was poor. Of the 200 employers who carried out radon measurements in their workplaces, 30 had radon concentrations greater than the reference level of 400 becquerels per cubic metre, specified in the Radiological Protection Act 1991 (Ionising Radiation) Order 2000.

It is now time for a comprehensive programme to be put in place in the Castleisland-Tralee-Fenit area to reduce exposure to radon. There is a precedent for this in countries such as Sweden, the UK and the USA where radioactive hotspots are targeted for remediation work. Intervention by the State either with free testing to help identify if there is a risk, and with grant support for remedial works in houses over the recommended levels, appears to be the only way forward.

Mr. Roche: I thank Deputy Deenihan for raising this serious issue. The statistics he illustrated, and the statistics produced by the RPII, illustrate how important it is for householders to have their premises tested. Testing is a very cheap and convenient process.

I am aware of the high levels of radon found in the house in question in Castleisland, County Kerry. I saw the test results when I visited the RPII recently. As the House is aware, radon is a naturally occurring radioactive gas found in variable amounts in rocks and soil. When it surfaces in the open air, it is quickly diluted. However, where in certain circumstances it enters an enclosed space, such as a house, it can reach unacceptably high concentration levels. This is what has happened in some of these cases. There is evidence to suggest that long-term exposure to high levels of radon can be a contributory factor in increasing the risk of lung cancer and that the incidence is higher among smokers than non-smokers. As Deputy Deenihan said, this is a very dangerous gas which can cause lung cancer in specific circumstances.

In July 2003, a house located close to the town of Castleisland was found to have an extraordinary concentration of radon at 48,000 becquerels per cubic metre. This was 250 times greater than the national reference level of 200 becquerels per cubic metre. The national reference level was established by the Government in the early 1990s and is the level above which the carrying out of radon remediation works should be considered. This exceptionally high radon concentration level was unprecedented in Ireland. As the Deputy said, it was one of the highest levels found in Europe. I understand that subsequent radon remediation works on the house resulted in a significant reduction in the concentration level, that is, below 500 becquerels per cubic metre, illustrating what can be done with remediation works.

Following this discovery, the RPII sent 2,500 letters to all households in the four 10 x 10 km national grid squares adjoining the town of Castleisland, informing them of the high levels found and advising them to have radon measurements carried out. By way of response to the institute's letters, 418 householders requested radon measurements. Results now available for 384 of these indicate that 54 houses, or 14%, exceeded the national reference level of 200

[Mr. Roche.]

becquerels per cubic metre, including five houses, or 1%, which had concentrations above 1,000 becquerels per cubic metre. The highest concentration level found among the 384 houses was just over 6,100 becquerels per cubic metre, while the average concentration was just below 150 becquerels per cubic metre. In all cases where concentration levels in excess of the national reference level were found, the RPII would have advised the householder to consider undertaking radon remediation work.

A further 90 local authority homes in the four grid squares adjoining Castleisland were measured for radon at the initiative of Kerry County Council, for which it is to be complimented. However, none of these houses was found to have radon concentrations in excess of the national reference level. These follow up radon measurements in houses in the area indicate that the exceptionally high radon concentration levels found in the house in Castleisland has not been replicated generally to date in other houses in the area.

The Government has been concerned about the issue of radon for some time. Through the RPII, it has committed significant resources to assessing the extent of the radon problem throughout the country and to highlighting public awareness of radon. Upgraded building regulations, introduced in June 1997 by my Department, require all new houses which commenced construction on or after 1 July 1998 to incorporate radon protection measures. My Department has recently published an updated edition of the Technical Guidance Document C on Part C of the Building Regulations (Site Preparation and Resistance to Moisture) which incorporates enhanced radon prevention measures for new buildings commenced on or after 1 April 2005. The new guideline document is aimed at ensuring that the 1997 radon protection measures are carried out more effectively. Ireland was among the first European countries to introduce specific building regulations and related detailed technical guidance on radon prevention in new buildings. In February 2002, the Department of the Environment and Local Government published a booklet, Radon in Existing Buildings — Corrective Options, advising designers, builders and homeowners on remediation options for reducing radon in existing houses to, or below, the national reference level.

The RPII published a booklet in November 2004 entitled Understanding Radon — A Householder's Guide. The guide is directed at householders who have been informed that they have radon concentrations above the reference level in their homes. The aim of the guide is to assist such householders in interpreting their radon measurement results and in deciding how to deal with the problem.

The Radiological Protection Institute of Ireland has been promoting public awareness of radon for many years as well as highlighting the risks associated with it. The institute has always encouraged householders, as I also encourage them, particularly those residing in high radon areas, to have their homes tested for radon and, where measurements are found to exceed the national reference level, to carry out appropriate radon remediation works. The cost to a householder of having his or her home tested for radon would be in the order of €45.

This week the institute announced the commencement of a radon awareness campaign. This will involve a series of nationwide public information seminars on radon and it is being targeted at selected high radon areas. The first of these seminars took place in Ballina yesterday. I understand that, as part of the renewed campaign, a similar public awareness initiative will take place in Tralee later this year.

Basically the institute's campaign, announced this week, is aimed at further promoting public awareness of radon and encouraging householders, particularly those in high radon areas, to have their homes tested for radon.

The Government takes the issue of radon very seriously. As I indicated, the Government has taken a number of initiatives down the years to tackle the radon problem and it will continue to publicise and heighten public awareness of the issue.

The Dáil adjourned at 9.30 p.m. until 10.30 a.m. on Thursday, 24 February 2005.

Written Answers.

The following are questions tabled by Members for written response and the ministerial replies received from the Departments (unrevised).

Questions Nos. 1 to 14, inclusive, answered orally.

Questions Nos. 15 to 61 resubmitted.

Questions Nos. 62 to 70, inclusive, answered orally.

Social Welfare Benefits.

71. **Mr. Deenihan** asked the Minister for Social and Family Affairs the welfare traps that are associated to the one parent family payment; and if he will make a statement on the matter. [6089/05]

73. **Aengus Ó Snodaigh** asked the Minister for Social and Family Affairs when he proposes to introduce new measures to replace the allowance for lone parents. [5910/05]

85. **Mr. Connaughton** asked the Minister for Social and Family Affairs his proposals to change the lone parents allowance; and if he will make a statement on the matter. [6088/05]

108. **Mr. Boyle** asked the Minister for Social and Family Affairs his proposals to change the one parent family allowance. [6069/05]

109. **Mr. McCormack** asked the Minister for Social and Family Affairs the measures he intends to introduce to reverse the situation by which certain welfare payments prevent the parents of children from living together; and if he will make a statement on the matter. [6042/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 71, 73, 85, 108 and 109 together.

The one parent family payment is designed to provide income support to parents with insufficient means who have to parent alone. This can arise as a result of being widowed, or following separation or divorce, or being unmarried.

The scheme in its present form largely reflects the reality that applied up to relatively recently, whereby mothers were mainly the full time carers, with the father being the sole breadwinner. The main aim of the scheme, therefore, has been to provide income support for mothers parenting alone to replace that which would otherwise be provided by the father in a two parent family. The scheme thus provides lone parents with the same option parents have in two parent families, that of rearing their children themselves.

This reality, however, has been substantially changing in recent years. It is now more common in two parent families for both parents to work outside the home either on a full time basis or with one parent working full time and the other working part-time. Two income families are increasingly becoming the norm and international research shows that the risk of poverty for such families is on average less than 4%.

One parent family households are, accordingly, at greater risk of poverty and, if these households are jobless, the risk of poverty is greater again.

Reflecting current realities, therefore, now requires giving parents the option of working outside the home and enabling them reconcile the demands of this work and their responsibilities to care for their children.

The OECD, in a recent report on an international comparative study on reconciling work and family life, in which Ireland participated, found that employment participation among lone parents in this country is among the lowest in the OECD. This is despite the huge employment growth and increasing female participation in the workforce in recent years and the income disregards afforded to lone parents who take up employment.

In addition, of those in employment, a high proportion are in relatively low paying part-time employment. This may be due, in part at least, to the fact that availing of the income disregard under the one parent family payment scheme enables a recipient top up their benefit from part-time employment without foregoing the security of having a regular weekly benefit. The report points out that this may be achieved at the price of foregoing better paid full time employment, greater self-sufficiency and a higher standard of living.

Entitlement to payments under the schemes is also contingent on not cohabiting with another adult either in marriage or outside marriage. This is essential in ensuring that recipients under the schemes do not gain an advantage over those living together, either married or otherwise, and parenting the children on a joint basis. Reluctance to forgo the income security provided by the one parent family payment may also act as a disincentive to a partnership and ultimately marriage for recipients.

Much research has been undertaken in recent years into the operation of the one parent family scheme, including a review of the scheme by my own Department published in 2001 and participation in the OECD project on reconciling work and family life, mentioned above. A nationwide consultation took place in 2003, on which a report entitled Families and Family Life in Ireland: Challenges for the Future has been published, which includes consideration of the position of lone parents and their children. There are currently a number of processes under way in which the findings of this analysis and research are being drawn together.

The issue is being examined in the context of a wider examination of supports for families in a changing society being co-ordinated by the family affairs unit of my Department through an inter-departmental committee. The outcome of this examination is scheduled to be completed by mid-year.

[Mr. Brennan.]

Second, the Cabinet Committee on Social Inclusion last November requested the Senior Officials Group, which reports to it, to undertake a specific study on the obstacles to employment for lone parents, including those which may exist in the current income support arrangements. A small working group has been set up to examine the matter intensively over the coming months with a view to reporting by mid year. The working group also includes representatives of the Departments of the Taoiseach and Finance, and my Department is directly involved with other relevant Departments participating during consideration of policy issues relevant to them. My Department will be reviewing the existing income support arrangements and provisions as an input to the work of the group.

One of the aims of these processes will be to propose changes to the schemes that will remove obstacles to claimants achieving, more easily than at present, greater self-sufficiency through employment and/or, if desirable, through a reconstituted family. This will in many cases also offer greater prospects of an improved standard of living and quality of life than continued reliance on the one parent family payment.

72. **Mr. Eamon Ryan** asked the Minister for Social and Family Affairs the consideration he has given to the introduction of a special waste allowance for social welfare recipients. [6078/05]

95. **Mr. Coveney** asked the Minister for Social and Family Affairs if his Department has had discussions with the Department of the Environment, Heritage and Local Government on the introduction of a special bin charge allowance for elderly persons; the progress which has been made to date; his proposals in regard to same; and if he will make a statement on the matter. [6032/05]

120. **Mr. Penrose** asked the Minister for Social and Family Affairs if he is engaged in discussions with the Department of the Environment, Heritage and Local Government regarding a possible waiver scheme for social welfare recipients; if so, the nature and content of such discussions; and if he will make a statement on the matter. [5887/05]

179. **Ms O. Mitchell** asked the Minister for Social and Family Affairs the progress which has been made on the promised introduction of a common nationwide waste charges waiver system for qualifying applicants. [6255/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 72, 95, 120 and 179 together.

My Department has held discussions with the Department of the Environment, Heritage and Local Government regarding aspects of the arrangements governing the collection and disposal of domestic waste.

Those discussions have focused on establishing the facts and exchanging information about the level of charges for domestic waste management, the increasing role played by commercial operators and the reduced role played by some local authorities in this area.

It is clear from those discussions that this is a complex and evolving issue. The range of charges imposed varies quite considerably from area to area, and from operator to operator. In addition, even where the total charges imposed by operators may be similar, the charging regimes vary quite considerably.

For example, some operators impose a single annual charge, others impose smaller but more frequent charges while some operators impose a mix of standard standing charges coupled with "pay by use" charges that respond to either the volume or the weight of waste.

The setting of waste management charges is a matter for the relevant local authority in cases where it acts as the service provider. It is also a matter for the local authority to determine the nature and extent of the waiver schemes that they operate in such cases. There is no reason any local authority that collects domestic waste cannot design and implement a waiver system that protects the position of people on social welfare and others on low incomes.

Where a private operator is providing the domestic waste collection service, the operator sets the charges and no waiver is available. This can lead to difficulties for people on social welfare payments and others on low incomes, for example, if they are required to make a single annual payment.

To address this, I understand the Department of the Environment, Heritage and Local Government is proposing to work with the waste industry to ensure that all private domestic waste operators include accessible "pay by use" options for customers in their areas who would face difficulty in paying annually. One approach that will be explored is that every operator would be required to offer a "bag" or "tag" option that a household could purchase each week or at whatever interval suited their circumstances.

The introduction of a national social welfare scheme at this stage to address the issue is not considered feasible given the wide range of charging regimes and cost levels that exist in respect of waste management throughout the State. Any system put in place to assist people who rely on private domestic waste collection would have to be sensitive to the different local arrangements.

I will continue to closely monitor this situation to ensure that suitable arrangements are in place to avoid hardship for people on social welfare payments and others on low incomes.

Question No. 73 answered with Question No. 71.

Family Support Services.

74. **Ms B. Moynihan-Cronin** asked the Minister for Social and Family Affairs if he has read and considered a policy position paper from an organisation (details supplied) on recognising the realities of the diversity of family life in Ireland; and if he will make a statement on the matter. [5904/05]

Minister for Social and Family Affairs (Mr. Brennan): Families and family life have been undergoing profound changes in Ireland and in many other developed countries in recent decades. These changes include the increasing participation of women in the workforce, decreasing fertility, a significantly higher incidence of separation and divorce, cohabitation outside marriage, lone parenthood and reconstituted families. These changes have major implications for families and their core functions, especially care of children, older people and family members with disabilities.

Many of these realities have been addressed in the policy position paper referred to by the Deputy. They have also been addressed in the Report of the Commission on the Family, in many of the research projects undertaken under the families research programme, a second phase of which will be undertaken this year by the Family Support Agency, at international level, for example, in an OECD project on reconciling work and family life, in which Ireland has been directly participating, and in the conference on Families, Change and European Social Policy, which Ireland, with the support of the EU Commission, hosted in May 2004 during the EU Presidency, the first such conference on families at EU level for over a decade.

The impact of change on families was a major theme of the 10th Anniversary of the UN International Year of the Family commemorated last year. This was preceded in Ireland by a nationwide consultation during 2003 on the implications of these changes for policy on supports for families. A report on the public consultation fora entitled Families and Family Life in Ireland — Challenges for the Future was published at the outset of the year and became a basis for discussions on the changes and their implications.

New policies have been introduced and existing policies and programmes have been adapted to address the changes. These have included schemes such as the one parent family payment in my own Department, developments in family law, the provision being made to meet the increasing demand for child care for parents who work outside the home and the adaptation of policies in employment, education, care of the elderly and housing and accommodation to meet new family needs.

The Family Support Agency was established in May 2003 to draw together family related programmes and services developed by the Government since 1997. These are designed to promote continuity and stability in family life, help prevent family breakdown and support, support ongoing parenting relationships for children and local community supports for families.

Specifically, the Family Support Agency's main functions include the provision of grant aid for voluntary and community organisations providing marriage and relationship counselling services, child counselling services and bereavement support for families; and the provision of a family mediation service throughout the country for couples who have decided to separate. The service is designed to help couples to reach agreement on issues such as the family home, financial arrangements. This can greatly assist children in retaining close bonds with both parents where possible and avoiding costly litigation. The support, promotion and development of the family and community services resource centre programme. There are currently 75 centres throughout the country being core funded under the scheme, with an overall target of 100 centres by the end of 2006.

As mentioned earlier, the agency also has responsibility for the second phase of the families research programme.

An effective response to the changes taking place requires an integrated, strategic approach. Preparations for such an approach are being coordinated by my Department through an interdepartmental committee. I expect that the outcome of this work will be a strategy statement to be completed later this year.

A key feature of this strategic process to date has been consultation with all stakeholders and interested parties.

Written submissions have been invited and received from virtually all the key interests, including the organisation referred to by the Deputy. They are all being fully taken into account in drawing up the strategy.

Child Support.

75. **Mr. Stanton** asked the Minister for Social and Family Affairs the number of children awaiting assessment for the crèche supplement by a social worker or health sector personal social services professional in each county; and if he will make a statement on the matter. [6057/05]

Minister for Social and Family Affairs (Mr. Brennan): Crèche supplements were introduced in some of the former health boards to provide individual assistance where necessary to parents in need of short-term support. This arose, for example, where a parent would not be able to avail of necessary supports such as counselling services or addiction treatment programmes without assistance towards the cost of child-minding. The fact that these supplements were in payment for long durations in many cases indicated that they had become a long-term child care support rather than the short-term social welfare intervention which was originally intended. In effect, long-term child care needs were being provided through a short-term income support scheme.

[Mr. Brennan.]

It is more appropriate that community operated or "not-for-profit" child care facilities in disadvantaged areas would be supported in a more direct and sustainable manner than indirectly through the short-term supplementary welfare allowance scheme. This approach has been successfully adopted in certain Health Service Executive regions where former health boards provided significant grant-aid directly to community child care crèche facilities.

The Department of Justice, Equality and Law Reform has a significant financial support mechanism in place through its equal opportunities childcare programme, particularly aimed at supporting parents who want to take up educational, training or employment opportunities. The Department of Education and Science also operates an early start pre-school programme aimed at children in the three to four age range.

The facilities supported directly through these mechanisms are able to provide child care facilities at low or no cost to disadvantaged families who do not then have to rely on supplementary welfare allowance on an ongoing basis.

Officials from my Department engaged in discussions during 2004 with the Departments of Health and Children, Justice, Equality and Law Reform, Education and Science, the then Eastern Regional Health Authority and other health boards to identify and put in place suitable funding arrangements for crèches for 2004 and subsequent years. Some local funding difficulties in relation to 2004 were resolved in light of these discussions.

In this regard, I have allocated an additional €2.3 million within the social welfare Estimates for 2005 for crèche supports. These funds can be drawn on, as appropriate, to supplement provisions of the relevant Departments which have an existing funding relationship with crèches. The funds are particularly appropriate to agencies supplying services which might otherwise have relied on supplementary welfare allowance crèche supplements for a part of their funding in previous years. Discussions are ongoing with relevant Departments to finalise arrangements for allocating this additional funding for the support of community crèches in the most appropriate way.

As an interim measure, I have also arranged that existing crèche supplements already in payment may continue to be paid by community welfare services in 2005 to the families concerned while they continue to remain eligible.

In addition, new supplements may be made available in specific instances where a public health nurse or health service social worker recommends that a child in difficult circumstances would benefit by attending a community crèche, or that the parent/s of a child needs to avail of counselling services, addiction treatments or similar and that crèche services are required to facilitate this.

In each such instance the Health Service Executive must be satisfied that all the relevant circumstances are taken into account, for example, the person's ability to pay for or provide the service from an alternative source, in determining if a supplement is warranted in each recommended case.

I am satisfied that the community welfare service is in a position to deal with any referrals from public health nurses or social workers as the cases arise.

My Department has no direct responsibility for the health service professionals who refer people to the community welfare officers for consideration of a crèche supplement under the supplementary welfare allowance scheme. Accordingly, I do not have information on how many families or children are awaiting a professional assessment by public health nurses or health service social workers.

However, my Department's computer system show that there are currently 273 crèche supplements in payment. Thirty-five of these were awarded by community welfare officers in the past few weeks following the issue of the guidelines by my Department to the Health Service Executive at the end of January last setting out the new provisions. According to computer records only five crèche supplement applicants are awaiting a decision at present.

Social Welfare Benefits.

76. **Mr. Wall** asked the Minister for Social and Family Affairs his views on claims by the Migrant Rights Centre that restrictions on welfare benefits for non-Irish citizens are placing migrant workers at risk of poverty and homelessness; and if he will make a statement on the matter. [5897/05]

93. **Mr. Gormley** asked the Minister for Social and Family Affairs his views on the opinion of the Migrant Rights Centre that migrant workers run a large risk of poverty due to social welfare restrictions. [6075/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 76 and 93 together.

Migrant workers qualify for social insurance benefits in respect of the unexpired part of their work permits if they satisfy the normal qualifying contribution conditions. Migrant workers may also satisfy the habitual residence condition for receipt of social assistance payments and child benefit.

The requirement to be habitually resident in Ireland was introduced as a qualifying condition for certain social assistance schemes and child benefit with effect from 1 May 2004.

The basis for the restriction contained in the new rules is the applicant's habitual residence. The restriction is not based on citizenship, nationality, immigration status or any other factor.

The effect of the restriction is that a person whose habitual residence is elsewhere is not paid certain social welfare payments on arrival in Ireland. The question of what is a person's "habitual residence" is decided in accordance with European Court of Justice case law, which sets out the grounds for assessing individual claims.

Each case received for a determination on the habitual residence condition is dealt with in its own right and a decision is based on application of the guidelines to the particular individual circumstances of each case. Any applicant who disagrees with the decision of a deciding officer has the right to appeal to the Social Welfare Appeals Office.

People whose claims are rejected on ground of habitual residency are offered repatriation by the Department of Justice, Equality and Law Reform and may have their basic needs met by that Department while awaiting return to their country of origin.

The Migrant Rights Centre Ireland has recently made a submission to my Department setting out its views on how the operation of the habitual residence condition impacts on migrant workers and their families. While the submission claims that the habitual residence condition is causing undue hardship and in effect placing vulnerable people's lives and safety at risk, it does not provide any examples of such cases. However, I have asked my officials to consider the general issues raised and respond to the centre.

My officials are also carrying out a review of the operation of the condition, taking account of the issues which have come to light since its introduction. Any specific matters raised by the Migrant Rights Centre will be taken on board in that context.

Family Support Services.

77. **Mr. Cuffe** asked the Minister for Social and Family Affairs if he will respond to criticism voiced by the One Family group that the delay in reversing changes in the operation of the back to education allowance scheme requires lone parents to remain in poverty until such changes take effect. [6072/05]

113. **Ms Enright** asked the Minister for Social and Family Affairs if he has reconsidered reversing the qualifying period for the back to education allowance to nine months; when he expects this change to be made; and if he will make a statement on the matter. [6091/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 77 and 113 together.

The back to education allowance is a second chance education opportunities programme designed to encourage and facilitate people on certain social welfare payments to improve their skills and qualifications and, therefore, their prospects of returning to the active workforce.

The conditions for entitlement to the third level option of the back to education allowance were revised with effect from 1 September 2004. From that date, the qualifying period was increased from six months to 15 months for new applicants intending to commence third level courses of study.

The number of lone parents accessing the scheme has risen from 1,282 in the 2003-04 academic year to 1,514 in the current year, an increase of 18%. This indicates that the increase in the qualifying period to 15 months had no adverse effect on the number of lone parents accessing the BTEA scheme. In fact, the number of lone parents pursuing third level study with the assistance of the BTEA scheme shows an overall increase of almost 90% over the last three years.

The BTEA scheme was always intended to benefit people who had difficulty finding employment because of a lack of education qualifications. In many cases, people who have not completed second level education are held back in their efforts to obtain employment because of this. The qualification period for people who wish to pursue second level education has remained at six months and the numbers taking second level education with the support of the BTEA are increasing.

As Deputies will be aware, I reduced the qualifying period for access to the third level option of the scheme to 12 months in the recent budget. I also increased the annual cost of education allowance, paid to people on BTEA, from €254 to €400. These changes will take effect from 1 September 2005.

I am satisfied that, overall, the current arrangements ensure that the scheme supports those people who are most distant from the labour market and whose need is greatest.

As I have undertaken to the Dáil and the social affairs committee, I will continue to keep the qualifying period for this scheme under regular review.

Social Welfare Benefits.

78. **Mr. Gogarty** asked the Minister for Social and Family Affairs if he has satisfied himself that the definition of fraud in his Department is adequate. [6074/05]

Minister for Social and Family Affairs (Mr. Brennan): Overpayments of social welfare payments are categorised as fraud or non-fraud. Non-fraud cases are those which arise primarily due to customer or third party error, and some are due to departmental error. Fraud cases arise mainly on foot of false declarations by customers concerning their employment, income or family status.

The question as to whether an overpayment which has arisen involves fraud is a matter for decision by the statutorily appointed deciding officer dealing with any case.

Fraud arises where social welfare payments are made on the basis of any statement or represen-

[Mr. Brennan.]
tation which was, to the knowledge of the person making it, false or misleading in a material respect or by reason of the wilful concealment of any material fact.

This applies in situations such as a person claiming unemployment payments when they are in fact working, or failing to disclose their full means or increases in their means. Other situations would include failing to disclose the true employment or residential status of their spouse, partner or dependants, absenting themselves or their dependants from the State, or working while claiming to be incapable of work.

The figures for fraud overpayments for 2004 are not yet available. During 2003, the value of all fraud overpayments was €13.73 million which consisted of a total of 16,681 cases. The number of fraud overpayments increased by 21%, while the value increased by 16% in comparison with 2002. The major element of this consisted of concurrent working and claiming, with an overpayment value of €7.29 million on 13,562 cases. Other main elements consisted of €1.53 million in 238 cases of means, income or earnings not disclosed, €0.85 million in 83 cases where marital status changed and €0.80 million in 691 cases of being absent from the State.

Cases involving fraud or abuse are examined with a view to initiating legal proceedings. Prosecutions are taken against employers who fail to carry out their statutory obligations, and persons who defraud the social welfare payments system. The decision to prosecute in a given case is based on the nature of the alleged offence, the evidence available and the particular circumstances of the individual employer or claimant.

My Department aims to protect the schemes from fraud or abuse while at the same time ensuring that the customers receive a quality and timely service.

Anti-Poverty Strategy.

79. **Mr. P. Breen** asked the Minister for Social and Family Affairs his views on a report by the Central Statistics Office of January 2005, which revealed that nearly 15% of children here under the age of 15 were living in consistent poverty; and if he will make a statement on the matter. [6052/05]

84. **Mr. Murphy** asked the Minister for Social and Family Affairs the progress to date on the eradication of consistent poverty; and if he will make a statement on the matter. [6059/05]

104. **Ms McManus** asked the Minister for Social and Family Affairs the action he plans to take on foot of the recent EU-SILC survey which found that 23% of the population is at risk of poverty and that 9% of the population is classed as consistently poor; if this is not a damning indictment of Government anti-poverty policies; and if he will make a statement on the matter. [5898/05]

119. **Mr. Gormley** asked the Minister for Social and Family Affairs his views on the opinion of the charity Barnardos that 66,000 children here currently live in consistent poverty. [6076/05]

121. **Mr. Boyle** asked the Minister for Social and Family Affairs the way in which he intends to respond to the findings of the recent EU-SILC survey, which shows that children, women and older persons have a greater risk of poverty than their counterparts in other European Union countries. [6070/05]

125. **Ms O'Sullivan** asked the Minister for Social and Family Affairs the progress on the implementation of the national action plan against poverty and social exclusion; if he will elaborate on his recent remarks that the gap between rich and poor is unacceptably wide; and if he will make a statement on the matter. [5890/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 79, 84, 104, 119, 121 and 125 together.

The results from the 2003 EU Survey of Income and Living Conditions, EU-SILC, released last month by the Central Statistics Office, CSO, are a valuable addition to the research already undertaken into income, living standards and the extent of poverty in Ireland. The new survey identifies groups at risk of poverty including families with children, especially lone parents and large families on low incomes, those with disabilities, the long-term unemployed and the elderly, especially those living alone.

Considerable progress has been and is being made in alleviating poverty. This progress, however, is masked by the fact that incomes generally have been increasing substantially as a result of the high levels of both economic and employment growth achieved in recent years.

Despite major increases in social welfare payments and improvements in public services generally, those who are not in employment, such as the elderly, or only in a position to secure low paid or part-time employment, such as many lone parents, have not been able to share fully in the fruits of the increasing prosperity.

A key target of Government policy under the national anti-poverty strategy has been to reduce to below 2%, or eliminate fully, consistent poverty, which measures deprivation of goods and services considered essential in today's Ireland. Significant progress has been made with levels of consistent poverty being reduced from 15.1% in 1994 to 5.2% in 2001, and in the case of children from 15.3% in 1997 to 6.5% in 2001.

A somewhat different methodology and approach was adopted for the EU-SILC survey which resulted in higher percentages for those experiencing consistent poverty, reversing the trend of recent years. Both the CSO, and the Economic and Social Research Institute, which conducted the earlier surveys, have assured me that the outcomes of both surveys are not comparable. It is, therefore, not possible to conclude

from them whether the rates for consistent poverty went up or down or remained unchanged.

There is certainly no reason to believe that there has been a worsening in poverty levels in recent years. Between 2001 and 2005, spending on social welfare has increased from €7.8 billion to €12.2 billion. During the same period the lowest social welfare rates have increased by 40% while the consumer price index has increased by just over 13%. As a result of Budget 2005, welfare payments have increased by three times the expected rate of inflation. The real improvement resulting from these developments is commented on in the EU- SILC report.

The EU-SILC survey shows, as in previous surveys, the groups who are most vulnerable to poverty. The main route out of this vulnerability for those in the working age groups, especially in households with children, is employment.

A major ongoing priority will be to remove the obstacles to employment for those groups and work to provide the incentives and supports they need to obtain employment such as education, training, help with job search, and child care.

In relation to income support, serious consideration is now being given to the introduction of a second tier of supports — in addition to the child benefit and other support entitlements — aimed specifically at addressing those children most at risk. Linked to this particularly are the vulnerable circumstances of many lone parents, who are mostly women. The existing support systems will be scrutinised over the coming months and changes considered that more adequately reflect the needs of this group in a 21st century Ireland. My Department is also involved in efforts to develop a strategy to eliminate obstacles to employment for lone parents.

Among those no longer able to work, especially the elderly, we need to give priority to identifying and providing support for those who are most vulnerable, especially those living alone.

The National Action Plan against Poverty and Social Exclusion, NAP-inclusion, provides a clear strategic basis for making progress in all these areas in a coherent, planned way.

Progress on the implementation of the plan was reported in the First Annual Report of the Office for Social Inclusion, OSI, which I launched last December. A report to the European Commission evaluating the implementation of the plan will be prepared by OSI for submission in June 2005 and publication shortly afterwards. These reviews and evaluations, together with the ongoing annual survey results from EU-SILC, will help to inform the development of the next NAP-inclusion, which is due to commence in 2006 and will apply up to 2009.

Social Welfare Benefits.

80. **Mr. Costello** asked the Minister for Social and Family Affairs if he intends to address the gross inequality of treatment of asylum seekers in the context of direct provision; if he will increase the rate of direct provision; and if he will make a statement on the matter. [5902/05]

Minister for Social and Family Affairs (Mr. Brennan): The objective of the supplementary welfare allowance scheme, which is administered on my behalf by the community welfare division of the Health Service Executive, is to make up the difference between a person's means and his or her basic needs. Where a person has access to some resources in kind or in cash, through the social welfare system or otherwise, the relevant legislation requires that this be taken into account in determining the amount of assistance payable.

Asylum seekers who are catered for under the direct provision system operated by the Reception and Integration Agency of the Department of Justice, Equality and Law Reform are provided with full board accommodation and other facilities such as laundry services and access to leisure areas. In addition, a direct provision allowance of €19.10 per adult and €9.60 per child is payable to an asylum seeker each week in respect of personal requisites.

In some cases, asylum seekers are accommodated by the Reception and Integration Agency in 'step down' facilities under the direct provision system. The criteria for assessment of such cases are the same as those applying to any other recipients including people who have been supplied with hostel type accommodation. If accommodation only is supplied, full rate supplementary welfare allowance is payable, less a standard deduction of €13 per week as the person's contribution in respect of the accommodation. If additional services are supplied free, for example, breakfast or other meals, the amount of allowance payable is reduced to take account of the level of additional service supplied in each individual case.

With effect from May 2004 basic supplementary welfare allowance is subject to a statutory habitual residence condition. Asylum seekers who arrived in Ireland after that date are unlikely to satisfy this condition and are not eligible for supplementary welfare allowance as a result. Pending systems being put in place by the Department of Justice, Equality and Law Reform to pay the direct provision allowance to those in direct provision and in 'step down' facilities, this allowance is currently being paid weekly by community welfare officers on an administrative basis as an interim measure.

In addition to the services and allowance available to them through direct provision, it is open to any asylum seeker to seek assistance for a particular once-off need by way of an exceptional needs payment through the supplementary welfare allowance scheme.

The question of changing the rate of direct provision allowance would be a matter for consideration by my colleague, the Minister for Justice, Equality and Law Reform, in the context of the value of the overall package of facilities available to asylum seekers in the direct provision system.

Anti-Poverty Strategy.

81. **Mr. Crawford** asked the Minister for Social and Family Affairs his views on a EU publication, the Report on Gender Equality between Men and Women, of February 2005, which revealed that Irish women are at greater risk of poverty than their counterparts in any other EU member state; and if he will make a statement on the matter. [6017/05]

Minister for Social and Family Affairs (Mr. Brennan): The Deputy is referring to the recently published EU second annual report on equality between men and women, which was requested, by the EU Heads of State at the Spring European Council, in March 2003.

This report covers a range of issues including gender gaps in employment, part-time employment and unemployment rates, educational attainment, lifelong learning, working hours and elected representation in national parliaments, in addition to risk of poverty rates. In general, Ireland is reported at average, or above average, against its EU counterparts in most of these areas. Our success in recent years in reducing unemployment levels for both men and women places us second overall on this measure, and we also fare strongly in relation to reported levels of educational attainment for both men and women.

However, I share the Deputy's concern about the reported level of women identified as being at risk of poverty in Ireland. The 'at risk of poverty' measure is based on the percentage of persons below the income threshold of 60% of median income. The recent EU Survey on Income and Living Conditions, EU-SILC, reported that the rate for women was 23.4% in 2003 with lone parent households and older women living alone being the highest risk groups.

There are a number of factors which contribute to the relatively high 'at risk of poverty' rate. There have been very significant increases in average incomes in recent years, and in particular, a growth in two income households. International research has shown that on average the risk of poverty in two income households is less than 4%.

However, despite significant increases in social welfare rates, the incomes of those not in employment have lagged those in employment, especially in households with two incomes. Lone parents and older women living alone would be particularly dependent on social welfare income support.

The current National Action Plan against Poverty and Social Exclusion specifically targets women as one of a number of groups who are particularly vulnerable to poverty and social exclusion, with a view to reducing or eliminating their risk and incidence of poverty and improving their access to services such as health care, education and employment.

This plan includes specific targets in relation to women which include: income supports for lone parents; pensioners and their spouses; significant improvements in child benefit rates; improved participation by women in employment; and actions to address obstacles to employment and the gender pay gap. Access to services and gender mainstreaming are also covered by targets and objectives in the national action plan.

In addition to the above, a number of specific initiatives are under way under Sustaining Progress which will impact positively on women and families. A study is being carried out by the NESC on amalgamating social welfare child dependant allowances with family income supplement payments, in an effort to channel extra resources to low income families without creating disincentives to employment. A sub-group of the Senior Officials Group on Social Inclusion has commenced examining all obstacles to employment for lone parent families, the majority of whom are women.

My Department is also participating in an Interdepartmental Working Group on Early Child Care and Education, chaired by the National Children's Office. The work of this committee is at an advanced stage and the outcome will make an important contribution to finding the right mix of services and income support to facilitate employment take up and care for children.

This Government is committed to continuing efforts to alleviate poverty, especially for those who cannot work and have not been in a position to benefit from the employment opportunities afforded by the high economic growth. During the period 2001 to 2005, the lowest social welfare rates increased by 40% and child benefit rates increased by 65%, while the consumer price index has increased by just over 13%.

Assisting and supporting vulnerable families and their children and older people is one of our main challenges as a society in overcoming poverty and in ensuring that they have a fair share of the life chances and quality of life which our prosperity as a nation is already conferring on a majority. Meeting this challenge will be one of my main priorities in the coming years in the further development of the strategy to combat poverty and social exclusion.

Pension Provisions.

82. **Mr. Hogan** asked the Minister for Social and Family Affairs the progress to date on the introduction of a personal pension entitlement for pensioner spouses currently in receipt of the qualified adult allowance to be set at the level of a full non-contributory pension, as promised in the programme for Government; and if he will make a statement on the matter. [6016/05]

Minister for Social and Family Affairs (Mr. Brennan): In the programme for Government and in Sustaining Progress, the Government has committed itself to increasing the payment for qualified adults, age 66 or over, to the same level as the personal rate of the old age non-contribu-

tory pension. The estimated cost of this commitment is €44 million.

Considerable progress has already been made in this regard with the qualified adult allowance on the contributory payment now standing at €138.50 or 83% of the maximum rate of old age non-contributory pension, currently €166.00 per week. Overall increases in the qualified adult allowance on the old age contributory pension amount to €56.47 per week since April 2000.

Further progress towards Government targets in relation to the qualified adult allowance rate will be made in a budgetary context.

Social Welfare Benefits.

83. **Mr. G. Mitchell** asked the Minister for Social and Family Affairs the way in which increasing the child dependant allowance would result in a welfare trap; the welfare traps which would emerge; and if he will make a statement on the matter. [6036/05]

94. **Ms O. Mitchell** asked the Minister for Social and Family Affairs if he intends to introduce a second tier support payment for children in unemployed or low-wage households; if so, the progress made to date; and if he will make a statement on the matter. [6035/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 83 and 94 together.

Child dependant allowance is an additional payment made to social welfare recipients in respect of eligible child dependants under 18 years of age. This age limit can be extended to 22 years in specified circumstances where the child remains in full-time education.

While the loss of this additional allowance on gaining full-time employment can constitute a disincentive to work, the extent of the disincentive would vary according to the number of children in the family and the potential income from employment.

Social welfare recipients with larger families would therefore be most vulnerable in this regard.

In recognition of this fact, every Government since 1995 has held the rate of child dependant allowance at the same level while increasing child benefit, which is paid regardless of parental means or employment status. As such, it represents a substantial improvement in the State's contribution towards the costs of rearing children, a contribution which cannot be lost as a result of either parent taking up employment.

In line with this policy, monthly rates of child benefit will have increased by €103.51 at the lower rate and €127.78 at the higher rate since 1997 when Budget 2005 rate increases are taken into account, increases of 272% and 258% respectively. This level of increase is unprecedented and delivers on the Government's objective of providing support for children generally while offering real choice to all parents.

Since 1994, the combined income support of child benefit and child dependant allowance for those on social welfare payments has increased by more than double the rate of inflation.

As I stated in my budget speech, I was urged by many groups, both at and following the annual pre-budget forum, to reverse current policy on child income support by increasing the level of child dependant allowances on the grounds that these payments are made only to recipients of social welfare and, consequently, are targeted directly at those most at risk of poverty. I considered these arguments carefully but concluded that child benefit remains the most appropriate vehicle for tackling child poverty at the present time.

With regard to the introduction of a second tier payment in respect of children in low-wage or unemployed households and following its identification as an issue in the Sustaining Progress national agreement, the National Economic and Social Council, NESC, has undertaken a review of child income support and in particular the possible merging of family income supplement and child dependant allowances into a "second-tier" child income support payment. This review, which NESC expects to complete during 2005, will inform the development of future policy in this area.

Question No. 84 answered with Question No. 79.

Question No. 85 answered with Question No. 71.

Pension Provisions.

86. **Mr. S. Ryan** asked the Minister for Social and Family Affairs the steps he intends to take to increase the number of workers in the private sector who have pensions; his response to recent data from the Irish Pensions Board which show that only a quarter of the workforce have adequate pensions savings; and if he will make a statement on the matter. [5893/05]

97. **Mr. Eamon Ryan** asked the Minister for Social and Family Affairs if the failure of many employers to provide matching contributions to their employees' PRSAs is undermining that scheme. [6077/05]

126. **Mr. Gilmore** asked the Minister for Social and Family Affairs the level of uptake of PRSAs; if he has plans to review the scheme given the low level of interest in the accounts. [5894/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 86, 97 and 126 together.

It is Government policy to encourage people to participate in occupational and private pension arrangements so that they can, when they retire, maintain their pre-retirement standard of living at a reasonable level.

[Mr. Brennan.]

To this end a range of measures have been introduced over the last few years including personal retirement savings accounts, PRSAs, mandatory PRSA access where occupational schemes are not available, and an ongoing national pensions awareness campaign.

At the end of December 2004, some 46,237 PRSA accounts were open with a total asset value of €178 million. The comparable figures for 2003 are 19,022 accounts with an asset value of €19 million. In terms of overall occupational and private pensions coverage, CSO figures for the first quarter of 2004 show that 52.4% of persons in employment have a supplementary pension. This is a small increase on the 2002 figures which showed coverage at 51.2%.

The key target group for Government action in the supplementary pensions area is those who are 30 years of age and over. The national pensions policy initiative suggested that up to 70% of this group will need to supplement their social welfare pension to maintain living standards in retirement. The most recent CSO figures suggest that 59.1% of people in this group have the necessary pensions cover and, again, this is a small increase on the 2002 figure of 57.4%.

Over the last few years there has been a steady increase in the number of people taking out PRSAs and in those participating in standard occupational schemes. However, at this stage it has to be accepted that at the present rate of progress we will not achieve our targets within any kind of reasonable timescale.

Pensions Board research has shown a high level of awareness among the public in relation to pensions issues resulting from the awareness campaign conducted by the board. However, we are having only limited success in translating this high level of awareness into improved coverage. The reasons for this are multi-faceted. While, as suggested, the attitude of employers may well be a factor, Pensions Board research has highlighted other issues such as perceptions of affordability and a lack of urgency in relation to pensions among certain age groups in the population.

As the Deputies may be aware, a statutory review of pensions coverage and related issues is required to be completed by September 2006. However, I consider that the coverage situation is unlikely to improve dramatically over the next year and, in the circumstances, there is little point in delaying the review until 2006. Accordingly, as already announced, I have recently asked the Pensions Board to commence work on a comprehensive review of our overall pensions strategy, including possible alternatives to our present approach.

I am anxious to ensure that this is completed in the shortest possible timescale so that I can review the situation and decide what further action is required in this area. At the end of the day we must ensure that we can deliver on our commitment to provide an adequate retirement income for all.

Question No. 87 answered with Question No. 69.

Social Welfare Benefits.

88. **Mr. Sargent** asked the Minister for Social and Family Affairs if he has progressed his plan for part of the rent supplement budget to be used for the purchase of housing. [6080/05]

Minister for Social and Family Affairs (Mr. Brennan): The supplementary welfare allowance scheme provides for the payment of a weekly or monthly supplement in respect of rent or mortgage interest. This is available to assist eligible people who are unable to provide for their accommodation costs from their own resources and who do not have accommodation available to them from any other source. The scheme is administered, on behalf of my Department, by the community welfare division of the Health Services Executive.

The plan to which the Deputy refers arose from a Government decision in July 2004 to introduce new rental assistance arrangements. These arrangements are being implemented by local authorities on a phased basis over three years under the direction of the Department of the Environment, Heritage and Local Government.

The Government believes that the new arrangements will provide the best solution for disadvantaged people with ongoing housing needs, rather than extended reliance on rent supplements. In this regard an initial sum of €19 million has been transferred from my Department's Vote to that of the Department of the Environment, Heritage and Local Government in 2005 to cover the first year costs of developing and administering the new arrangements. Additional funding will be transferred to the Department of the Environment, Heritage and Local Government over the next three years.

Under the plan, local authorities will develop a range of accommodation solutions for people with long term housing needs who would otherwise rely on rent supplement. This includes people who have been receiving rent supplement for 18 months or longer. The measures involved include the existing range of social housing options, further encouragement of voluntary housing schemes and procurement of a range of suitable rental accommodation units in conjunction with private landlords.

The objective of the new arrangements is to minimise the need for longer-term dependence on social welfare rent supplement by providing an appropriate range of housing options for rent supplement clients in each local authority area. Arrangements are in place to facilitate local authorities to provide these additional options within three years from commencement of the new arrangements in each local authority and in any event no later than September 2008. The rent supplement scheme will continue to provide support for people who have accommodation needs in the short term.

The new arrangements are currently being implemented in seven local authority areas throughout the country. My Department and the Health Service Executive are actively assisting the Department of the Environment, Heritage and Local Government in this process. The new arrangements will have started in all local authority areas by the end of 2005.

This new role for housing authorities enhances their involvement in meeting long-term housing needs generally. It also integrates rent supplement services more closely with overall social housing policy.

I want to emphasise that the rent supplement scheme will continue to be available through the community welfare service for all eligible people who have an immediate accommodation need and who are unable to provide for that themselves.

89. **Mr. Naughten** asked the Minister for Social and Family Affairs the action he is taking to increase the uptake of the FIS scheme; if he will report on the uptake and estimated eligibility under the scheme; and if he will make a statement on the matter. [5859/05]

106. **Mr. Neville** asked the Minister for Social and Family Affairs if his Department has ever calculated the number of persons who would be eligible for the family income supplement scheme; and if he will make a statement on the matter. [6093/05]

110. **Mr. Noonan** asked the Minister for Social and Family Affairs the number of persons who are eligible for the family income supplement but are not availing of the scheme; the number of persons who avail of the scheme; and if he will make a statement on the matter. [6040/05]

114. **Mr. Durkan** asked the Minister for Social and Family Affairs the number of persons who have applied for family income supplement in the past 12 months; if this represents an increase or decrease on previous years; and if he will make a statement on the matter. [6001/05]

189. **Mr. Durkan** asked the Minister for Social and Family Affairs the number of applications for family income supplement received in the past 12 months; the number refused, approved or pending; the way in which this figure compares with the previous year; and if he will make a statement on the matter. [6268/05]

199. **Dr. Upton** asked the Minister for Social and Family Affairs the current number of claimants for family income supplement; his estimate of the number of households which might be entitled to claim this payment; and the steps he will take to improve take-up of this supplement. [6336/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 89, 106, 110, 114, 189 and 199 together.

Family income supplement is designed to provide cash support for people with families on low earnings. This preserves the incentive to remain in employment in circumstances where the employee might only be marginally better off than if he or she were claiming other social welfare payments. The number of persons who applied for family income supplement in the year to December 2004 was 21,020, which represents a substantial increase on 2003 when the numbers of applications received was 18,164. Similarly, the current level of applications represents a significant increase over previous years.

In 2004, there were 17,979 applications approved compared with 13,868 in 2003 while the number of applications refused was 3,507 in 2004 compared with 3,230 in 2003.

The number of claims pending at end of 2004 was 1,175, which was substantially less than at end 2003 when there were 2,582 claims pending.

The number of persons in receipt of family income supplement, FIS, at 31 December 2004 was 14,727, which shows an increase on previous years. The average value of FIS payments that week was €69.68. The numbers of persons who were in receipt of FIS in recent years were as follows: 2000, 13,181; 2001, 11,840; 2002, 12,043; and 2003, 12,317.

Improvements to the family income supplement scheme, including the assessment of FIS on the basis of net rather than gross income and the progressive increases in the income limits, have made it easier for lower income households to qualify under the scheme.

In addition, the increase in the minimum FIS payment to €20 has made it more attractive to those with only a marginal entitlement.

In this year's budget, I provided for further increases in the FIS income limits with effect from January 2005.

These unprecedented increases raised the weekly income limits by €39 at each point, adding an extra €23.40 to the payments of most existing FIS recipients. As a result, an estimated 2,600 additional families should qualify for payment.

It is difficult to ascertain with any precision the rate of FIS take up. Research undertaken by the Economic and Social Research Institute in 1997, which was based on the Living In Ireland Survey 1994, suggested that fewer than one in three eligible claimants were actually in receipt of the payment. However, since then labour market conditions and wages have changed significantly. Rising levels of remuneration, including the impact of the national minimum wage, will mean some applicants are above the income thresholds for their family size. Changes in taxation and PRSI have improved take-home pay for the lower paid. Also, the numbers of families where both parties are in employment have increased.

On this question of take-up a working group, chaired by the Department of Finance, was established to examine the role which refundable tax credits could play in the tax and welfare system,

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with a specific brief to examine the possible payment of FIS through the tax system.

While the group's final report is awaited, I understand that the principal recommendation regarding FIS is likely to be to continue payment through the social welfare system while maximising effects to increase take-up.

My Department undertakes a number of proactive measures to ensure that people are aware of possible entitlement to FIS, which include advising all newly awarded one parent family payment recipients, advising all employers annually in PRSI mailshots and examining entitlement in all awarded back to work allowance cases. Information on FIS is contained in all child benefit books and can be accessed on the Department's website. In addition, the scheme has been extensively advertised through local and national media outlets, including newspapers and radio, as well as through poster campaigns and targeted mailshots.

Every effort will continue to be made to publicise family income supplement and to increase people's awareness of their social welfare entitlements generally.

Nursing Home Charges.

90. **Mr. P. McGrath** asked the Minister for Social and Family Affairs the position regarding the practice of health authorities holding the pension books of older persons in public nursing homes following the Supreme Court judgement of 16 February 2005; and if he will make a statement on the matter. [6103/05]

105. **Mr. Cuffe** asked the Minister for Social and Family Affairs if he will consider introducing controls to ensure that social welfare payments given to those in institutional care cannot be abused. [6071/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 90 and 105 together.

In relation to payments to people in institutional care, the practice generally has always been that, when social welfare pensioners took up residence in long-stay residential care centres operated by the health boards, the board was appointed as an agent for the purpose of cashing the person's weekly pension or allowance and any charges towards the maintenance of people in these institutions were normally deducted from those payments.

Following instructions in December to the Health Service Executive, no maintenance charges for long-stay care are now being levied. Until such time as alternative arrangements can be made, the Health Service Executive has continued, in a temporary capacity, to act as an agent for the purpose of cashing pension or allowance books. These pension payments are being lodged in all cases to a patient's private property account that is being maintained by the HSE for each individual resident; pensioners have full access to this account whenever they wish.

I understand that the HSE is in the process of writing to all social welfare pensioners in their care to advise them that maintenance charges no longer apply and that pension payments belong in full to the pensioners themselves. Where a pensioner is unable, for whatever reason, to manage their own financial affairs, the HSE is making arrangements to inform the next of kin of the position.

The HSE is also advising pensioners of the various options open to them for receiving their pension payments. These comprise continuation of the existing arrangement whereby the HSE cashes the pension book on the pensioner's behalf and lodges the payment to the patient's private property account; payment of the pension into a bank or building society account or An Post pensions savings account; cashing of the pension at a post office by the pensioner; or appointment of another person, such as a relative, to act as an agent to cash the pension book on the pensioner's behalf.

A national implementation group of the HSE is responsible for ensuring that pensioners are fully advised of these new arrangements, and my Department is represented on this group.

My Department has primary responsibility for issuing payments to pensioners and for ensuring that pensioners are satisfied with the method of payment and the security of their payments. I have asked my officials to liaise with the Department of Health and Children and the HSE to ensure that all appropriate arrangements are made in this regard.

Social Welfare Code.

91. **Mr. Costello** asked the Minister for Social and Family Affairs if he has reviewed the habitual residence condition; if he has considered the hardship this condition has caused in many cases in recent times; and if he will make a statement on the matter. [5901/05]

Minister for Social and Family Affairs (Mr. Brennan): The requirement to be habitually resident in Ireland was introduced as a qualifying condition for certain social assistance schemes and child benefit with effect from 1 May 2004.

The basis for the restriction contained in the new rules is the applicant's habitual residence. The restriction is not based on citizenship, nationality, immigration status or any other factor.

The effect of the restriction is that a person whose habitual residence is elsewhere is not paid certain social welfare payments on arrival in Ireland. The question of what is a person's "habitual residence" is decided in accordance with European Court of Justice case law, which sets out the grounds for assessing individual claims.

Each case received for determination is dealt with in its own right and a decision is based on application of the guidelines to the particular cir-

cumstances of each case. Any applicant who disagrees with the decision of a deciding officer has the right to appeal to the Social Welfare Appeals Office.

The condition is being operated in a very careful manner to ensure that Ireland's social welfare system is not open to everyone who is newly arrived in Ireland, while at the same time ensuring that people whose cases are appropriate to the Irish social welfare system have access to the system when they need it.

My officials are completing a review of the operation of the habitual residence condition. This review is taking account of the issues that have come to light since the condition came in to effect in May 2004 and representations received from various groups and organisations who have an interest in this area.

Social Welfare Benefits.

92. **Mr. Crowe** asked the Minister for Social and Family Affairs his plans to extend the Christmas bonus scheme to clients that are on long term disability benefit in view of the unfairness of the present system. [5906/05]

Minister for Social and Family Affairs (Mr. Brennan): A special Christmas bonus payment was first introduced in December 1980 for social welfare pensioners and people who depend solely on their social welfare payments for income support.

There have been a number of developments in this scheme since its inception, including changes in the level of the bonus payment, the introduction of a minimum payment and the extension of the categories of eligible claimants.

The focus of the bonus has always been on persons who rely on the social welfare system for financial support over the long term. These include recipients of retirement, old age contributory and non-contributory, widow's, widower's and invalidity pensions, one-parent family payment, carer's allowance, disability allowance, long-term unemployment assistance, farm assist and people on employment support payments.

The bonus is also payable to participants in the rural social scheme, which was introduced in 2004 and operates under the aegis of the Minister for Community, Rural and Gaeltacht Affairs.

There are no plans at present to amend or extend entitlement to the bonus payment to short-term schemes and any such extension could only be considered in a budgetary context having regard to the resources available and the significant cost which would be involved.

In relation to disability benefit, it is open to persons who have been in receipt of disability benefit for at least a year to apply for invalidity pension and, if they qualify for the pension, they would also qualify for the Christmas bonus payment.

Question No. 93 answered with Question No. 76.

Question No. 94 answered with Question No. 83.

Question No. 95 answered with Question No. 72.

Family Support Services.

96. **Ms O'Sullivan** asked the Minister for Social and Family Affairs his response to recent comments from a person (details supplied) that family policy in Ireland adds to child poverty and to family poverty in very real ways; and if he will make a statement on the matter. [5889/05]

Minister for Social and Family Affairs (Mr. Brennan): The comments to which the Deputy refers were made at a conference entitled, Being a Father at Christmas, which I opened and which was funded by my Department as an event marking the 10th Anniversary of the UN International Year of the Family.

The comments particularly referred to the way in which the State intervenes in families where separation occurs and the approach of statutory agencies to children and fathers in that situation.

When families separate, members of the resulting two households will be poorer as a result. Disputes can often arise over access to and custody of children, which can also have a negative impact, sometimes severe, on all concerned.

One important response to this has been the establishment of the Family Support Agency in May 2003 which draws together the main family related programmes and services developed by the Government since 1997. These are designed to promote continuity and stability in family life, help prevent family breakdown and support ongoing parenting relationships for children and local community support for families. The agency's functions include: the provision of grant aid for voluntary and community organisations providing marriage and relationship counselling services, child counselling services and bereavement support for families; and the provision of a family mediation service throughout the country for couples who have decided to separate. The service is designed to help couples to reach agreement on issues such as the family home, financial arrangements. This can greatly assist children in retaining close bonds with both parents where possible and avoiding costly litigation.

The major social, demographic and economic changes taking place requires, however, the ongoing modernisation of all policies and programmes across Government that impact on families. It is possible that many current policies may no longer be achieving the desired outcomes, or achieving them to a sufficient degree, because of the change circumstances of families.

It may also be the case, as the expert cited by the Deputy states, that some policies may be adding to the problems rather than resolving them.

It is for that reason that a strategic approach to the provision and further development of sup-

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ports for families is being developed by my Department through an interdepartmental committee. This will include ongoing analysis and monitoring of the changes taking place, which impact of families, evaluation of the effectiveness of the supports in place for families to meet their care responsibilities and discharge their other functions, a coherent, integrated and comprehensive strategy approach containing clear objectives and targets for improving and further developing supports for families in a changing society.

One aim of the strategic approach will be to identify and remedy policies which are not achieving the desired outcome. It will also facilitate dialogue with stakeholders, other interested parties and experts in the ongoing evaluation and further development of policy. I hope to bring forward appropriate proposals arising from the current examination later this year.

Question No. 97 answered with Question No. 86.

Social Welfare Benefits.

98. **Mr. English** asked the Minister for Social and Family Affairs the safety nets that exist for persons who do not have a history of tenancy but who need an emergency social welfare payment, such as the rent supplement, as a result of fleeing domestic violence; and if he will make a statement on the matter. [6099/05]

Minister for Social and Family Affairs (Mr. Brennan): The supplementary welfare allowance scheme, which is administered on my behalf by the community welfare division of the Health Service Executive, provides for the payment of a weekly or monthly supplement in respect of rent to an eligible person whose means are insufficient to meet his or her accommodation needs and who does not have accommodation available to him or her from any other source.

Subject to satisfying the usual conditions regarding habitual residency, employment status, rent level conditions and a means test, all applicants for rent supplement who have been assessed by a local authority as being in need of housing can receive rent supplement. This applies regardless of how long they have been renting in the private sector, or even if they never rented before.

If an applicant for rent supplement has not been assessed by a local authority as being in need of housing, they are not necessarily excluded from receiving rent supplement on that account.

A number of categories of people are exempted from the requirement to be assessed by the local authority in this way, including elderly people, people with disabilities, people regarded as homeless by a local authority and people leaving institutions such as prisons.

There are no circumstances in which people fleeing domestic violence situations should have to remain in such situations because of the conditions for receipt of rent supplement. The regulations provide the executive with discretion to deal with exceptional or emergency cases of this sort. In this regard the executive may award a rent supplement to a person who is not an existing private sector tenant and who does not fall into one of the exempted categories, if in the opinion of the executive the circumstances so warrant.

The principal criteria upon which such a determination might be made include the safety and well-being of the person or a situation where a person is being made homeless or forced to use homeless facilities unless rent supplement is paid. Such cases could include people who find themselves caught up in violent domestic situations who have to move accommodation because of fears for their safety or well being.

I am satisfied that the current conditions for receipt of rent supplement, including the discretion available to the executive to deal with exceptional situations, ensure that anybody with a genuine housing need, and who cannot provide for his or her accommodation costs from within his or her own resources, can have access to rent supplement.

Question No. 99 answered with Question No. 69.

Pension Provisions.

100. **Mr. Gogarty** asked the Minister for Social and Family Affairs the consideration he has given to having the homemaker disregard made retrospective from 1973. [6073/05]

Minister for Social and Family Affairs (Mr. Brennan): The homemaker's scheme was introduced in 1994 and is intended to protect the pension entitlements of those who take time out of the paid workforce for caring duties. The scheme allows up to 20 years to be disregarded when a person's insurance record is being averaged to assess entitlement for contributory pension purposes. The scheme will not of itself qualify a person for a pension as the standard qualifying conditions relating to the type and number of contributions paid or credited must also be satisfied.

In August 2000, my Department published a review of the qualifying conditions for old age contributory and retirement pensions. This review also included a general examination of the homemaker's scheme and the report suggested a number of reforms for further consideration. These included the possibility of changing the operative date of the scheme and replacing the disregard system with one based on actual credited contributions. These suggestions are being examined in more detail in the second part of the review. This phase of the review is also looking at changes to the qualifying conditions for contributory and retirement pensions suggested in

the phase 1 report together with a range of other issues.

I expect that the review will be ready for publication in the next few months and developments in relation to the homemaker's scheme will be considered in the light of the conclusions of that report.

Question No. 101 answered with Question No. 69.

Social Welfare Benefits.

102. **Ms B. Moynihan-Cronin** asked the Minister for Social and Family Affairs if his attention has been drawn to calls from a lone parents organisation (details supplied) for recognition for lone parent families under the Constitution; his views in this regard; and if he will make a statement on the matter. [5903/05]

Minister for Social and Family Affairs (Mr. Brennan): Families and family life in Ireland have been undergoing profound change in recent decades, which includes the significant growth in the proportion of families headed by lone parents. The Oireachtas Committee on the Constitution, in inviting submissions, has specifically stated that account will be taken of these developments in their consideration of the possible need for changes to the provisions on families in the Constitution. I do not consider that it would be appropriate for me at this stage, as Minister, to preempt the conclusions and recommendations to be arrived at by the Oireachtas committee by commenting on any submission made to it by any organisation or individual, including the organisation referred to by the Deputy.

Question No. 103 answered with Question No. 67.

Question No. 104 answered with Question No. 79.

Question No. 105 answered with Question No. 90.

Question No. 106 answered with Question No. 89.

Social Welfare Benefits.

107. **Mr. Naughten** asked the Minister for Social and Family Affairs his plans to introduce photo identification in conjunction with the free travel pass; and if he will make a statement on the matter. [5860/05]

Minister for Social and Family Affairs (Mr. Brennan): Free travel passes issued by my Department do not display a photograph of the passholders. However, it is a CIE requirement that passholders resident in the major cities — Dublin, Cork, Waterford and Galway — must obtain an ancillary photopass from CIE in order to use the CIE Group services in those cities. This photopass is obtained free of charge by eligible passholders, with the cost being met by my Department.

The primary reason for photo identification is to prevent fraud of the system through free travel passes being transferred.

While the Department has no immediate plans to introduce a photo-type free travel pass, it has been working closely with a number of other bodies in efforts to develop a more secure type of free travel pass which may include photo identification. The issues which must be considered in carrying out this work include those of standards for public service cards generally and also, issues around data protection.

My Department is currently chairing an interdepartmental steering group to develop a set of standards for a public service card. These will provide a framework within which existing plastic cards issued by Departments can converge.

The Department is also a key stakeholder for the purposes of the integrated ticketing project in the greater Dublin area, GDA, which is being carried out by the Rail Procurement Agency, RPA, for the Department of Transport. This system will be implemented by way of a smartcard and initial roll-out of the card is planned for later this year. This card is expected to comply with the standard referred to earlier and may contain a photograph.

I will ensure that my Department continues to work closely with all of the bodies concerned to progress the introduction of a more secure free travel pass.

Questions Nos. 108 and 109 answered with Question No. 71.

Question No. 110 answered with Question No. 89.

Social Welfare Code.

111. **Mr. Kenny** asked the Minister for Social and Family Affairs the steps he has taken or proposals he has considered to make the social welfare system father friendly; and if he will make a statement on the matter. [6044/05]

Minister for Social and Family Affairs (Mr. Brennan): People are only identifiable in the social welfare system as parents when they have child dependants. Traditionally, the father was the main and often the sole breadwinner, with the mother, as the main caregiver, being regarded as dependent on the father. Implementation of the principle of equal treatment for men and women in recent decades has involved making the social welfare system both more mother and father friendly.

The mother, as normally the primary care giver, now generally receives child benefit payments, which before had been payable to the father as main breadwinner. There are no longer differences in payments or in eligibility conditions for men and women under the social welfare system and the concept of dependancy has largely

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been removed. Both men and women are equally eligible for benefits or pensions, if they become a lone parent, but the majority of lone parents, some 86.4%, are women.

Recognition of the mother as primary caregiver has meant that where the parents are separated, the mother usually retains custody of the children and, if there is eligibility, full entitlement to the one parent family payment. The scheme as it currently operates, therefore, may not sufficiently facilitate or promote joint parenting, and to that extent may not be sufficiently father friendly. This is one of the issues being examined both in a review of obstacles to employment under the one parents' family scheme being carried out by the senior officials group reporting to the Cabinet committee, and in the context of an examination of strategies for families which is being co-ordinated by my Department. The outcome of these projects will receive priority attention.

Greater involvement of both parents in the rearing of their children is in the interests of all concerned, and any changes to the social welfare system and, in particular, the one parent family payments, that may be needed to achieve that will be fully considered.

Social Welfare Benefits.

112. **Mr. Ferris** asked the Minister for Social and Family Affairs the number of one parent families which are in receipt of the one parent family payment; and the percentage of one parent families which are in receipt of the payment. [5908/05]

Minister for Social and Family Affairs (Mr. Brennan): According to the most recent census there were 154,000 lone parent families in 2002, comprising one in six of all families, with 85% headed by women. In terms of marital status, 40% were headed by a widowed person, 32% headed by a separated or divorced person and 24% headed by a single person.

The number in receipt of the one parent family payment at end of December 2004 was 80,103 — up from 58,960 in 1997 when the scheme was introduced. There were, in addition, 12,225 lone parents with children in receipt of payments under social insurance schemes, comprising 10,769 widowed persons and 1,456 deserted wives. In total, therefore, 92,328 or approximately 60% of lone parents are receiving weekly payments under the social welfare system.

Question No. 113 answered with Question No. 77.

Question No. 114 answered with Question No. 89.

Question No. 115 answered with Question No. 69.

Social Welfare Code.

116. **Mr. Durkan** asked the Minister for Social and Family Affairs the extent to which cuts imposed in the budget of a year ago have impacted on social welfare recipients; the full extent of the savings affected by those cuts; the number of persons or families refused rent or other support on foot of same; the instructions issued by his Department then or subsequently; and if he will make a statement on the matter. [6002/05]

Minister for Social and Family Affairs (Mr. Brennan): The measures introduced in the context of the 2004 Estimates included changes to the back to education allowance, one parent family payment, certain child dependant allowances, changes in the conditions of entitlement to short term social insurance payments and changes in the supplementary welfare allowance scheme.

It is not possible to quantify precisely the numbers affected by the measures in question in that, where disallowances or reduced entitlements occur, the specific reasons for such are not recorded on payment systems in a way which facilitates production of the information requested. While data is regularly available on the numbers in receipt of all payments, simple comparisons of such numbers would not reliably indicate the number of persons affected by the measures.

The number in receipt of any particular scheme can and does fluctuate for a wide variety of reasons, such as, for example, seasonal factors in the case of unemployment. Furthermore, in many instances, the individuals who may have been affected by a particular measure could have availed of alternative support. Again, it is not possible to distinguish those particular cases from those who, for other reasons, avail of these alternative supports over the same period.

The total overall projected expenditure in 2004 on the schemes affected by the measures was, however, broadly in line with expectations. I have conducted a review of the measures announced in November 2003 to assess their impact on people. During the course of that review I listened carefully to the views expressed by members of this House, by the social partners and by voluntary groups and others I have met since becoming Minister for Social and Family Affairs.

On budget day, I was pleased to announce the following new arrangements: the qualifying period for the back to education allowance is being reduced from 15 months to 12 months and in addition, the cost of education allowance is being increased by €254 to €400; the transitional payment for recipients of one parent family payment is being restored and will now be available for a period of six months where a recipient's income exceeds €293 per week; the income limit for entitlement to half-rate child dependant allowances for unemployment, disability and related schemes will be increased by €50 per week to €350.

The saving of €700,000 arising from last year's MABS supplement measure is being redirected to the Money Advice and Budgeting Service to enable it to further develop its services. The sum of €2.3 million, an amount equivalent to the savings achieved by the discontinuation of crèche supplements, is now being made available to ensure that vulnerable families can continue to have access to crèche supports, for example in cases where a social worker or public health nurse deems this necessary as part of their work with the family. I am consulting my colleagues, the Tánaiste and Minister for Health and Children and the Minister for Justice, Equality and Law Reform, about the most appropriate way to channel this funding.

An additional €2 million is being made available to improve the diet supplement arrangements. The sum of €19 million in funding from the rent supplement scheme is being transferred to the local authorities as an initial measure to enable them to put long-term housing solutions in place. The six months rule for entitlement to rent supplement is being amended in order to ensure that bona fide tenants who experience a change of circumstances are not disadvantaged, if for example they become ill or unemployed within six months of renting.

Rent supplement will now remain in payment unless a third offer of local authority accommodation has been refused. I am not raising the minimum contribution for rent supplement this year. In addition, the measure relating to half rate payments for widows and widowers and allied payments was amended earlier last year.

The full year cost of all of the measures I have detailed above is €36 million in a full year. The operation of the remaining measures will be kept under review. With regard to the supplementary welfare allowance scheme, circulars were issued by my Department to the community welfare staff who administer the scheme on my behalf, in December 2003 and in January 2005, advising them of the changes to the scheme and reminding them of the discretion available to them to deal with exceptional or emergency cases which may arise from time to time.

Social Welfare Benefits.

117. **Mr. Perry** asked the Minister for Social and Family Affairs if he has plans to change the dual eligibility rule for persons in receipt of the carer's allowance; and if he will make a statement on the matter. [6100/05]

Minister for Social and Family Affairs (Mr. Brennan): The carer's allowance is a social assistance payment which provides income support to people who are providing certain elderly or incapacitated persons with full time care and attention and whose incomes fall below a certain limit.

The primary objective of the social welfare system is to provide income support and, as a general rule, only one weekly social welfare payment is payable to an individual. This ensures that resources are not used to make two income support payments to any one person. Of course, persons qualifying for two social welfare payments always receive the higher payment to which they are entitled.

As part of the improvements introduced in the last budget, all persons providing full time care and attention will be entitled to a respite care grant of €1,000 in June, regardless of their means. The persons in receipt of other social welfare payments, excluding unemployment assistance and benefit, will be entitled to this payment subject to meeting the full time care condition. This arrangement is being introduced to acknowledge the needs of carers especially in relation to respite.

Government policy is strongly in favour of supporting care in the community and enabling people to remain in their own homes for as long as possible. The types of services which recognise the value of the caring ethos and which provide real support and practical assistance to the people involved will continue to be developed and all allowances and systems of support will be kept under regular review.

118. **Mr. Ferris** asked the Minister for Social and Family Affairs the number of recipients of the fuel allowance; if he has satisfied himself that the allowance is keeping up with fuel costs in this sector; if he plans to extend the scheme during particularly long cold weather; and his proposals to extend the allowance. [5907/05]

Minister for Social and Family Affairs (Mr. Brennan): The aim of the national fuel scheme is to assist householders who are in receipt of long-term social welfare or health board payments towards meeting their additional heating needs during the winter season. The season was extended from 26 weeks to 29 weeks in 2001 and now covers the period October to April each year.

Under the scheme a fuel allowance of €9.00 per week is paid to eligible households during this 29 week winter heating period, with an additional €3.90 per week being paid in the designated smokeless fuel zones, bringing the total amount in those areas to €12.90 per week. I expect some 274,000 households to benefit under the fuel allowance scheme in 2005 at a cost of some €85 million. In addition over 300,000 pensioner and other households qualify for electricity or gas allowances through the household benefits package, payable towards their heating, light and cooking costs throughout the year.

There is also a facility available through the supplementary welfare allowance scheme to assist people in certain circumstances who have special heating needs. An application for a heating supplement may be made by contacting a community welfare officer at any local health centre.

An important objective of this Government is to provide real increases in payment rates each year for people who depend on social welfare income support, to ensure that they can experi-

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ence some real improvement in their quality of life, including provision of adequate heating. Pensioners and other groups have received significant increases in their primary social welfare payment rates this year and in recent years. This has improved their income situation considerably in real terms relative to fuel cost increases and to price inflation generally. It is also more beneficial to the individual as primary payments are payable for a full 52 weeks of the year.

It should be pointed out that both increasing the rate of fuel allowance and providing modified allowance rates for an extended period each year would have significant cost implications. However, I intend to keep the adequacy of the fuel allowance and the question of extending it under regular review.

Question No. 119 answered with Question No. 79.

Question No. 120 answered with Question No. 72.

Question No. 121 answered with Question No. 79.

122. **Mr. S. Ryan** asked the Minister for Social and Family Affairs his plans to address the issue of fuel poverty, particularly among the elderly; if he has considered recent research which showed that up to 2,000 pensioners are at risk of premature death annually because of inability to heat their homes adequately; and if he will make a statement on the matter. [5891/05]

Minister for Social and Family Affairs (Mr. Brennan): The term "fuel poverty" has been described as the inability to afford adequate warmth in a home, or the inability to achieve adequate warmth because of energy inefficiency in the home.

My Department provides a range of income assistance to householders who are in receipt of long-term social welfare or health board payments and who are unable to provide fully for their own heating needs. A fuel allowance of €9.00 per week is payable to eligible households with an additional €3.90 per week being paid in designated urban smokeless fuel zones, bringing the total amount in those areas to €12.90 per week. These payments are made for the duration of the fuel season which lasts for 29 weeks from the end of September to mid-April each year.

The fuel allowances represent a contribution towards a person's additional heating expenses during the winter season. In addition many households also qualify for electricity and gas allowances through the household benefits package. Expenditure by my Department on fuel, electricity and gas allowances for social welfare and other elderly clients is expected to be nearly €195 million this year.

An important objective of this Government is to provide real increases in payment rates each year for people who depend on social welfare income support, to ensure that they can experience real improvement in their quality of life, including provision of adequate heating. In this regard, the significant increases in primary social welfare payment rates for pensioners and other groups this year and in recent years have improved their income situation considerably in real terms relative to fuel cost increases and to price inflation generally.

I am aware of the research report, Fuel Poverty and Policy in Ireland and the European Union, published in 2003 by the policy institute at Trinity College, Dublin in conjunction with the Combat Poverty Agency. This report indicated that the estimated incidence of fuel poverty in Ireland, while not the highest overall of the countries assessed, was higher than in other northern European countries and that the problem is concentrated in certain social groups, particularly the elderly or those with children and who were living in social housing where insulation and energy efficiency standards were lower than average.

As acknowledged in the report, the primary solution lies in improving the energy efficiency of housing, along with improving the income situation of people who might otherwise experience fuel poverty. Local authorities throughout the country are responsible for undertaking programmes of improvement to the existing social housing stock which help conditions generally for tenants, including draught insulation and energy efficiency. All new social housing is being built to modern energy efficiency standards.

I am aware also that Sustainable Energy Ireland and the Combat Poverty Agency are well advanced with plans to carry out an action research project in designated geographical areas this year, where eligible persons will have an energy audit carried out in their homes.

The energy audit will include energy advice to the household as well as remedial work such as the installation of roof space insulation, draft proofing, fitting of hot water cylinder lagging jackets and energy efficient light bulbs. The project will evaluate the effects of the measures undertaken from the point of view of improved comfort levels, health effects as well as changes in fuel costs and carbon dioxide emissions. The project is due to commence shortly and will involve monitoring the effect of individual remedial works carried out. My Department will keep the results of this project under careful review to assist with the development of future income support policy in this area.

Social Welfare Code.

123. **Mr. Morgan** asked the Minister for Social and Family Affairs if he will report on the criteria which guide the denial of benefit of unemployment assistance to persons particularly the phrase not actively seeking work; and if he will report on the guidelines concerning the proofs needed by his Department from clients. [5909/05]

Minister for Social and Family Affairs (Mr. Brennan): Social welfare legislation provides that, in order to be entitled to unemployment benefit or unemployment assistance, a person must prove, *inter alia*, that he or she is available for and genuinely seeking work.

Unemployment benefit and assistance claimants are expected to demonstrate that they have taken reasonable steps to secure suitable full-time employment and to provide examples of such steps. A person who fails to satisfy the deciding officer that he or she is available for full-time employment and genuinely seeking work is not entitled to an unemployment payment. In applying the legislation, deciding officers have regard to local conditions including job vacancies in the locality and the extent to which a claimant has sought to take advantage of available labour market opportunities.

The steps which people might be expected to take to seek employment will vary with the circumstances but could include, for example making oral or written applications for work to employers or persons who have advertised job offers on behalf of an employer; seeking information on the availability of employment from employers, advertisements, employment agencies and people who have placed advertisements indicating that employment is available; availing of reasonable training opportunities suitable in their case; acting on the advice given by a departmental facilitator, a FÁS adviser or other placement agency such as the local employment service, LES.

The system is based on the exercise of judgement by the deciding officer or, as appropriate, the appeals officer, as to whether a claimant meets the conditions of entitlement. The Department has a programme of training for deciding officers on the carrying out of their responsibilities and on the application of the legislation. Each case is decided on its own merits within the framework of the relevant social welfare legislation.

The onus is on the claimant to show that he or she satisfies the conditions of being available for and genuinely seeking work on an ongoing basis. I am satisfied that the requirement to be available for full-time employment and to be genuinely seeking work is operated in a reasonable manner so as to ensure that only those who are genuinely seeking employment qualify for payment.

Under social welfare legislation decisions in relation to individual cases are made by statutorily appointed deciding officers and appeals officers. Where a person is dissatisfied with a decision made by a deciding officer to refuse him or her an unemployment payment, the decision may be appealed to the social welfare appeals office.

Pension Provisions.

124. **Ms McManus** asked the Minister for Social and Family Affairs the number of applications received to date for the pre 1953 pension; the number of applications rejected by his Department; the number of applicants who claim to have been employed by local authorities who were refused the pre 1953 pension; the number of applicants who claim to have been employed by semi-State bodies who were refused the pre 1953 pension; and if he will make a statement on the matter. [5899/05]

Minister for Social and Family Affairs (Mr. Brennan): The special old age contributory pension for people who commenced insurable employment before 1953 was introduced with effect from 5 May 2000. To qualify for the pension a person must have commenced insurable employment under the National Health Insurance Acts and have a total of at least 260 full-rate social insurance contributions paid since then. The 260 contributions can be made up solely of contributions paid prior to 1953 under the National Health Insurance Acts or of a combination of contributions paid before 1953 and after 1953 under the Social Welfare Acts. Every two contributions paid prior to 1953 are counted as three for this purpose with any odd contribution counted as two.

The pension is payable at half the maximum weekly personal rate, that is €89.70. Increases for qualified adults and child dependants, where applicable, are also payable at half-rate.

Since its introduction in May 2000, some 29,740 people have been awarded the pre 1953 pension and a further 3,900 awarded a *pro rata* rate of pre 1953 pension under EU regulations on social security, giving a total of 33,640 pensions awarded to date. There are currently some 28,600 people in receipt of payments under the pre 1953 provisions.

Applications for a pre 1953 pension involve checking employment records going back over 50 years. Cases arise where no trace of employment contributions can be readily found on the Department's record system. In such instances a more extensive check is initiated including, where appropriate, referral to a social welfare investigator who will be asked to investigate the existence of the employment with the pensioner and the alleged employer, and to make a determination in relation to the contributions due.

It can be difficult to collate records in respect of people who have been engaged in casual employment, and many people who worked with local authorities and some semi-state agencies did so on a casual basis prior to 1953. These difficulties are addressed through the activities of my social welfare inspectors. A breakdown of the number of applicants who failed to qualify for a pre 1953 pension categorised by the nature of their employment is not maintained.

Consequently I am not in a position to provide the information sought as to the number of applicants refused the pension and who claimed to have been employed by local authorities or semi-state bodies.

Question No. 125 answered with Question No. 79.

Question No. 126 answered with Question No. 86.

General Medical Services Scheme.

127. **Mr. Wall** asked the Tánaiste and Minister for Health and Children the ratio of patients to doctors, general practitioners, medical card holders, private patients as determined by her Department; the mechanism determined by her Department in allocating areas for general practitioners services; the mechanism determined by the Department in accepting doctor's applications for dealing with medical card-holders; and if she will make a statement on the matter. [6133/05]

Tánaiste and Minister for Health and Children (Ms Harney): The Health Act 2004 provided for the Health Service Executive, which was established on 1 January 2005. Under the Act, the executive has the responsibility to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. This includes responsibility for the assessment of service requirements for its area and ensuring that arrangements are in place to guarantee appropriate service delivery for its general medical services scheme, or medical card, patients.

In the case of general practitioners who hold contracts with the local area of the Health Service Executive to provide general practitioner services to medical card holders under the general medical services, GMS, scheme, the total number of patients which might be assigned to a doctor may be up to 2,000. In exceptional cases this limit may be exceeded or indeed a lower limit may be determined, but the decisions will be matters for the local area of the Health Service Executive to make, having regard to all of the aspects of the particular case.

Arrangements in respect of the provision of services by general practitioners who wish to solely provide services for private patients are matters for the doctor concerned and the local area of the health service is not involved in any way in this decision.

Where full GMS GP contracts are advertised, applications from suitably qualified general practitioners are invited. The procedure regarding the interview, selection and recruitment forms part of the GMS contract which participating doctors hold with their local Health Service Executive's area, and which is as agreed between the Department of Health and Children and the Irish Medical Organisation, the doctors' representative body. As part of industrial relations agreements between the Department of Health and Children and the Irish Medical Organisation, made in 1999 and again in 2001, limited entry to the GMS scheme was possible for suitably qualified GPs. These agreements allowed for those GPs who were interested and qualified to hold limited GMS contracts. These limited GMS contracts allowed GPs to treat their over-70s patients who qualified for a medical card for the first time, following the phased increase in the income level for eligibility assessment in 1999, and again following the introduction of the statutory entitlement to a medical card for all persons aged 70 years and over from 1 July 2001. After specified periods GPs holding these limited contracts would become eligible for full GMS contracts and be able to provide services to any medical card patient who might choose to be included on their patient panel list.

The 2003 annual report of the GMS Payments Board, now the HSE's primary care reimbursement service, is the latest for which published figures are available. The report indicated that at the end of 2003, there were 1.158 million eligible persons and 1,971 doctors participating in the GMS scheme, giving a ratio of 587.5 patients per doctor.

Cancer Screening Programme.

128. **Mr. McGinley** asked the Tánaiste and Minister for Health and Children if her attention has been drawn to the fact that the national mammogram service has not yet been extended to Letterkenny General Hospital which discriminates against women in County Donegal; when it is expected that this service be available in the hospital. [6134/05]

Tánaiste and Minister for Health and Children (Ms Harney): The roll-out of the national breast screening programme to the remaining counties is a major priority in the development of cancer services. This will ensure that all women in the relevant age group in every county have access to breast screening and follow up treatment where appropriate.

A capital investment of approximately €21 million has been approved to construct and equip two static clinical units, one in Cork and the other in Galway and to provide mobile units to screen women in adjoining counties, including Donegal. In advance of the roll-out of BreastCheck to Donegal, women in Donegal currently avail of mammography services at Letterkenny General Hospital.

Any woman irrespective of her age or residence who has immediate concerns or symptoms should contact her GP who, where appropriate, will refer her to the symptomatic services in the region.

Health Services.

129. **Ms O. Mitchell** asked the Tánaiste and Minister for Health and Children the amount deducted from the pensions or allowances of patients in public or publicly funded psychiatric facilities in each year for the past six years. [6238/05]

130. **Ms O. Mitchell** asked the Tánaiste and Minister for Health and Children the amount deducted from the Disability Allowances for

patients accommodated in State or State funded facilities in each year for the past six years. [6239/05]

131. **Ms O. Mitchell** asked the Tánaiste and Minister for Health and Children the amount of pension deductions for nursing home patients accommodated in privately operated publicly contracted beds each year for the past six years. [6241/05]

Tánaiste and Minister for Health and Children (Ms Harney): I propose to take Questions Nos. 129 to 131, inclusive, together.

The Health Act 2004 provided for the Health Services Executive, HSE, which was established on 1 January 2005. Under the Act, the executive has the responsibility to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. Accordingly, my Department has requested the HSE to provide data for the amounts deducted from eligible patients regarding long stay charges in publicly funded long stay residential units. Fully comprehensive information is not yet available covering the wide range of programmes concerned. However, the HSE has begun the process of collating this information and in this context my Department has asked the HSE to investigate the matter raised and reply directly to the Deputy.

Health Services.

132. **Mr. Crowe** asked the Tánaiste and Minister for Health and Children if her attention has been drawn to the difficulties being experienced by a person (details supplied). [6242/05]

Tánaiste and Minister for Health and Children (Ms Harney): The Health Act 2004 provided for the Health Service Executive, which was established on 1 January 2005. Under the Act, the executive has the responsibility to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. As the person in question resides in Dublin, my Department has requested the chief officer for the executive's eastern regional area to investigate the matters raised and to reply directly to the Deputy.

133. **Mr. O'Shea** asked the Tánaiste and Minister for Health and Children, further to Question No. 214 of 15 February 2005, the person who will have the final decision within the Health Service Executive in regard to the national service plan to be presented to her; and if she will make a statement on the matter. [6243/05]

Tánaiste and Minister for Health and Children (Ms Harney): With effect from 1 January 2005, under the Health Act 2004, the Health Service Executive has responsibility for the delivery of health services. Under section 31(1) of the Act, the executive is obliged to prepare, adopt and then submit to me for approval a service plan for the financial year or other period as may be determined by me. No one person within the executive makes the final decision on the service plan: it is a matter for the board of the executive. Sub-section (8) provides that not later than 21 days after receiving the service plan, I shall either approve it or issue a direction under sub-section (9) that it be amended. If I approve it, under sub-section (13), I am obliged to ensure that a copy of the approved plan is laid before both Houses of the Oireachtas within 21 days after it has been approved by me. The national service plan will be informed by the guiding principles underpinning the health strategy, namely equity, people-centredness, quality and accountability. The plan will cover all the major programmes of care.

Cancer Screening Programme.

134. **Mr. Naughten** asked the Tánaiste and Minister for Health and Children her plans and timetable for the rollout of BreastCheck in the west of Ireland; when she intends to have the screening service up and running; and if she will make a statement on the matter. [6244/05]

Tánaiste and Minister for Health and Children (Ms Harney): The rollout of the national breast screening programme to the remaining counties is a major priority in the development of cancer services. This will ensure that all women in the relevant age group in every county have access to breast screening and follow up treatment where appropriate. A capital investment of approximately €21 million has been approved to construct and equip two static clinical units, one in Cork and the other in Galway. Design briefs in respect of the capital projects have been completed. It is anticipated that the advertisement for the appointment of a design team will be placed in the *EU Journal* in the coming weeks. Additional capital funding of €3 million has also been approved for the relocation and development of the symptomatic breast disease unit, in tandem with the BreastCheck development, at University College Hospital, Galway.

Any woman irrespective of her age or residence who has immediate concerns or symptoms should contact her GP who, where appropriate, will refer her to the symptomatic services in the region.

Nursing Home Subventions.

135. **Mr. Perry** asked the Tánaiste and Minister for Health and Children if her attention has been drawn to the fact that a 35-bed unit requires 760 hours of nurse and carer attention per week; her plans to have a uniform policy on contract beds treating all nursing homes in an equal fashion; if her attention has further been drawn to the serious crisis encountered by many small nursing homes in the west with capital allowances, subvention amounts, falling bed numbers and wages costs; and if she will make a statement on the matter. [6245/05]

Minister of State at the Department of Health and Children (Mr. S. Power): A working group was established to look at all aspects of the sub-

[Mr. S. Power.]
vention scheme and the Health (Nursing Homes) Act 1990. Among the aims of this working group is the development of a system, which will be transparent, provide equity, be less discretionary, be financially sustainable and ensure a high standard of care is on offer to clients.

The capital allowances referred to were introduced as an incentive to the private sector to invest in new nursing homes and to extend or renovate existing homes. Since their introduction the number of nursing homes throughout the country has increased significantly, thereby offering greater choice and newer facilities to the public. The issue of subvention rates will be addressed in the context of the working group's remit and it is not anticipated that rates will increase before the recommendations of that group are brought to Government.

Mental Health Services.

136. **Mr. Neville** asked the Tánaiste and Minister for Health and Children if psychiatric patients who are in public institutions will have all moneys deducted from their benefits or pensions refunded. [6246/05]

Tánaiste and Minister for Health and Children (Ms Harney): My Department is studying the Supreme Court judgment in detail and will take on board all the consequences for policy and law arising from the judgment. A special Cabinet subcommittee comprising the Taoiseach, the Minister for Finance, the Attorney General and myself has been established to consider the issue of repayment in light of the judgment.

Health Service Executive.

137. **Mr. Kehoe** asked the Tánaiste and Minister for Health and Children the total cost of the changeover for stationery in each health board area when changing to the HSE; and if she will make a statement on the matter. [6282/05]

Tánaiste and Minister for Health and Children (Ms Harney): The Health Act 2004 provided for the Health Service Executive, which was established on 1 January 2005. The cost of stationery arising from the changeover from the health boards is a matter for the executive. Accordingly, my Department has requested the acting director of the executive's corporate affairs directorate to ascertain the position and to reply directly to the Deputy.

Nursing Home Subventions.

138. **Mr. Kehoe** asked the Tánaiste and Minister for Health and Children if a person (details supplied) in County Wexford is entitled to a refund following the Supreme Court decision of 16 February 2005 regarding the overcharging of patients in public and private nursing homes; and if she will make a statement on the matter. [6283/05]

Tánaiste and Minister for Health and Children (Ms Harney): My Department is studying the Supreme Court judgment in detail and will take on board all the consequences for policy and law arising from the judgment. A special Cabinet subcommittee comprising the Taoiseach, the Minister for Finance, the Attorney General and myself has been established to consider the issue of repayment in light of the judgment.

139. **Mr. Kehoe** asked the Tánaiste and Minister for Health and Children if a person (details supplied) in County Wexford is entitled to a refund or moneys following the Supreme Court decision of 16 February 2005 regarding overcharging of patients in public and private nursing homes; and if she will make a statement on the matter. [6284/05]

Tánaiste and Minister for Health and Children (Ms Harney): My Department is studying the Supreme Court judgment in detail and will take on board all the consequences for policy and law arising from the judgment. A special Cabinet subcommittee comprising the Taoiseach, the Minister for Finance, the Attorney General and myself has been established to consider the issue of repayment in light of the judgment.

140. **Mr. Kehoe** asked the Tánaiste and Minister for Health and Children the category of nursing home patient that will qualify for a refund as a result of the Supreme Court decision of 16 February 2005; and if the legal representatives and heirs of a deceased person who would have been entitled to a refund will be allowed to claim the overpayment. [6285/05]

Tánaiste and Minister for Health and Children (Ms Harney): My Department is studying the Supreme Court judgment in detail and will take on board all the consequences for policy and law arising from the judgment. A special Cabinet subcommittee comprising the Taoiseach, the Minister for Finance, the Attorney General and myself has been established to consider the issue of repayment in light of the judgment.

Health Service Allowances.

141. **Mr. Kehoe** asked the Tánaiste and Minister for Health and Children the position regarding the review of the domiciliary allowance of a person (details supplied) in County Wexford; and if she will make a statement on the matter. [6286/05]

Minister of State at the Department of Health and Children (Mr. T. O'Malley): The Health Act 2004 provided for the Health Service Executive, which was established on 1 January 2005. Under the Act, the executive has the responsibility to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. This includes responsibility for payment of and entitlement to domiciliary care allowance. Accordingly, my Department has requested the

chief officer for the executive's south-eastern area to investigate the matter raised and to reply directly to the Deputy.

Health Services.

142. **Mr. G. Mitchell** asked the Tánaiste and Minister for Health and Children if the Health Services Executive will keep in contact with persons (details supplied) in Dublin 8 concerning a proposed development; if this Deputy will be fully briefed on the issue and kept informed; and if she will make a statement on the matter. [6310/05]

Minister of State at the Department of Health and Children (Mr. S. Power): The Health Service Executive was established under the Health Act 2004 on 1 January 2005. Under the Act, the executive is responsible for managing and delivering, or arranging to be delivered on its behalf, health and personal social services. Therefore, it is responsible for the provision of health services in the Dublin 8 area. Accordingly, the Department of Health and Children has asked the chief officer for the executive's eastern regional area to investigate the matter and to reply directly to the Deputy.

Medical Cards.

143. **Mr. G. Mitchell** asked the Tánaiste and Minister for Health and Children if the health agency will review the case of a person (details supplied) in Dublin 6W; and if a medical card will issue for this person. [6311/05]

Tánaiste and Minister for Health and Children (Ms Harney): The Health Service Executive was established under the Health Act 2004 on 1 January 2005. Under the Act, the executive is responsible for managing and delivering, or arranging to be delivered on its behalf, health and personal social services. Therefore, it is responsible for the assessment of applications for medical cards. Accordingly, the Department of Health and Children has asked the chief officer for the executive's eastern coast area to investigate the matter and to reply directly to the Deputy.

Health Services.

144. **Dr. Upton** asked the Tánaiste and Minister for Health and Children if the Health Service Executive intends to demolish a day care centre at a facility (details supplied) in Dublin 8. [6333/05]

Minister of State at the Department of Health and Children (Mr. S. Power): The Health Service Executive was established under the Health Act 2004 on 1 January 2005. Under the Act, the executive is responsible for managing and delivering, or arranging to be delivered on its behalf, health and personal social services. Therefore, it is responsible for the provision of health services in the Dublin 8 area. Accordingly, the Department of Health and Children has asked the chief officer for the executive's eastern regional area to investigate the matter and to reply directly to the Deputy.

Services for People with Disabilities.

145. **Dr. Upton** asked the Tánaiste and Minister for Health and Children the position regarding the provision of a special needs place for a person (details supplied) in Dublin 8. [6335/05]

Minister of State at the Department of Health and Children (Mr. B. Lenihan): The Health Service Executive was established under the Health Act 2004 on 1 January 2005. Under the Act, the executive is responsible for managing and delivering, or arranging to be delivered on its behalf, health and personal social services. Accordingly, the Department of Health and Children has asked the chief officer for the executive's eastern regional area to investigate the matter and to reply directly to the Deputy.

General Register Office.

146. **Mr. Perry** asked the Tánaiste and Minister for Health and Children the level of controls or supervision her Department has in the appointment of key medical professionals in medical, surgical and gynaecological areas in cross-checking their suitability for these appointments, with regard to the new state of the art private hospital in Galway; and if she will make a statement on the matter. [6337/05]

Tánaiste and Minister for Health and Children (Ms Harney): The Medical Council has statutory responsibility under the Medical Practitioners Act 1978 for the registration and control of persons engaged in the practice of medicine. As a matter of good recruitment practice in the public and private health sectors, I expect the prospective employer of a member of any health care profession whose activities are regulated by law to check the status of that person's registration with the relevant regulatory authority.

Hospital Services.

147. **Mr. Penrose** asked the Tánaiste and Minister for Health and Children the steps she will take to have a person (details supplied) in County Westmeath admitted to St. James's Hospital or St. Vincent's for a surgical bed; and if she will make a statement on the matter. [6368/05]

Tánaiste and Minister for Health and Children (Ms Harney): The Health Service Executive was established under the Health Act 2004 on 1 January 2005. Under the Act, the executive is responsible for managing and delivering, or arranging to be delivered on its behalf, health and personal social services. As the person in question resides in County Westmeath, the Department of Health and Children has asked the chief officer for the executive's midland regional area to investigate the matter raised and to reply directly to the Deputy.

Health Services.

148. **Mr. Penrose** asked the Tánaiste and Minister for Health and Children the reason ENT services were discontinued at Longford County Clinic, Longford; if her attention has been drawn to the significant imposition that this will be upon persons who wish to avail of the service; if her attention has further been drawn to the fact that there is over 100 patients at the present time awaiting these services; and if she will make a statement on the matter. [6369/05]

Tánaiste and Minister for Health and Children (Ms Harney): The Health Service Executive was established under the Health Act 2004 on 1 January 2005. Under the Act, the executive is responsible for managing and delivering, or arranging to be delivered on its behalf, health and personal social services. Therefore, it is responsible for the provision of hospital services. Accordingly, the Department of Health and Children has asked the chief officer for the executive's midland regional area to investigate the matter raised and to reply directly to the Deputy.

Decentralisation Programme.

149. **Mr. Timmins** asked the Minister for Finance the number of members of staff of the Revenue Commissioners who were due to decentralise to Athy, County Kildare; if it is still intended to send this number; and if he will make a statement on the matter. [6277/05]

Minister for Finance (Mr. Cowen): As part of the Government's decentralisation programme, it was decided that 250 Revenue posts will be decentralised to Athy, County Kildare. The report of the decentralisation implementation group of 19 November 2004 did not include Athy as a location in the first phase of moves. A further report is expected from the group in the spring of 2005 dealing with all remaining locations, including Athy. The data from the central applications facility published in September showed that a total of 134 persons have applied for decentralisation with the Revenue Commissioners, with Athy as their first choice.

150. **Ms Enright** asked the Minister for Finance the position in relation to decentralisation to Tullamore; if a site has been agreed; when the contract documents will be signed; and if he will make a statement on the matter. [6278/05]

Minister for Finance (Mr. Cowen): The report of the decentralisation implementation group of 19 November 2004 included Tullamore as a location in the first phase of moves. I understand that the Commissioners of Public Works are at an advanced stage in negotiations for the acquisition of property for the Department of Finance in Tullamore. If the negotiations are successful, the Commissioners expect that the contract stage will be reached in the near future.

Disabled Drivers.

151. **Mr. Connaughton** asked the Minister for Finance when an appeal under the disabled drivers tax concessions scheme by a person (details supplied) in County Galway will be heard; if an appeals board is in operation at present; and if he will make a statement on the matter. [6279/05]

Minister for Finance (Mr. Cowen): I have no direct responsibility for the day-to-day operation of the medical board of appeal for the disabled drivers and disabled passengers (tax concessions) scheme. However, the Department of Finance and the Department of Health and Children are reconstituting the medical board of appeal for the scheme. Progress has been made and it is hoped that the new arrangements will be put in place shortly. I will arrange for the new secretary to the board, when in place, to contact the individual concerned about his appeal.

Tax Collection.

152. **Mr. J. Higgins** asked the Minister for Finance the terms of any concessions made by his predecessor or Department to any of a number of companies (details supplied) with regard to taxation; and his estimate of the cost of these concessions up to December 2004. [6280/05]

Minister for Finance (Mr. Cowen): It is not the practice to comment on an individual taxpayer's affairs unless it is clear that the Deputy is asking on behalf of or with the consent of the taxpayer concerned. Moreover, I am not aware of any concessions of the nature referred to by the Deputy.

Tax Code.

153. **Ms Shortall** asked the Minister for Finance if he will arrange with the Revenue Commissioners to adjust the tax being deducted from a person (details supplied) in Dublin 11 to reflect the person's current level of income; and the steps this person needs to take to apply for a refund of overpaid tax. [6281/05]

Minister for Finance (Mr. Cowen): I am advised by the Revenue Commissioners that on the basis of the details now provided to the person, a revised certificate of tax credits for 2005, which will reflect the correct marital status and level of income of the taxpayer, will issue shortly. The taxpayer is entitled to a refund of tax for the years 2001 to 2004 inclusive and a cheque for this will also issue shortly. Any tax overpaid for 2005 will be automatically refunded through the taxpayer's pension.

Flood Relief.

154. **Mr. N. O'Keeffe** asked the Minister for Finance if the river banks of two rivers in County Cork (details supplied) will be built up or bridged; if his attention has been drawn to the fact that the banks of these rivers collapsed in October or November 2004 following high winds and very heavy rainfall; if his attention has

further been drawn to the fact that both are tidal rivers and the collapse of the banks has caused serious flooding of lands in the area; if his attention has further been drawn to the fact that it has been the responsibility of the Board of Works over the years to rebuild these river banks when damaged by high tides and heavy rainfall and that the residents and farmers of these areas claim that the Board of Works is obliged to carry out the work now required. [6330/05]

Minister of State at the Department of Finance (Mr. Parlon): The Commissioners of Public Works currently have no responsibility for the embankments in question. An engineer from the Office of Public Works met on site a number of the affected landowners last week. He carried out a preliminary inspection of the area but survey work will need to be done as well as the checking of levels to form a preliminary view of the full nature and extent of the problem and of the implications, especially financial and environmental, of undertaking remedial works. This further survey will be undertaken as soon as resources permit and when it is completed a report will be prepared in the matter, which will inform consideration of whether flood protection works would be viable, whether they should be undertaken by the State and, if so, what priority should be accorded to them among the long list of schemes the Office of Public Works has been requested to undertake.

Coastal Protection.

155. **Mr. O'Shea** asked the Minister for Communications, Marine and Natural Resources if he proposes to make funding available to Waterford County Council for remedial works in regard to coastal erosion at Tramore, Helvick, Cunnigar, Ballyvoile and Bunmahon, County Waterford; and if he will make a statement on the matter. [6275/05]

Minister of State at the Department of Communications, Marine and Natural Resources (Mr. Gallagher): Responsibility for coastal protection rests with the property owner, whether it be a local authority or a private individual. In July 2002 the Department requested all coastal local authorities to submit proposals, in order of priority, for consideration in the context of the national coastal protection programmes for the years from 2003 to 2006. Waterford County Council submitted proposals for coastal protection works at Cunnigar, phase 2, estimated at €1 million, and this was its number-one priority. Ballyvoile, phase 1, was the county council's number-two priority, with an estimated cost of €1.1 million. The county council's third priority was Helvick, estimated at €500,000, and Bunmahon was its fourth priority, estimated at €500,000. Ballyvoile, phase 2, was the council's seventh priority, with an estimated cost of €930,000. There was no funding available during 2003 and 2004 for these projects. However, in the years 2000 to 2002 Exchequer funding of €270,824.32 had been provided towards design and rock revetment at Cunnigar.

Waterford County Council did not submit a proposal in respect of Tramore. However, the Department provided funding of €1,171,927.51 to Waterford County Council in the years 2000 to 2003 towards promenade refurbishment at Tramore.

The coastal protection programme for 2005 is under consideration at present.

Housing Grants.

156. **Dr. Upton** asked the Minister for Communications, Marine and Natural Resources if he will consider introducing a renewable energy grant, such as the clear skies grant offered in the UK, to encourage householders to avail of renewable energy, such as domestic solar heating panels; and if he will make a statement on the matter. [6334/05]

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): Housing grants schemes are generally the responsibility of my colleague, the Minister for the Environment, Heritage and Local Government. I have neither plans nor funds to introduce a grant scheme of the type suggested in the question.

Sustainable Energy Ireland, SEI, which was established as a statutory agency in May 2002, implements initiatives on renewable energy and energy efficiency on behalf of my Department. Under SEI's House of Tomorrow Research, Development & Demonstration Programme, solar heating panels are one of a number of energy technologies eligible for support in the context of an integrated set of measures comprising a whole-house energy efficiency solution. This programme is open to demonstration projects involving clusters of five or more homes. Funding is available on a limited scale for whole-house measures at a rate of up to €5,000 per house in such developments.

Decentralisation Programme.

157. **Mr. Walsh** asked the Minister for Communications, Marine and Natural Resources the provisions being put in place to facilitate the 180 staff who have volunteered through the central applications facility to decentralise to Clonakilty, County Cork; the timescale for this development; and if he will make a statement on the matter. [6338/05]

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): The Government's decentralisation programme provides for the relocation of my Department's seafood and coastal zone functions, involving 91 posts, to Clonakilty. An Bord Iascaigh Mhara, accounting for 93 posts, is also to be relocated to Clonakilty.

The latest information from the Public Appointments Service, formerly the Civil Service Commission, indicates that 140 expressions of

[Mr. N. Dempsey.]
interest had been received for the 91 posts in the Department's seafood and coastal zone functions and 36 for the 93 Bord Iascaigh Mhara posts in Clonakilty. The Public Appointments Service has, in recent weeks, provided details to the Department of applicants expressing an interest in decentralising to Clonakilty. The Department is examining these data in the context of the transfer protocol agreed recently between the Department of Finance and staff representative organisations.

The Department is in ongoing liaison with the Office of Public Works regarding the acquisition, by OPW, of a suitable site for both the Department and Bord Iascaigh Mhara, and on detailed specification of our requirements to assist with the building design element.

The decentralisation implementation group has indicated, in its latest report, that the anticipated time for the completion of facilities in Clonakilty is early 2007.

Electricity Generation.

158. **Mr. Perry** asked the Minister for Communications, Marine and Natural Resources if his attention has been drawn to the concerns expressed (details supplied); if he will respond to same; and if he will make a statement on the matter. [6115/05]

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): I am aware of the statement in question. Liberalisation of the electricity market has proceeded on a phased basis since February 2000 under the regulatory oversight of the Commission for Energy Regulation, CER, the independent regulator for gas and electricity, in accordance with the Electricity Regulation Act 1999. On 19 February this year the market opened fully to competition. This is over two years in advance of the July 2007 deadline set down in Directive 2003/54/EC on electricity.

All customers are now eligible to source their electricity from any licensed supplier and the entire market becomes contestable. Scope now exists for all customers, household and non-household alike, to seek out keener prices in the competitive market. Up to 19 February last, the partial opening of the market successfully broadened customer choice. The latest information available to me indicates that at the end of 2004, some 2,342 customers out of 13,500 eligible customers had switched supplier, not only from licensed suppliers other than the ESB but between new suppliers.

The "green" market has been fully liberalised since February 2000 and over 40,500 customers out of the whole electricity customer base have so far chosen "green" suppliers. The Department has itself changed to a "green" supplier, moving away from the ESB following a competitive process.

The switching between independent suppliers shows that customers are price-sensitive and quality-sensitive, and their having a choice of supplier is allowing them to make the decision on what best meets their needs. Over time, as suppliers target the domestic market, we expect to see those benefits extended to the domestic customer. As with any newly opening market, suppliers have initially concentrated on serving larger customers, not least because the market for larger customers was opened earlier.

There are currently six active independent suppliers in the retail market and the CER expects that they will initially have a greater interest in capturing large to medium sized customers. Activity in that segment of the market is strong, with 33% of total energy now being supplied by independents.

The quotation cited is no more than an observation on what has taken place in other member states. As with other electricity markets, and indeed utility markets, it is expected that the benefits of a fully liberalised market will flow through to the domestic customer over time.

Market opening, which involves the removal of barriers and putting in place the enabling systems and processes, is a major step towards making that happen because it facilitates and makes it easy and simple for customers to switch and for suppliers to enter the domestic market.

Postal Services.

159. **Ms O. Mitchell** asked the Minister for Communications, Marine and Natural Resources in view of the introduction of a national pay by weight charge if there are plans to introduce measures which would allow homeowners to block unsolicited postal mail. [6125/05]

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): An Post is statutorily obliged under section 12 of the Postal and Telecommunications Services Act 1983 to satisfy all reasonable demands for postal services throughout the State.

The public receives a wide variety of mail from a number of sources, much of which could be regarded as unsolicited mail, including unaddressed mail material, which may be delivered by operators besides An Post. An Post itself provides two services called Postaim and Publicity Post which allow businesses to address correspondence about their products and services directly to individuals or, alternatively, to have unaddressed publicity brochures, etc., delivered to houses in a particular area.

Under section 2(7) of the Data Protection Acts 1988 and 2003, individuals have the right to request that they be removed from any direct mailing lists used by businesses. Householders also have the option of limiting the amount of unsolicited mail they receive by completing a mailing preference service form requesting that their names be removed from mailing lists controlled by members of the Irish Direct Marketing

Association. The form, available from post offices, goes directly to the Irish Direct Marketing Association and only applies to addressed mail sent by their members. It has no bearing on mail from any other source or unaddressed mail.

Coastal Protection.

160. **Mr. O'Shea** asked the Minister for Communications, Marine and Natural Resources his views on whether €2.882 million is a totally adequate amount to deal with coastal erosion by way of coastal protection works; the proposals he has to seek significant additional moneys for coastal protection; and if he will make a statement on the matter. [6233/05]

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): A value for money report in March 2002 highlighted the need for a more strategic focus in addressing the problem of coastal erosion in Ireland. In this respect the coastal protection strategy study commenced in 2003. The study will address the nature and extent of erosion at various locations and different types of coastline in Ireland and seek to identify the most effective means, technically, financially and environmentally, to respond to particular instances and types of erosion. The question of providing funding for coastal protection works in the future will depend on the outcome of the coastal protection strategy study, the amount of Exchequer funding available for such works and overall national priorities.

Under the coastal protection measure of the National Development Plan 2000-2006, €52.01 million is identified for expenditure. Expenditure under this measure up to the end of 2004 was €32.2 million.

Harbours and Piers.

161. **Mr. Walsh** asked the Minister for Communications, Marine and Natural Resources if he will approve the commencement of work on a pier (details supplied) in County Cork. [6250/05]

Minister of State at the Department of Communications, Marine and Natural Resources (Mr. Gallagher): Garnish Pier is owned by Cork County Council and responsibility for its maintenance and development is a matter for the local authority in the first instance. Cork County Council submitted a proposal to the Department in 2003 for works to Garnish Pier at an estimated cost of €750,000. There was no Exchequer funding available in 2004 for this project. The question of providing funding in the post-2004 period will depend on the amount of Exchequer funding available for works at fishery harbours generally and overall national priorities.

Official Engagements.

162. **Mr. Wall** asked the Minister for Arts, Sport and Tourism his proposed itinerary for St. Patrick's week celebrations and if he will make a statement in the matter [6116/05]

Minister for Arts, Sport and Tourism (Mr. O'Donoghue): Full details of my itinerary for the celebrations surrounding St. Patrick's Day have yet to be finalised. However, the itinerary will include a visit to London to participate at the St. Patrick's Day Festival which commences on 13 March. This festival, which includes a major parade, has become a highlight in the London calendar over recent years. The festival is a wonderful opportunity to celebrate the enormous contribution Irish people have made over many years to London and Britain in general. I will also attend the Mayor's St. Patrick's Day dinner on 12 March.

163. **Mr. Wall** asked the Minister for Arts, Sport and Tourism the number of departmental staff that travelled to China with the Taoiseach on his recent visit; the result of the visit; the delegations he met or contacted during the visit and the proposals he intends to implement; and if he will make a statement on the matter. [6119/05]

Minister for Arts, Sport and Tourism (Mr. O'Donoghue): No staff from my Department accompanied the Taoiseach on his recent visit to China.

Tourism Ireland organised two very successful workshops for the tourism trade in Beijing and Shanghai, which were attended by the Taoiseach. In addition, Tourism Ireland has now appointed its first representative in China, based in Shanghai. This representative will be working with both the Chinese and the Irish tourism industries to exploit the opportunities presented by this growing outbound tourism market.

Sports Capital Programme.

164. **Mr. Perry** asked the Minister for Arts, Sport and Tourism if the lotto funding application submitted by Institute of Technology, Sligo for the new multipurpose sports centre will provide a quality sports hall for sports and recreational facilities for all sectors of the community; the negotiations that have taken place to allocate the €1.75 million; when a decision will be made; and if he will make a statement on the matter. [6231/05]

Minister for Arts, Sport and Tourism (Mr. O'Donoghue): The national lottery-funded sports capital programme, which is administered by my Department, allocates funding to sporting, voluntary and community organisations and, in some instances to schools and colleges throughout the country. The programme is advertised annually.

Sligo IT has been allocated €1.33 million in three separate allocations under the programme since 2001. I and officials from my Department met with representatives of the institute to discuss its latest project and, following these discussions, the institute submitted an application for funding under the 2005 sports capital programme, for

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which the closing date for receipt of applications was 4 February 2005.

All applications received before that closing date are being evaluated against the programme's assessment criteria, which are outlined in the guidelines, terms and conditions of the programme. I intend to announce the grant allocations for the programme as soon as possible after the assessment process has been completed.

165. **Mr. Connaughton** asked the Minister for Arts, Sport and Tourism if consideration will be given to an application by a club (details supplied) in County Galway for funding under the sports capital programme; and if he will make a statement on the matter. [6309/05]

Minister for Arts, Sport and Tourism (Mr. O'Donoghue): The national lottery-funded sports capital programme, which is administered by my Department, allocates funding to sporting and community organisations at local, regional and national level throughout the country. The programme is advertised annually.

Applications for funding under the 2005 programme were invited through advertisements in the press on 5 and 6 December last. The closing date for receipt of applications was 4 February 2005. All applications, including one from the club in question, are being evaluated against the programme's assessment criteria, which are outlined in the guidelines, terms and conditions of the programme. I intend to announce the grant allocations for the programme as soon as possible after the assessment process has been completed.

Swimming Pool Projects.

166. **Mr. Ferris** asked the Minister for Arts, Sport and Tourism the amount of grant aid that has been provided since 1995 to assist the provision of privately owned leisure facilities that include swimming pools; and the corresponding figure for the same period for County Laois. [6318/05]

Minister for Arts, Sport and Tourism (Mr. O'Donoghue): Under the terms of the local authority swimming pool programme, any privately owned swimming pool project seeking funding must have the full support of the relevant local authority and is expected to provide a high level of public access at reasonable hours and prices. Responsibility for the programme rested with the then Department of the Environment until 1998 when it was transferred to my Department. Since 1998 an amount of some €11.115 million has been paid to six pool projects which were not owned by local authorities, that is, they were owned by private, voluntary or educational sectors, none of which were in County Laois.

The national lottery-funded sports capital programme, which is administered by my Department, allocates funding to sporting organisations and to voluntary and community organisations throughout the country. No funding has been allocated under the programme since 1995 to assist in the provision of privately owned leisure facilities that include swimming pools.

Under the operational programme for tourism 1994-1999, European regional development fund grants were available to support specialist accommodation-related developments, including the provision of leisure facilities. Details of such grants are available from Fáilte Ireland which administered the grant programme.

Sports Capital Programme.

167. **Mr. Penrose** asked the Minister for Arts, Sport and Tourism if he will approve funding for a sports capital application for a club (details supplied) in County Westmeath; and if he will make a statement on the matter. [6363/05]

168. **Mr. Penrose** asked the Minister for Arts, Sport and Tourism if approval will be given to an application by a sports club (details supplied) in County Westmeath for capital funding; and if he will make a statement on the matter. [6364/05]

169. **Mr. Penrose** asked the Minister for Arts, Sport and Tourism if approval will be given to a sports club (details supplied) in County Westmeath for capital funding; and if he will make a statement on the matter. [6365/05]

Minister for Arts, Sport and Tourism (Mr. O'Donoghue): I propose to take Questions Nos. 167 to 169, inclusive, together.

The national lottery-funded sports capital programme, which is administered by my Department, allocates funding to sporting and community organisations at local, regional and national level throughout the country. The programme is advertised annually.

Applications for funding under the 2005 programme were invited through advertisements in the press on 5 and 6 December last. The closing date for receipt of applications was 4 February 2005. All applications, including those from each of the clubs in question, are being evaluated against the programme's assessment criteria, which are outlined in the guidelines, terms and conditions of the programme. I intend to announce the grant allocations for the programme as soon as possible after the assessment process has been completed.

FÁS Training Programmes.

170. **Mr. Wall** asked the Minister for Enterprise, Trade and Employment if the attached submission will be addressed in regard to the provision of accommodation for the participants; and if he will make a statement on the matter. [6131/05]

Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen): I do not have a role in the matters raised by the Deputy which are a day to day operational matter for FÁS as part of their responsibility under the Labour Services Act 1987.

Construction Industry.

171. **Mr. Penrose** asked the Minister for Enterprise, Trade and Employment if the labour inspectorate of his Department has received correspondence from persons (details supplied) in County Galway about the necessity for compliance with the registered agreement pertaining to the construction industry; and if he will make a statement on the matter. [6128/05]

Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen): The labour inspectorate has received correspondence from the person referred to in the question and arrangements have been made for an early inspection to be carried out in this case.

The wages and employment conditions of workers employed in the construction industry are governed by the Registered Employment Agreement (Construction Industry Wages and Conditions of Employment) Variation Order, which is enforced by the labour inspectorate of my Department. In this regard the rate of pay which can be enforced in respect of construction operatives under the terms of the registered employment agreement is €7.36 per hour.

Job Losses.

172. **Mr. Bruton** asked the Minister for Enterprise, Trade and Employment the number of those currently at work in the Tallaght area, Dublin 24 in view of recent job losses in this area; and if he will make a statement on the matter. [6129/05]

Minster for Enterprise, Trade and Employment (Mr. Martin): Employment is broken down by region only and not into specific areas such as the area in question. According to the latest quarterly national household survey published by the Central Statistics Office, employment in the Dublin region for June to August 2004 was 560,200. The corresponding figure for June to August 2003 was 553,900. The unemployment figures for the corresponding quarters were 28,100 in 2003, or 4.8%, and 24,700 in 2004, or 4.2%. The industrial development agencies are continuing to market the Tallaght area for new jobs and investment. Tallaght benefits from having a third level institute — the Tallaght Institute of Technology — and excellent infrastructural facilities at City West and Grange Castle in Clondalkin. Wyeth Biopharma has approximately 700 people employed in Clondalkin and this figure is expected to rise to 1,300 by the end of the year. The Japanese pharmaceuticals company, Takeda Chemical Industries, which will employ 60 people, has begun construction in Clondalkin. At City West, project developments by SAP Support Services, 460 jobs, AOL Technologies Ireland Limited, 204 jobs, and Colgate-Palmolive Support Services, 80 jobs, are providing locally accessible employment opportunities. Following an agreement last year, Enterprise Ireland is supporting the development of business incubation space at the Institute of Technology. This facility is expected to generate quality start up enterprises. The development agencies continue to work with existing companies to assist them to move up the value chain and increase employment potential. Companies who have availed of this process, with financial assistance from IDA Ireland, include Sage and Xilinx in City West. Job losses and job gains have always been, and will continue to be, part of the economic landscape, but our overall unemployment rate is among the lowest in Europe. In the case of job losses, the full services of FÁS, particularly in relation to re-training and up-skilling, are made available to any workers who wish to avail of those services. In addition, FÁS provides a vocational guidance and referral service to all job seekers in the Tallaght area. I am satisfied that the strong infrastructural support already in place, including the opening of the Luas, will continue to attract jobs to Tallaght and the surrounding area.

Grocery Industry.

173. **Mr. O'Shea** asked the Minister for Enterprise, Trade and Employment if he will address the concerns of a person (details supplied) in County Kerry regarding the Groceries Order; and if he will make a statement on the matter. [6269/05]

Minister for Enterprise, Trade and Employment (Mr. Martin): I have noted the concerns raised in regard to the order. The consumer strategy group was established to deliberate on a wide range of consumer matters. I am currently awaiting the report of group and I expect that it will contain recommendations in relation to the groceries order.

On receipt of the report, I will consider the group's findings in consultation with my Government colleagues and interested parties before deciding what action is appropriate.

National Minimum Wage.

174. **Mr. F. McGrath** asked the Minister for Enterprise, Trade and Employment if a company (details supplied) at the Dublin Port Tunnel which is paying its staff €1,935 per month is in breach of employment legislation, particularly in regard to the minimum wage; and if he will make a statement on the matter. [6320/05]

Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen): The wages and employment conditions of workers employed in the construction industry are governed by the Registered Employment Agreement (Construction Industry Wages and Conditions of Employment) Variation Order, which is enforced by the Labour Inspectorate of my Department. The rate of pay which can be enforced in respect of construction operatives under the terms of the registered employment agreement is €7.36 per hour.

[Mr. Killeen.]

In the absence of any details of the number of hours worked in the month, it is not possible to confirm if the rate of €1,935 per month is in breach of employment legislation. However, as the maximum average working week under the Organisation of Working Time Act is 48 hours, this could mean that the monthly rate of pay is in excess of the statutory minimum required under the registered employment agreement.

If the Deputy is aware of evidence that the employer is in breach of the registered employment agreement, these should be brought to the attention of the Labour Inspectorate.

Live Register.

175. **Mr. Stanton** asked the Minister for Enterprise, Trade and Employment his views on the unemployment level in Cobh, Mitchelstown and Youghal respectively; his further views on job losses and projected job losses in these towns; the action he intends to take to address these job losses; and if he will make a statement on the matter. [6328/05]

Minister for Enterprise, Trade and Employment (Mr. Martin): The live register figures for Cobh show 436 in January 2005, as against 452 in January 2004, a decrease of 3.5%. Figures for Mitchelstown are included with Fermoy and these show 865 on the live register in January 2005, as against 890 in January 2004 a decrease of 2.8%. In Youghal, there were 690 on the live register in January 2005, as against 756 in January 2004, a decrease of 8.7%. Unemployment has dropped in all these areas in January 2005, compared to January 2004. Overall, for Cork city and county, there were 16,134 on the live register in January 2005, and 17,474 in January 2004, a decrease of 7.7%.

The most recent quarterly household survey published by the Central Statistics Office in December, 2004, showed that the unemployment rate for the country as a whole was 4.7% while, for the south west, it was below the national average at 4.5%. Job losses and job gains have always been, and will continue to be, part of the economic landscape, but our overall unemployment rate is among the lowest in Europe. Initially, in the case of job losses, the full services of FÁS, particularly in regard to re-training and upskilling, are made available to any workers who wish to avail of those services.

Direct employment in IDA Ireland supported companies in Cork city and county continues to grow. The sectors contributing to this growth are information and communications technologies, medical technologies and international services. Over the last four years, IDA Ireland has approved new projects for the Cork area, which will create up to 5,000 jobs at full production. Last year, Enterprise Ireland approved support of over €9 million and paid over €5.6 million to its client companies in Cork city and county. Enterprise Ireland also approved support of over €2.7 million for third level-industry innovation partnership in Cork, covering 45 projects, during 2004. These partnerships encourage the adoption of new technologies by industry.

There are a number of other developments taking place in Cork, which will contribute to providing significant employment opportunities for the area. These include an Aer Rianta investment at Cork Airport and the construction of the Kinsale roundabout flyover. As regards Mitchelstown in particular, a socio-economic strategy is currently being drawn up. The strategy is expected to be completed by the end of March 2005, and this will help to inform future actions and policies for the area.

Social Welfare Benefits.

176. **Mr. Stanton** asked the Minister for Social and Family Affairs the process and procedures taken by his Department in the event of reclaiming welfare overpayments; and if he will make a statement on the matter. [6229/05]

Minister for Social and Family Affairs (Mr. Brennan): The repayment of social welfare overpayments is regulated by a code of practice, SI No. 227 of 1996. The regulations specify that in applying the code due regard is to be taken of the interests of taxpayers and social welfare contributors who finance the various social welfare payments as well as the ability of the debtor concerned to repay.

These regulations specify that every effort must be made to recover all overpayments, but specifies that repayment may be deferred, suspended, reduced or cancelled in accordance with the terms of the code of practice. The application of the terms of the code of practice is a function of deciding officers. Overpayments may be recovered in the following ways: a single payment to repay the overpayment; regular periodic payments; by deduction(s) from the customer's social welfare payment and by taking civil proceedings. When determining the method and rate of repayment, the code requires that consideration should be given to any facts or circumstances relevant to the rate of recovery, as well as the amount of the overpayment and the circumstances in which it arose.

177. **Mr. Stanton** asked the Minister for Social and Family Affairs the procedures and process for the recovery of child maintenance payments within his Department; the way in which the payments are calculated; and if he will make a statement on the matter. [6230/05]

Minister for Social and Family Affairs (Mr. Brennan): Applicants for one-parent family payment are required to make ongoing efforts to seek adequate maintenance from the other parent of their child. Normally, such maintenance is obtained by way of negotiation or by court order. Increasingly, separated couples are using my Department's family mediation service, which is

being progressively extended country-wide, to reach agreement.

Where social welfare support is being provided to a one-parent family, the other parent is legally liable to contribute to the cost of this payment. In every case where a one-parent family payment is awarded, the maintenance recovery unit of my Department seeks to trace the liable relative involved in order to ascertain whether she or he is in a financial position to contribute towards the cost of one-parent family payment. This follow-up activity takes place within 2-3 weeks of award of payment.

All liable relatives assessed with maintenance liability are notified by the Department and issued with a determination order setting out the amount of contribution assessed. The amount assessed can be reviewed where there is new information about, or changes in, the financial or household circumstances of a liable relative. The Department requires regular, normally weekly, payment of the contributions assessed in this way. There are currently 1,868 liable relatives contributing directly to my Department. Since 2001, one-parent family payment claimants are allowed to retain 50% of any maintenance received without reduction in their social welfare entitlements, as a further incentive to seek support themselves.

The maintenance recovery unit of my Department, through its follow up activity with the liable relative, achieved savings of €8.5 million in 2002 and €14.2 million in 2003. Savings of €16.6 million were achieved in 2004. These savings are composed both of direct cash payments by the liable relative to the Department, and of savings on scheme expenditure. Savings on scheme expenditure arise where maintenance recovery activity leads to the liable relative paying maintenance in respect of a spouse and-or children and the consequent reduction or termination of a one-parent family payment. In 2004, a total of 722 one-parent family payments were cancelled while a further 512 payments were reduced as a result of maintenance recovery activity.

In implementing maintenance recovery provisions to date the Department has concentrated on those cases where the liable relatives concerned, being in employment or self-employment, would be in a better financial position to make a contribution towards the support of their families. Legislation allows the Department to seek recovery from liable relatives through the courts in appropriate cases. A total of 182 cases have been submitted for court action from 2001 to date. The majority of these cases have resulted in orders being written against the liable relative in court or, alternatively, in the liable relative agreeing to pay a contribution to either the Department or the lone parent. Further cases are in the course of preparation by the Department for court action.

Health Service Allowances.

178. **Ms O. Mitchell** asked the Minister for Social and Family Affairs the amount deducted from the disability allowances for patients accommodated in State or State funded facilities in each year for the past six years. [6252/05]

192. **Ms O. Mitchell** asked the Minister for Social and Family Affairs the full amount deducted from the disability allowances for patients accommodated in State or State funded facilities in each year for the past six years. [6299/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 178 and 192 together.

The information requested is not held by my Department. Deductions made from a person's disability allowance while in State funded facilities are a matter for the Health Service Executive, the relevant health board or service providers involved. Social welfare payments are primarily paid to the claimant. However, in accordance with social welfare legislation, payment may be made to a person other than the claimant where the claimant the requests this. Such persons are appointed to act as agents to, *inter alia,* collect payments on behalf of a claimant. Generally agents are appointed where a person is unable to cash their payment due to serious illness or loss of mobility. They may also be appointed in cases where a person is permanently unable to act for themselves or to discharge responsibility. In many cases parents, guardians or other family members are appointed as agents. All such applications are made on foot of a written application from the social welfare claimant where possible. The agent is appointed by my Department on the understanding that the social welfare payment due will be spent for the benefit of the person concerned.

Question No. 179 answered with Question No. 72.

Local Authority Housing.

180. **Mr. Durkan** asked the Minister for Social and Family Affairs the number of persons who have been refused rent allowance on the basis of having to meet such payments for the first six months from their own resources; and if he will make a statement on the matter. [6259/05]

181. **Mr. Durkan** asked the Minister for Social and Family Affairs if he has had any discussions with the Minister for Environment, Heritage and Local Government with a view to improving the supply of local authority or affordable houses in the event of restriction of eligibility for rent allowance; and if he will make a statement on the matter. [6260/05]

182. **Mr. Durkan** asked the Minister for Social and Family Affairs if he has given instructions to reduce availability or entitlement to rent support; and if he will make a statement on the matter. [6261/05]

186. **Mr. Durkan** asked the Minister for Social and Family Affairs the number of applications for

[Mr. Durkan.]
rent support received in the past 12 months; the number refused, approved or pending; the way in which this figure compares with the previous year; and if he will make a statement on the matter. [6265/05]

Minister for Social and Family Affairs (Mr. Brennan): I propose to take Questions Nos. 180 to 182, inclusive, and 186 together.

Rent supplements are provided through the supplementary welfare allowance scheme which is administered on my behalf by the community welfare division of the Health Service Executive. The changes, which were introduced in the rent supplement scheme in January 2004, were designed to refocus the scheme on its original objective of providing short-term income support to individual tenants in need. Longer term housing needs require a housing solution rather than ongoing cash supports. Some of the changes were first considered in consultation with the Department of the Environment, Heritage and Local Government as part of the work of an inter-departmental planning group established by Government to examine the future of rental assistance.

The work of this group gave rise to the new initiative which was announced by Government in July 2004 whereby local authorities will progressively assume responsibility for meeting long-term housing needs, including those of people dependent on rent supplement for 18 months or longer. These new rental assistance arrangements will see local authorities put solutions in place for people with long-term housing needs. These solutions will include additional social and affordable housing. The existing rent supplement scheme will continue to provide income support for up to 18 months where necessary.

According to the records of my Department, 57,874 people were receiving rent supplement at the end of 2004, a reduction of just 3.5% on the 59,976 receiving supplement the end of 2003. Some 41,838 rent supplements were awarded in 2004, compared to 53,750 in 2003. These totals include cases where a person on rent supplement moves to a new address. There are currently 388 applications pending, compared to 320 at this time last year.

Specific details of applications refused on grounds of failure to meet the conditions for receipt of rent supplement are not maintained on my Department's computer system. However, my Department undertook a survey of rent supplement refusal cases in the second half of 2004. All cases refused over a six month period in four health board regions which together account for one third of the rent supplement scheme were examined. The total number of cases involved was 438, indicating that the total number of refusals nationally is of the order of 1,300 per annum. This survey indicated that 4% of cases were refused on the grounds that the applicant was renting for less than six months and another 5% were refused on the grounds that they had a spouse-partner in full-time employment. A further 8% were refused on the grounds that they were not assessed by the housing authority as having a housing need and fewer than 1% were refused on the grounds that they had failed to accept a second offer of local authority accommodation. These numbers are negligible in the context of the level of rent supplement awards in the same period, which was of the order of 20,000. The balance of refusal decisions in this sample period were made for a wide range of reasons, including means, habitual residency or for issues relating to the accommodation involved.

After extensive consultation, I recently made changes to the regulations specifying the conditions for receipt of rent supplement, with effect from 31 January 2005, to address specific concerns. These changes removed the six month rule, extended the scheme to provide coverage for bona fide existing tenants who become unable to meet their rent or mortgage interest payments through illness, unemployment etc, and extends from two to three the number of refusals of local authority offers of accommodation a person may make before becoming ineligible for rent supplement.

Following enactment of the new regulations, a circular was issued by my Department to the community welfare division of the Health Service Executive setting out details of the amended qualification criteria. In addition to specifying the new grounds for eligibility, the circular also reiterated the discretionary scope available to community welfare officers to award rent supplement in any case of exceptional or special need. There is no question of any direction to officers to restrict the availability of, or entitlement to, rent supplement. The scheme remains available to all eligible people who are unable to meet their immediate accommodation needs from their own resources.

Social Welfare Code.

183. **Mr. Durkan** asked the Minister for Social and Family Affairs his proposals in respect of one parent family allowance; and if he will make a statement on the matter. [6262/05]

Minister for Social and Family Affairs (Mr. Brennan): The number of persons in receipt of the one parent family payment at the end of 2003 was 79,181, up from 58,960 in 1997, when the scheme in its present form was introduced.

There are, in addition, 13,125 lone parents with children in receipt of payments under social insurance — 8,687 widowed persons and 4,528 deserted wives. In total, therefore, 92,306, lone parents are receiving weekly payments under the social welfare system, who between them have 150,122 qualified children.

The reality on which these schemes were originally based, however, has been substantially changing in recent years. It is now more common in two parent families for both parents to work outside the home either on a full-time basis, or

with one parent working full-time and the other working part-time.

Reflecting current realities, therefore, now requires giving parents the option of working outside the home and enabling them reconcile the demands of this work and their responsibilities to care for their children.

Entitlement to payments under the schemes is also contingent on not cohabiting with another adult either in marriage or outside marriage. This is essential in ensuring that recipients under the schemes do not gain an advantage over those living together, either married or otherwise.

Much research has been undertaken in recent years into the operation of the one parent family scheme, including a review of the scheme by my Department published in 2001 and participation in the OECD project on reconciling work and family life. A nationwide consultation took place in 2003, on which a report entitled, Families and Family Life in Ireland: Challenges for the Future, has been published, which includes consideration of the position of lone parents and their children. There are currently two main processes under way in which the findings of this analysis and research are being drawn together.

The issue is being examined in the context of a wider examination of supports for families in a changing society being co-ordinated by the family affairs unit of my Department through an inter-departmental committee. This process is scheduled to be completed by mid-year.

The Cabinet Committee on Social Inclusion last November requested the Senior Officials Group, which reports to it, to undertake a specific study on the obstacles to employment for lone parents, including those which may exist in the current income support arrangements. A working group has been set up to examine the matter intensively over the coming months with a view to reporting by mid-year.

It would not be appropriate for me to pre-empt the outcome of this work by going into detail on the possibilities for reform, pending proposals from these committees. However, I can give an assurance that priority will be given to consideration and, where appropriate, implementation of the proposals when they do emerge.

Social Welfare Payments.

184. **Mr. Durkan** asked the Minister for Social and Family Affairs the number of applications for one parent family allowance that have been refused or reduced in the past 12 months; and if he will make a statement on the matter. [6263/05]

Minister for Social and Family Affairs (Mr. Brennan): There is a statutory obligation on all claimants of one parent family payment to satisfy, and to continue to satisfy, the conditions for entitlement to the payment.

In 2004, a total of 16,810 new claims for one parent family payment were received. Of this number, 3,999 were refused as they failed to meet the qualifying conditions of the scheme. Of the 12,811 cases awarded, 2,269 were awarded at a reduced rate. Reduced rate payments arise when a person has earnings from employment, where maintenance is being paid by a spouse or the other parent of a child, and-or where the person has other means, for example, capital.

It is estimated that some 60% of one parent family recipients are currently in full or part-time employment. A number of these recipients are earning gross wages of less than €146.50 per week, €7,618 per annum. As this is below the minimum income disregard threshold, it does not affect their rate of one-parent family payment. Where recipients have gross earnings between €146.50 weekly and the maximum statutory earnings limit of €293.00 per week, 50% of the amount of gross weekly earnings above €146.50 is taken into account as means and the one parent family payment is consequently paid at a reduced rate. At the end of December 2004 there were approximately 18,000 recipients on reduced rates of one-parent family payment.

Social Welfare Code.

185. **Mr. Durkan** asked the Minister for Social and Family Affairs his proposals to enhance, improve or extend the free schemes; and if he will make a statement on the matter. [6264/05]

Minister for Social and Family Affairs (Mr. Brennan): The household benefits package, which comprises the electricity-gas allowance, telephone allowance and television licence schemes, is generally available to people living permanently in the State, aged 66 years or over, who are in receipt of a social welfare type payment or who fulfil a means test.

The package is also available to carers and people with disabilities under the age of 66 who are in receipt of certain welfare type payments. People aged over 70 years of age can qualify regardless of their income or household composition. Widows and widowers aged from 60 to 65 whose late spouses had been in receipt of the household benefit package retain that entitlement to ensure that households do not suffer a loss of entitlements following the death of a spouse.

A range of proposals has been made to extend the free schemes to other groups. These are kept under review in the context of the objectives of the scheme and budgetary resources.

Question No. 186 answered with Question No. 180.

Social Welfare Benefits.

187. **Mr. Durkan** asked the Minister for Social and Family Affairs the number of non-contributory pension applications received in the past 12 months; the number approved, refused or pending; the way in which this figure compares with the previous year; and if he will make a statement on the matter. [6266/05]

Minister for Social and Family Affairs (Mr. Brennan): The figures required by the Deputy are as follows:

Pension Claims	2004	2003
Received	11,263	10,661
Approved	7,171	7,136
Refused	3,002	2,864
Pending at end-year	1,517	1,160

These figures refer to the total of claims for old age non-contributory pension, widow/er's non-contributory pension and blind pension.

188. **Mr. Durkan** asked the Minister for Social and Family Affairs the number of applications for the carer's allowance received in the past 12 months; the number refused, approved or pending; the way in which this figure compares with the previous year; and if he will make a statement on the matter. [6267/05]

Minister for Social and Family Affairs (Mr. Brennan): My Department awarded 4,739 and refused 2,728 carer's allowance applications in 2004 compared to 3,984 and 2,335, respectively, in 2003.

There were 7,817 applications for carer's allowance in 2004, compared to 7,233 in 2003. Despite the 8% increase in the number of claims submitted, the number of claims pending decision fell from 1,440 at the end of 2003 to 1,053 at the end of 2004.

The number of persons receiving a carer's allowance has increased from 21,326 at the end of 2003 to 23,049 at week ending 31 December 2004. Expenditure on the scheme, has increased from €183.3 million in 2003 to €210.3 million in 2004.

Support of carers has been a priority of Government since 1997. Payments to carers have been improved over that period and qualifying conditions for carer's allowance have been significantly eased, coverage of the scheme has been extended and new schemes such as the respite care payment have been introduced and enhanced. The further development of support for carers continues to be a priority for me and for Government.

Question No. 189 answered with Question No. 89.

190. **Mr. Ring** asked the Minister for Social and Family Affairs the reason his Department claims that a person (details supplied) in County Mayo is not suffering a loss of earnings and will not allow their claim for additional unemployment benefit; and if he will make a statement on the matter. [6293/05]

Minister for Social and Family Affairs (Mr. Brennan): The person concerned applied for unemployment benefit on 12 January 2005.

One of the conditions for receipt of unemployment benefit is that a person must have sustained a substantial loss of employment and a reduction in earnings.

Information provided by the employer, in this case, indicated that although there had been a reduction in the average number of days per week worked by the person concerned, there had been no reduction in earnings. Accordingly, a deciding officer disallowed the unemployment benefit claim of the person concerned from 12 January 2005, on the grounds that he had not suffered a loss of earnings.

This position was outlined in my reply to the Deputy's previous question in relation to this case on 16 February 2005.

On receipt of the Deputy's current question, further inquiries were made in the case. From contact with the employer it now transpires that the person concerned may have suffered neither a loss of earnings nor a loss of employment.

It is open to the person concerned to appeal the deciding officer's decision and a form for this purpose may be obtained from his social welfare local office.

Under social welfare legislation, decisions in relation to claims must be made by deciding officers and appeals officers. These officers are statutorily appointed and I have no role in regard to making such decisions.

191. **Dr. Upton** asked the Minister for Social and Family Affairs if he will review the way in which his Department awards pensioners the back money they are issued following a budget increase in order to provide a breakdown of the way in which this single, relatively large amount is made up [6298/05]

Minister for Social and Family Affairs (Mr. Brennan): Increases in pensions are announced in the budget in December each year. This leaves my Department just four weeks to adjust its payments system before the increases are due to be paid in January.

Pensioners who receive their payments by electronic funds transfer, EFT, into their bank accounts or by electronic information transfer, ETT, at their local post office receive their increases on time and no arrears arise.

Pensioners who receive their payments by personalised payable orders, PPO, are treated differently. Because of the nature and the volume of payments involved, books containing 26 orders issue to them. In general these books are issued in bulk each April and October.

It would not be feasible to recall all of these books in December and to replace them with books containing orders with the increases. In order to minimise the delay in issuing the increases to these pensioners my Department issues a lump sum each February which covers the increase due for the period January to April.

Because of the large variety of rates which are paid to different pensioners, it is not possible to provide a detailed breakdown of the components

that make up the total amount of back money paid in each individual case.

However, each December my Department issues a press release in which details of the social welfare increases are announced. Information is also included of how the increases will be paid in the case of our customers.

My Department has a policy of reviewing procedures on an ongoing basis to identify potential for improvement. In this regard, the existing arrangements for payment of budget arrears to pensioners using the PPO book payment method are being kept under review.

Question No. 192 answered with Question No. 178.

Social Welfare Benefits.

193. **Mr. Stanton** asked the Minister for Social and Family Affairs the number receiving the child dependant allowance at the various rates; the amount it would cost to award the full rate to all recipients; and if he will make a statement on the matter. [6321/05]

Minister for Social and Family Affairs (Mr. Brennan): There are currently three different weekly rates of child dependant increases payable to social welfare recipients, €16.80, €19.30 and €21.60, depending on the type of payment. Half rate child dependant increase may also be paid in respect of a child in certain circumstances, for example where both of the child's parents are receiving a social welfare payment, or where one parent has earnings over a prescribed amount.

To standardise the three main rates of increases at the highest rate of €21.60 would mean that approximately 243,000 full rate payments and 93,000 half rate payments would be increased at a cost of approximately €60 million annually.

Family Support Services.

194. **Mr. Stanton** asked the Minister for Social and Family Affairs his views on the concept of shared parenting; the measures he has put in place to encourage and support shared parenting; and if he will make a statement on the matter. [6322/05]

Minister for Social and Family Affairs (Mr. Brennan): Parenting is normally shared by both parents, but the respective shares carried by both parents can vary depending on circumstances. In the past the mother was normally the primary care giver with the father being the main breadwinner. This resulted in mothers carrying a disproportionate share of the parenting, with fathers often missing out on direct involvement in much of their children's upbringing.

The growing participation of women in the workforce means that women are now undertaking a much greater share of the breadwinning role, but this is often not matched by fathers assuming a comparable share of the child caring role. Women, therefore, are often left with the double burden of care and breadwinning. This is not always the man's fault as employers may not be as ready to accommodate men's caring duties and responsibilities as they do those of women.

The promotion of shared parenting, therefore, has to be a key objective for policy in reconciling work and family life given the advantages that accrue for both men and women in their work and family lives and especially for their children.

The issue of shared parenting can become particularly acute when family breakdown occurs and a couple separate and live apart. As mothers have traditionally been the primary caregivers, they are usually awarded custody of the children. It can often be difficult for the non-custodial parent, usually the father, to maintain a satisfactory relationship with his children in these circumstances.

The family mediation service administered nationally by the Family Support Agency for couples who have decided to separate encourages them to co-operate with each other in working out mutually acceptable arrangements on a range of issues, such as parenting and ongoing living and financial arrangements. The mediation process can include the drafting of a shared parenting plan and when couples reach agreement, a family session is offered to parents with their children to discuss the agreed arrangements in a positive, supportive way. This can greatly assist children in retaining close bonds with both parents, where possible, and avoiding litigation. The service shows what can be done, but there is a need to further promote use of the service by separating couples,as well as supports for those who use it in implementing the agreements arrived at.

The desire of fathers for a significant and meaningful share in the parenting of their children must be encouraged and supported, especially in situations of family breakdown. It is my intention that this will be a key objective in the context of developing strategy on supports for families.

Social Inclusion Measures.

195. **Mr. Stanton** asked the Minister for Social and Family Affairs the way in which he has taken into account the ethnic origin of families; and if he will make a statement on the matter. [6323/05]

Minister for Social and Family Affairs (Mr. Brennan): It is important that in developing supports for our growing immigrant population, we learn from both the positive and negative aspects of the experience of our own emigrants. It was this in part which prompted the Irish EU Presidency, with the support of the EU Commission, to host an international conference entitled Reconciling Mobility and Social Inclusion — the Role of Employment and Social Policies in April of last year, which included participation by representatives of Irish emigrants. A report on the proceedings of this conference is currently being

[Mr. Brennan.]
finalised and will be published shortly and made available also on the website of the office for social inclusion in my Department.

The exchanges of experience, information and expertise at the conference is designed to help member states, in the context of preparing their national action plans to promote social inclusion, to further develop policies and programmes to support immigrants and their families, including ethnic minorities.

The European Council has asked that these national action plans should "highlight more clearly the risk of poverty and social exclusion faced by some men and women as a result of immigration". An evaluation of the existing national action plans is due by end June and the next full plan is due for submission to the EU Commission in 2006.

The specific issue of immigrant families of immigrants also arose in the context of another Irish Presidency conference on families, change and European social policy held in Dublin in May 2004, given that growing ethnic diversity in society is a key challenge to be addressed in developing supports for families. The issue also arose in the nationwide consultation on family policy in the run up to the tenth anniversary of the international year of the family in 2004 on which a report, "Families and Family Life in Ireland: Challenges for the Future", has been published. Officials of my Department were also active participants in a conference organised in December 2003 by the National Consultative Committee on Racism and Interculturalism on family and ethnicity, the proceedings of which were published in December 2004 in a special edition of the committee's journal.

These developments illustrate the ways in which the need to address the issue of ethnic diversity has been highlighted at both national and international levels.

There is a particular need, for the families of ethnic minorities to be supported. This requires raising the awareness of cultural diversity among all service providers and policy makers, and of the need for cultural sensitivity in dealing with family members of different ethnic minorities and of the special supports they need. Equally there is a need to educate people generally of these realities in the interests of promoting social cohesion and of combating prejudice, discrimination and racism.

All these considerations are being fully taken into account in the current preparations of strategies to support families in a changing society, and in the context of the next national action plan to promote social inclusion.

More specifically, information on entitlements is a key requirement. My Department allocated funding of €60,000 in 2003 to the Immigrant Council of Ireland towards the publication of an information handbook on immigrant rights and entitlements in Ireland. This handbook has been very well received by all the agencies providing information to immigrants. In 2004, my Department allocated a further €60,000 to the Immigrant Council of Ireland to translate this information handbook into various other languages. A translation service is also provided at my Department's own local offices in areas where there are large immigrant populations.

Social Welfare Benefits.

196. **Mr. Stanton** asked the Minister for Social and Family Affairs the maximum that can be earned per week which will allow persons to receive the full amount of the one parent family payment; when this figure was last adjusted; and if he will make a statement on the matter. [6324/05]

Minister for Social and Family Affairs (Mr. Brennan): The one parent family payment is the income support scheme for separated, unmarried and widowed persons and also for prisoners' spouses. It was introduced in 1997 when it replaced a number of schemes for different categories of lone parent. Under the one parent family payment scheme lone parents are encouraged to maximise their income from different sources and the means test for the scheme makes allowance for the exemption of significant levels of earnings.

A person can earn up to €146.50 per week, known as the "earnings disregard", without affecting their entitlement to receive the maximum rate of one parent family payment. Where a persons earnings exceed €146.50 weekly, half of the remainder of earnings up to €293 is assessed as means. Entitlement to one-parent family payment ceases where a claimant's weekly earnings exceed €293.

A claimant who has been in receipt of one parent family payment for 52 consecutive weeks whose earnings subsequently exceed €293 per week will not have the payment stopped immediately. He or she will be entitled to half of his or her one parent family payment for a maximum of 26 weeks, starting immediately subsequent to earnings exceeding €293.00 per week, subject to him or her satisfying all the other qualifying conditions. Payment will cease after 26 weeks.

My Department is committed in 2005 to reviewing the income support arrangements for lone parents. The issue of the earnings disregard will be examined in that context.

197. **Mr. Stanton** asked the Minister for Social and Family Affairs the islands on which the special island allowance is applicable; the criteria used to define islands; and if he will make a statement on the matter. [6326/05]

Minister for Social and Family Affairs (Mr. Brennan): The island allowance applies to certain social welfare claimants whose permanent place of residence is on an offshore island which is not

connected to the mainland by bridge. A list of qualifying islands follows this reply.

The budget in 2001 provided for the introduction of an islanders' allowance of €12.70 for social welfare recipients aged 66 and over. The budget in 2003 extended the allowance to islanders in receipt of a long-term disability payment. The Social Welfare Bill 2005 provides for a further extension of this allowance to residents on qualifying islands who are in receipt of an equivalent payment from another EU country. Qualifying islands: Arranmore Island, Donegal; Bere Island, Cork; Clare Island, Mayo; Clear Island, Cork; Clyinsh Island, Mayo; Dursey Island, Cork; Foynes Island, Limerick; Gola Island, Donegal; Illaunmore, Galway; Inchaghaun Island, Galway; Inishbarra Island, Galway; Inishbiggle, Mayo; Inishboffin, Donegal; Inishboffin, Galway; Inishcottle, Mayo; Inisheer, Galway; Inishfree, Donegal; Inishgort, Mayo; Inishlyre, Mayo; Inishmaan, Galway; Inishmore, Galway; Inishmulcichy, Sligo; Inishnakillew, Mayo; Inishodriscol, Cork; Iniskturk, Mayo; Lambay Island; Long Island, Cork; Omey Island, Galway; Sherkin Island, Cork; Tory Island, Donegal; Whiddy Island, Cork; and Island Roy, Donegal.

198. **Mr. Stanton** asked the Minister for Social and Family Affairs the number of lone parents who received transitional half rate payment in 2003 and 2004; and if he will make a statement on the matter. [6327/05]

Minister for Social and Family Affairs (Mr. Brennan): The transitional half rate payment is a payment made to lone parents whose earnings from employment exceed the statutory limit of €293.00 per week and who were in receipt of one parent family payment for 52 consecutive weeks immediately prior to their earnings exceeding the limit.

At 31 December 2003, a total of 759 lone parents were in receipt of the transitional half-rate payment. At the end of 2004, 250 lone parents were in receipt of this payment. This reduction was due to the fact that the arrangement was discontinued with effect from 19 January 2004 but was subsequently re-introduced with effect from 6 January 2005. The payment is now made for a period of 26 weeks commencing from the date the earnings exceed the statutory limit.

Question No. 199 answered with Question No. 89.

Commercial Vehicle Testing.

200. **Mr. Kehoe** asked the Minister for Transport if he will consider granting a testing licence for light commercial vehicles without the heavy commercial testing for persons without the facility to deal with heavy vehicles; and if he will make a statement on the matter. [6317/05]

Minister of State at the Department of Transport (Mr. Callely): The appointment of authorised testers for the purposes of compulsory testing of commercial vehicles is a matter for local authorities in accordance with the European Communities (Vehicle Testing) Regulations 2004. Under these regulations, it is a requirement for appointment as an authorised tester that the applicant is in a position to carry out testing on all classes of vehicles liable to testing under the regulations.

Road Traffic Offences.

201. **Ms O. Mitchell** asked the Minister for Transport his plans to introduce legislation to ban the use by drivers of hand held mobile telephones in cars. [6247/05]

Minister of State at the Department of Transport (Mr. Callely): The Attorney General has advised that the Road Traffic (Construction, Equipment and Use of Vehicles) (Amendment) (No. 2) Regulations 2002, which prohibit the use of a hand-held mobile telephone while driving a vehicle, are open to challenge in the courts on the grounds that they may be *ultra vires*. In the light of this advice, a legislative framework to address the overall regulatory questions arising from the development of in-car technologies, which would include mobile telephones, is being developed by my Department.

National Car Test.

202. **Ms O. Mitchell** asked the Minister for Transport his response to accusations that the national car testing service is acting outside its remit and raising unwarranted revenue when it issues test certificates for periods of less than two years in circumstances where the test was delayed beyond the test due date due to a backlog at the testing centre itself and in circumstances where car owners may be out of the country for a number of months and the car is out of use and unable to present for a test. [6256/05]

205. **Ms O. Mitchell** asked the Minister for Transport his views on accusations that National Car Testing Service Ltd. is acting outside its remit and raising unwarranted revenue when it issues test certificates for periods of less than two years in circumstances in which the test was delayed beyond the test date due to a backlog at the testing centre and circumstances by which car owners may be out of the country for a number of months and the car is out of use and unable to present for a test. [6303/05]

Minister of State at the Department of Transport (Mr. Callely): I propose to take Questions Nos. 202 and 205 together.

In accordance with Directive 96/96/EC, a passenger car is required to undergo the national car test when it is four years old and every two years thereafter. The age of the vehicle and conse-

[Mr. Callely.]
quently the first test due date are determined by reference to the date of initial registration with subsequent test due dates falling every two years after the first test due date. Factors such as non-use of a vehicle or failure to have a vehicle tested at the appropriate time would not be compatible with the criteria set out in the directive for determining test due dates. Therefore, in accordance with the test schedule, where a car is tested other than at the specified time, the test certificate is valid from the date of the actual test until the next date on which the test is due.

The car testing contract requires testing to be carried out to specified customer service performance standards. Regarding test arrangements, National Car Testing Service Limited is required to ensure that the maximum lead-time for an appointment for a NCT does not exceed four weeks. In the event of the company being unable to give an appointment within this period, it is obliged to conduct the NCT free of change.

Under road traffic law, the responsibility to ensure that a liable vehicle has a valid test certificate rests with the owner.

Driving Tests.

203. **Mr. Perry** asked the Minister for Transport when a driving test appointment will be made for a person (details supplied). [6258/05]

Minister for Transport (Mr. Cullen): The person concerned successfully sat his driving test on the 14 February 2005.

Rail Network.

204. **Ms O. Mitchell** asked the Minister for Transport if EU or other peace process funding is available for North-South rail projects. [6302/05]

Minister for Transport (Mr. Cullen): The Belfast-Dublin-Cork rail corridor has been designated by the European Commission as a priority trans-European network-transport route or TEN-T and, therefore, qualifies for funding under the TEN-T priority programme.

There has been investment in the past under the North-South INTERREG programme which attracted EU funding for certain infrastructural projects, such as bus stations in Border regions. More recently, as a flagship cross-Border project under the EU INTERREG IIIA Community Initiative, the Dublin-Belfast rail line is receiving €980,253 in funding to relay the rail track at Moira and Portadown in Northern Ireland.

Two projects on the Dublin-Belfast line have been supported by the EU programme for peace and reconciliation, commonly known as PEACE II. Translink, Northern Ireland Railways, received €2,306,237 to improve signalling at Lurgan and €4,894,899 to upgrade the level crossings at Moira and Trummery.

Both the PEACE II and INTERREG IIIA programmes are managed by the special EU programmes body — a North-South implementation body which was set up under the Good Friday Agreement. While there are no current EU funds available for North-South rail projects under the Cohesion Fund or the economic and social infrastructure programme, the cross-Border Dublin-Belfast inter-city rail services, operated jointly by Iarnród Éireann and Translink, benefited from an earlier round of EU funding.

Question No. 205 answered with Question No. 202.

Airport Development Services.

206. **Ms O. Mitchell** asked the Minister for Transport if his attention has been drawn to the CAT system upgrade required at Knock Airport to ensure the safe landing of all aircraft at the airport; if he intends to provide sufficient funding to the airport to enable it to upgrade its existing approach and landing system; and if he will make a statement on the matter. [6304/05]

Minister for Transport (Mr. Cullen): My Department has recently informed Knock Airport of its total grant allocation under the airports measure of the NDP. Within that allocation, my Department is considering an application for funding from Knock airport for the enhancement of the instrument landing system. Further details on the proposals, including cost estimates, are currently awaited from the airport company.

Fostaíocht Gaeltachta.

207. D'fhiafraigh **Mr. McGinley** den Aire Gnóthaí Pobail, Tuaithe agus Gaeltachta cad é an bhail atá ar thionscal (sonraí tugtha), cad iad na hiarrachtaí atá ar siúl an mhonarcha a athoscailt, an bhfuil téarmaí iomarcaíochta socraithe agus an ndéanfaidh sé ráiteas ina thaobh. [6175/05]

Minister for Community, Rural and Gaeltacht Affairs (Éamon Ó Cuív): Dírím aird an Teachta ar na freagraí a thug mé ar cheisteanna uimhreacha 190, 121 agus 332 ar 5 Deireadh Fómhair, 9 agus 23 Samhain 2004 faoi seach.

Tuigim ó Údarás na Gaeltachta nach bhfuil mórán athraithe tagtha ar chúinsí an tionscail ó shin. Ó thaobh na n-oibrithe de, tuigim go bhfuil thart ar aon trian a bhí leagtha as a gcuid oibre go sealadach tar éis a gcearta iomarcaíochta reachtúla a éileamh ón gcomhlacht. Tuigtear go bhfuil na híocaíochtaí iomarcaíochta sin déanta le dáréag agus go bhfuil iarratas amháin á phróiseáil i láthair na huaire.

Tá 15 ag obair go lán-aimseartha sa chomhlacht san am i láthair agus tá dóchas fós ag an mbainistíocht gur féidir gnó a aimsiú a chuirfidh ar a cumas na daoine eile atá fós mar fhostaithe de chuid an chomhlachta a athfhostú.

School Safety.

208. **Ms O. Mitchell** asked the Minister for Community, Rural and Gaeltacht Affairs the number and location of flashing amber safety lights at schools installed nationally, as part of the funding allocated to non-nationals roads under CLÁR programme since its inception; and if he will make a statement on the matter. [6232/05]

Minister for Community, Rural and Gaeltacht Affairs (Éamon Ó Cuív): Flashing amber safety lights were installed at twenty-two schools in CLÁR areas in 2003. The comparable figure in 2004 was 50. Details of the projects are listed on a county basis in the following statement.

Location of Flashing Amber Safety Lights at Schools

Funded under the CLÁR Programme 2003-2004

School	DED
Cavan	
Corran National School	Lissanover
Bawnboy National School	Bawnboy
Cork	
Dromleigh/Kilmichael National School	Carrigboy
Eyeries National School	Kilcatherine
Cahermore National School	Kilnamanagh
Schull National School	Schull
Derryclough National School	Carrigbawn
Knockaclarig National School	Clonfert West
Donegal	
S. N an Cheididh, Keadew	Rutland
S. N. Eadan Fhionnfhaoich	Graffy
S. N. Druim Na Croise	Ardara
Scoil Mhuire	Pettigo
S.N. Na Hacrai	Rutland
Scoil Naomh Mhuire	Ard Malin
Gairmscoil Chu Uladh	Fintown
Scoil Treasa Naofa	Ard Malin
St Davadogs National School	Rossnakill
S N Crannaighe Buidhe	Glengesh
S N Taodhbhog	Cloghan
S N Umlach	Carrigart
S N Cholmcille	Fintown
S N Chill Charthaigh	Kilcar
S N Arainn Mhór	Arran
Scoil Mhuire (Formerly called Niamh Conall)	Glenties
S N Min an Aoire	Kilgoly
SN Tiernasligo National School	Dunaff
SN Arainn Mhór (2)	Arran
Galway	
Derrybrien National School	Derrylaur
Creggs National School	Creggs
Lisheenaheilta National School	Raheen
Clonberne National School	Raheen
Gortaleam National School	Toberadosh
Dunmore National School	Dunmore South
Kerry	
Feoghanagh National School	Kilquane
Glenflesk National School	Flesk
Bohesial National School	Curraghbeg
Castlegregory National School	Castlegregory
Caragh Lake National School	Caragh

School	DED
Muiríoch National School	Kilmalkedar
Tousist National School	Ardea
Kilgobnet National School	Tahilla
Leitrim	
Ballinamore School Complex	Ballinamore
Fenagh National School	Fenagh
Drumcong National School	Keshcarrigan
Central Primary School	Drumshanbo
St. Joseph's National School, Leitrim Village	Leitrim
Limerick	
Bilboa National School	Bilboa
Mayo	
Carrowmore Lacken National School	Killala
Moygownagh National School	Kilfian South
Ratheskin National School	Kilfian East
Annaghmore National School	Ballycastle
Kilmovee National School	Kilmovee
Meelick National School	Meelick
Carracastle National School	Cloonmore
Bohola National School	Bohola
Midfield National School	Brackloon
Barnacoogue National School	Sonnagh
Rooskey National School	Doocastle
Sligo	
Drimina National School	Banada
Mullaghroe National School	Coolavin
Holy Family National School	Tubbercurry
Enniscrone National School	Kilglass
Easkey Vocational School	Easkey East
Rathlee National School	Easkey West
Bunninadden National School	Cloonoghill
Gurteen Vocational School	Kilfree
Culfadda National School	Drumrat
Cloghogue National School	Templevanny
Tipperary North	
Lackamore National School	Abington
Gortagarry National School	Aghnameadle
Upperchurch National School	Upperchurch
Westmeath	
Moyvore National School	Templepatrick

Community Development.

209. **Mr. Ring** asked the Minister for Community, Rural and Gaeltacht Affairs , further to Question No. 225 of 9 February 2005, his views on whether the issue involves discrimination; and if he will further clarify his reply. [6329/05]

Minister for Community, Rural and Gaeltacht Affairs (Éamon Ó Cuív): Only the social welfare payments outlined in my reply of 9 February at present form the basis for eligibility under the rural social scheme.

As I have outlined to the Deputy in my reply of 9 February 2005, a review of the rural social scheme will be undertaken by my Department within the coming months. This review will include an examination of the current eligibility criteria. When this review has been completed I will be in a position to outline whether or not the eligibility criteria should be extended.

Potato Industry.

210. **Mr. Naughten** asked the Minister for Agriculture and Food if she will postpone the introduction of PCN charges on seed potato producers until full consultation can take place between her Department and the industry; if she will consider

the introduction of a grant aid scheme in conjunction with the proposed new charges; and if she will make a statement on the matter. [6121/05]

Minister for Agriculture and Food (Mary Coughlan): In order to provide growers with a period of adjustment to the changes introduced to the seed certification scheme, the charges for PCN testing will be deferred until 2006. The other charges proposed for services under the scheme relating to field inspection, sealing and labelling will however apply as planned later this year.

Wide consultation has already taken place with growers' representatives and others on the introduction of fees for the scheme and the original fee proposed for PCN testing was halved arising directly out of that process. In addition, in order to ensure that growers are fully aware of the new arrangements relating to seed production, a series of information meetings is being arranged by my officials and will take place over the next few weeks.

I will consider grant aid for producers who grow high quality certified seed in order to assist them in bringing their production systems up to the highest international standards. My overall aim is to bring commercial focus to the seed potato sector so that it can become more efficient and meet the needs of the industry, thus reducing our dependence on imports.

EU Directives.

211. **Mr. Naughten** asked the Minister for Agriculture and Food in view of the fact that the implementation of the nitrates directive will have a major impact on agriculture in Donegal, if she will assure the house that the Brosnan proposals will be fully defended by her Department and the Department of Environment, Heritage and Local Government; and if she will make a statement on the matter. [6122/05]

Minister for Agriculture and Food (Mary Coughlan): The implementation of the nitrates directive is a matter in the first instance for the Minister for the Environment, Heritage and Local Government. A nitrates action programme was submitted to the EU Commission in October last. Its provisions emerged from a consultation process with stakeholders, including the farming organisations, and from the recommendations of independent adviser Mr. Denis Brosnan who had been appointed by the Minister for the Environment, Heritage and Local Government to act as an adviser in the matter.

I share the regret of the Minister for the Environment, Heritage and Local Government at the fact that the European Commission has indicated that the action programme falls short in some respects of meeting the requirements of the Nitrates Directive. My officials are working closely with their counterparts in the Department of the Environment, Heritage and Local Government in preparing a response to the Commission. Agreement with the Commission is necessary not only to avoid the risk of substantial fines on Ireland but also to safeguard ongoing EU funding of rural development measures.

It remains my objective, shared by the Minister for the Environment, Heritage and Local Government, to minimise the burden of compliance that the nitrates directive will place on farmers and to safeguard the future of the commercial farming sector.

Veterinary Practices.

212. **Mr. Naughten** asked the Minister for Agriculture and Food in view of the fact that veterinary cover is becoming increasingly difficult to achieve in western parts of the country, the plans she has to fund the establishment or maintenance of practices where stock numbers are dropping and which as a consequence are threatening the viability of some full time practices; and if she will make a statement on the matter. [6123/05]

Minister for Agriculture and Food (Mary Coughlan): I do not have any plans to fund the establishment or maintenance of veterinary practices in any part of the country. However, I am conscious that in future the viability of such practices may come under pressure in some areas and I will monitor the situation regarding veterinary cover on an ongoing basis.

Grant Payments.

213. **Mr. Perry** asked the Minister for Agriculture and Food if her officials will include this animal (details supplied) in this person's (details supplied) cattle movement monitoring system register in view of information (details supplied). [6124/05]

Minister for Agriculture and Food (Mary Coughlan): The person named included the animal in question on an application under the 2004 special beef premium scheme received in my Department on 15 July 2004. It is a requirement of the scheme that animals being submitted for premium be CMMS compliant on the date of application. Following computer validation it was found that the animal in question was not recorded on the CMMS database as being in the herd of the person named at the date of application.

By letter dated 24 November 2004 the person named was advised that the animal in question was non-CMMS compliant and was requested to have the movement of the animal regularised. The CMMS database was subsequently amended on 6 December 2004 showing the movement of the animal concerned into the herd of the person named.

By letter dated 10 January 2005 the person named was advised that, as the animal in question was non-CMMS compliant on the date of application for premium, no payment would be made on that animal and a penalty would be applied,

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in accordance with the terms and conditions. The person named was advised of the right of appeal; to date, no appeal has been received.

Question No. 214 withdrawn.

Animal Welfare.

215. **Ms Lynch** asked the Minister for Agriculture and Food her views on whether current legislation provides for proper controls in preventing the ill-treatment of animals; her proposals to introduce a duty of care for animal owners here; if her attention has been drawn to the fact that such legislation exists in other countries and that the UK is planning to introduce similar legislation; and if she will make a statement on the matter. [6306/05]

Minister for Agriculture and Food (Mary Coughlan): Primary responsibility for the welfare of animals rests with the owner or keeper of the animals. The owners-keepers are obliged to take all reasonable steps to ensure the welfare of animals under their care and to ensure that such animals are not caused any unnecessary pain, suffering or injury.

The welfare of animals kept for farming purposes in general is covered by the European Communities (Protection of Animals Kept for Farming Purposes) Regulations 2000 and the Protection of Animals Kept for Farming Purposes Act 1984.

In addition, the welfare of calves and pigs is subject to the European Communities (Welfare of Calves and Pigs) Regulations 2003 (SI 48 of 2003) which set out minimum requirements for accommodation in relation to space; lighting; ventilation; veterinary treatment and so on and to allow animals to express natural behaviour.

Laying hens are subject to the provisions of the European Communities (Welfare of Laying Hens) Regulations 2002 (SI 98 of 2002) which specify the accommodation and other welfare requirements for keeping and rearing laying hens.

Under current legislation the welfare of animals being transported must be protected. Inspections on the welfare of animals being transported are undertaken by officials from my Department on a national spot-check basis at meat factories, marts and ports and any follow-up action necessary is undertaken. The outcome of these inspections is reported to the European Commission.

Complaints received by my Department about on-farm welfare of animals are investigated thoroughly under the above-mentioned regulations and appropriate action is taken.

The Farm Animal Welfare Advisory Council, FAWAC, which was established in 2002, has brought together for the first time in Ireland, representatives of the principal stakeholders, welfare organisations, farming bodies, Government Departments North and South and veterinary representative bodies, in an advisory body. FAWAC already published animal welfare guidelines for beef, dairy and sheep farmers and guidelines for equines are currently being drafted.

One of the initiatives which has recently been taken under the umbrella of FAWAC is an early warning-intervention system for animal welfare cases which involves my Department, the Irish Farmers Association and the Irish Society for the Prevention of Cruelty of Animals. The objective of this system is to provide a framework within which problems can be identified and addressed before they become critical or overwhelming.

The current body of legislation in this area provides the necessary powers to ensure a high level of animal welfare and to prevent ill treatment of animals. The UK Government is planning to introduce new legislation relating to animal welfare and related areas.

Proposed Legislation.

216. **Mr. Naughten** asked the Minister for Agriculture and Food when she intends to publish the animal health Bill; and if she will make a statement on the matter. [6307/05]

Minister for Agriculture and Food (Mary Coughlan): Work on drafting the Animal Health Bill is proceeding in my Department. There is still a significant body of preparatory work to be completed and it is not possible at this stage to indicate a date for publication.

Rural Environment Protection Scheme.

217. **Mr. Connaughton** asked the Minister for Agriculture and Food the reason a REP scheme payment has not been awarded to a person (details supplied) in County Galway; and if she will make a statement on the matter. [6308/05]

Minister for Agriculture and Food (Mary Coughlan): The REPS contract in this case was completed in on 31 July 2004. The person named has been paid in full for his participation in REPS.

Single Payment Scheme.

218. **Mr. Penrose** asked the Minister for Agriculture and Food if, in view of correspondence, a person (details supplied) in County Westmeath has been considered for additional entitlements; and if she will make a statement on the matter. [6331/05]

Minister for Agriculture and Food (Mary Coughlan): I confirm that an application form to the 2005 single payment national reserve has been received from the person named before the closing date for receipt of applications. The position with regard to the national reserve is that all applications are being processed at present and in view of the number of applications received and accompanying documentation submitted, it will be some time before processing is completed.

It is not possible to indicate at this stage whether the person named will qualify for an allocation of entitlements from the reserve on foot of his application. Applicants will be notified of their eligibility or otherwise as soon as all applications are processed.

Since the person named was not in a position to declare the 30.47 hectares of inherited land on his 2002 area aid application form, that area cannot be used in calculating 2002 extensification premium.

219. **Mr. Penrose** asked the Minister for Agriculture and Food the reason a person (details supplied) in County Westmeath has been refused an application under *force majeure* and exceptional needs appeal system, in relation to the single payments system; and if she will make a statement on the matter. [6362/05]

Minister for Agriculture and Food (Mary Coughlan): The person named submitted an application for consideration of *force majeure*-exceptional circumstances in the calculation of his provisional single payment entitlements as a result of TB restriction of his herd in 2000 and 2001.

Following an examination of the pattern of production, the inward and outward movements recorded on the cattle movement monitoring system and the premia eligibility of the animals present on the holding during the reference years. The single payment unit advised the person named that the circumstances outlined by him did not satisfy the *force majeure*-exceptional circumstances criteria laid down in Article 40 of Council Regulation (EC) No 1782/2003.

The person named appealed this decision to the independent single payment appeals committee who carried out a full review of the circumstances of the case. The recommendation of the appeals committee was that the decision taken by the single payment unit should be upheld.

Disability Support Service.

220. **Caoimhghín Ó Caoláin** asked the Minister for Justice, Equality and Law Reform the way in which he intends to spend the extra €3 million in disability funding allocated to it in budget 2005. [6248/05]

Minister for Justice, Equality and Law Reform (Mr. McDowell): The funding is part of the multi-annual investment programme for disability announced in the budget. A sum of €15 million will be available for voluntary sector projects between 2005-2009 with the first tranche of €3 million in 2005. This fund is intended to support innovative, efficient and cost effective approaches to disability services and to help provide examples of effective service co-ordination. Practices developed as part of funded projects must be suitable for assimilation by mainstream service providers in the future.

The fund will be administered by my Department and will involve once-off grants for selected projects. Details including criteria for funding will be finalised in consultation with other key Departments. Disbursal of funding will be in accordance with the normal accounting procedures applicable to projects availing of State funding.

Visa Applications.

221. **Mr. N. O'Keeffe** asked the Minister for Justice, Equality and Law Reform the position in relation to student visa applications in respect of ten students who are English speaking and have sworn affidavit's that they will be returning to their country following training. [6249/05]

Minister for Justice, Equality and Law Reform (Mr. McDowell): The applications referred to by the Deputy were refused by my Department on 15 of February 2005.

For the most part, the reasons for refusal related to the visa officer being unable to establish, based on the documentation supplied, that the applicants would observe the conditions of the visa applied for, or that the applicants had demonstrated sufficient evidence of their obligations to return to their country of origin. In the majority of cases, the visa officer had concerns with regard to the applicant's student profile, specifically, that many of the people in question did not have a sufficient level of English or had notable gaps in their educational history.

In assessing any visa application, the visa officer will consider various matters, including whether it is reasonable in all the circumstances to conclude that the applicant would fully honour the conditions of the visa, for example, it is unlikely that the applicant would overstay the length of time applied for. The visa officer will also have regard to information provided and to such factors as the applicant's ties and general circumstances in their country of origin.

In this regard, an affidavit alone is not considered to be an appropriate level of documentary evidence. In all cases the onus is on the applicant to fully satisfy the visa officer that it would be appropriate to issue them with a visa. Appropriate supporting documentation must be submitted. The Department's approach in these matters is informed by past experience, including experience of abuse of the system.

It is also noted that the school concerned appears to be a newly established organisation operating from within the premises of a public house. In the normal course of events this school would be subject to a visit from the immigration authorities with a view to establishing its own bona fides.

It is open to the applicants to appeal the refusal decision in writing. Any appeal should be accompanied by appropriate additional supporting documentation that it is felt will address the

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reasons for refusal mentioned above and explained on my Department's website.

Citizenship Applications.

222. **Mr. Timmins** asked the Minister for Justice, Equality and Law Reform the position in relation to an application for Irish citizenship by a person (details supplied) County Carlow; and if he will make a statement on the matter. [6312/05]

Minister for Justice, Equality and Law Reform (Mr. McDowell): A declaration of acceptance of Irish citizenship as post nuptial citizenship was received in the citizenship section of my Department on 16 December 2004 from the person referred to in the Deputy's question.

The current processing time for such declarations is approximately ten months from the date of lodgement and it is likely, therefore, that the processing of the declaration of the person will be finalised by the end of October 2005.

It is not the case that non-national persons are precluded from studying in this jurisdiction. There are many thousands of non-national students lawfully resident here. I will advise the Deputy and the applicant when the matter has been concluded.

Disability Support Service.

223. **Mr. Stanton** asked the Minister for Justice, Equality and Law Reform the disability, mental health, human rights or other organisations which have made representations, had contact with or made submissions directly or indirectly to his Department in relation to the Disability Bill 2004 following its publication in September 2004; the organisations which have expressed reservations regarding, criticism of or suggested amendments to the Bill; the organisations which have expressed unreserved support for the Bill; and if he will make a statement on the matter. [6339/05]

Minister for Justice, Equality and Law Reform (Mr. McDowell): My Department has, to date, received 44 submissions from various organisations in respect of the Disability Bill 2004 most of which were received via the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights. As a member of that committee, the Deputy will be aware that the views of 34 of the groups concerned, four of which also sent submissions to the Department, were presented to the committee before Christmas. The names of the organisations concerned are set out in the lists accompanying this reply.

As with any Bill progressing through the Dáil, most of the submissions received relate to areas of concern and suggested amendments. The Deputy will appreciate that these submissions are being examined to see if it is possible to meet, in whole or in part, concerns expressed by way of Government amendment. The process of considering amendments in the context of the Bill is one that requires consultation with relevant Departments and the Attorney General. The process is ongoing. In the meantime, the Bill is on Second Stage in the House, having been debated over several days since 4 November 2004.

Organisations that sent submissions directly to the Joint Oireachtas Committeeon Justice, Equality, Defence and Women's Rights:

Age Action Ireland

AHEAD — Association for Higher Education Access and Disability

Alzheimer Society of Ireland

Amnesty International

Ann Sullivan Foundation for Deaf Blind

AWARE — Helping to defeat depression

Bodywhys

Brainwave — The Irish Epilepsy Association

Carers Association

Children in Hospital Ireland

Disability Federation of Ireland

Enable Ireland

FADE — North Fingal Centre for Independent Living

Forum of People with Disabilities

Genetic and Inherited Disorders Organisation

Headway Ireland — The National Association for Acquired Brain Injury

Hope Project

Huntington's Disease Association Ireland

Irish Association for Spina Bifida and Hydrocephalus

Irish Deaf Society

Irish Insurance Federation

Irish Senior Citizen's Parliament

Irish Wheelchair Association

Mental Health Ireland

NAHMI

National Council on Aging and Older People

National Federation of Voluntary Bodies

National Institute for the Study of Learning Difficulties

National Parents' and Siblings' Alliance

Not for Profit Business Association

Organisations that sent submissions directly to my Department:

Broadcasting Commission of Ireland

Disability Legal Resource Centre

Disability Legislation Consultation Group

Equality Authority

Institute for Design and Disability

Irish Congress of Trade Unions

Irish Human Rights Commission

Irish Life

National Disability Authority

Parkinson's Association

People with Disabilities in Ireland Ltd

Schizophrenia Ireland

Society of Actuaries in Ireland

TV3

Departmental Correspondence.

224. **Mr. Penrose** asked the Minister for Justice, Equality and Law Reform if he will provide a response in relation to correspondence (details supplied); and if he will make a statement on the matter. [6366/05]

Minister for Justice, Equality and Law Reform (Mr. McDowell): I expect that the Deputy will by now have received my recent response to him in relation to the matter he has raised.

School Transport.

225. **Ms Enright** asked the Minister for Education and Science if her attention has been drawn to the difficulties being experienced by school bus users, in an area (details supplied), due to serious overcrowding on the route with 70-75 students on a 57 seater bus; if she will provide a second bus on this route; and if she will make a statement on the matter. [6130/05]

Minister for Education and Science (Ms Hanafin): Under existing regulations which are a matter for the Department of Transport the licensed carrying capacity of vehicles engaged in school transport is based on a ratio of three children to every two adult seats.

The pupils to whom the Deputy refers are accommodated on a 53 seater adult bus, which is licensed to carry 79 children. Bus Éireann has advised that 73 tickets have been issued for this service. As the service in question can adequately cater for the number of eligible pupils offering for transport from the area concerned, my Department is satisfied that a second bus is not warranted.

226. **Mr. N. O'Keeffe** asked the Minister for Education and Science if she will recommend the inclusion of a specific area in a primary school bus route where five school going children reside (details supplied). [6132/05]

Minister for Education and Science (Ms Hanafin): A minimum of seven eligible pupils residing in a distinct locality are required for the establishment of a school bus service. My Department has been advised by Bus Éireann that the pupils referred to in the question are residing in a separate distinct locality from the area already covered by the existing service. As the minimum number of eligible pupils required for the establishment of a service has not been met in this case, it is not open to my Department to sanction a new bus route.

Stádas Scoile.

227. D'fhiafraigh **Mr. McGinley** den Aire Oideachais agus Eolaíochta an féidir glacadh le scoil (sonraí tugtha) atá suite sa Ghaeltacht d'aistriú ar ais ó scoil ina múintear ábhair trí Bhéarla go scoil ina múintear gach ábhar trí Ghaeilge. [6176/05]

Minister for Education and Science (Ms Hanafin): Is ceist d'údaráis scoile í, ar an gcéad dul síos, cinneadh a thógaint maidir leis an meán múinteoireachta sa scoil. Má tá sé beartaithe an meán múinteoireachta sa scoil a athrú ó Bhéarla go Gaeilge, ba chóir do'n patrún iarratas foirmeálta a chur faoi bhráid mo Roinne áit a ndéanfar an t-iarratas a bhreithniú i gcomhthéacs polasaí na Roinne agus an soláthar oideachasúil sa cheantar atá i gceist.

School Accommodation.

228. **Mr. Kehoe** asked the Minister for Education and Science if her attention has been drawn to the fact that a school (details supplied) in County Wexford has exceeded its maximum numbers and has turned students away; the action she will take to allow the students that were turned away to be educated in this school; if these students will be facilitated in the school; and if she will make a statement on the matter. [6177/05]

Minister for Education and Science (Ms Hanafin): The school to which the Deputy refers has made an application under the summer works scheme, SWS, to upgrade existing accommodation on its site to enable it to provide extra classroom accommodation for next September.

All applications under the SWS are currently being assessed in the school planning section of my Department and I will be announcing the successful applicants shortly.

229. **Mr. Howlin** asked the Minister for Education and Science if her Department has received an application from a school (details supplied) for temporary accommodation for September 2005; if her attention has been drawn to a situation at the school; if the required temporary accommodation will be provided in good time; and if she will make a statement on the matter. [6178/05]

Minister for Education and Science (Ms Hanafin): An application for temporary accommodation has been received from the school authority to which the Deputy refers. All applications for temporary accommodation for the 2005-06 school year are currently being assessed in the school planning section of my Department. I intend to publish a list of the successful applicants shortly.

230. **Ms Enright** asked the Minister for Education and Science the amount spent on providing new prefabricated buildings at primary and secondary school premises respectively, for 2004; the amount spent on upkeep for existing prefabricated buildings at primary and secondary school premises for 2004; and if she will make a statement on the matter. [6179/05]

Minister for Education and Science (Ms Hanafin): My Department spent €8,745,049.73 on the provision of prefabricated accommodation in primary schools in 2004. Any expenditure incurred in 2004 on the upkeep of existing prefabricated accommodation would have been financed under the minor works grant issued to all recognised primary schools annually.

The minor works grant is issued on the basis of a school allocation amounting to €3,809.21 and a pupil allocation amounting to €12.70. In the post-primary sector, my Department spent €3,997,842.79 on the provision of prefabricated accommodation and a sum of €129,456.92 on the refurbishment of prefabricated accommodation.

Any additional expenditure in 2004 on the upkeep of prefabricated accommodation would have been addressed directly by individual schools as necessary using the maintenance portion of current funding provided by my Department.

My Department is anxious to ensure that prefabricated accommodation is only purchased where absolutely necessary. A permanent accommodation initiative was introduced in 2003 to give 20 primary schools the capacity to provide a permanent solution to their accommodation needs instead of addressing their needs with the use of temporary or prefabricated accommodation. The initiative was expanded in 2004 to include 41 additional primary schools. Increasingly, the focus within my Department is to empower schools to resolve their accommodation needs in a permanent manner rather than relying heavily on temporary accommodation.

Schools Building Projects.

231. **Mr. Wall** asked the Minister for Education and Science if her Department has changed its options in regard to a school (details supplied) in County Kildare; if so, the new plan for the school; the timescale for such a plan; and if she will make a statement on the matter. [6180/05]

Minister for Education and Science (Ms Hanafin): This school's building project went to tender in late 2004. Unfortunately, the tender outcome was significantly in excess of the budget for this project. Officials from my Department's building unit met with the school authority and its design team on 21 February 2005 and advised them that the project can proceed as early as possible in 2005 provided reductions are achieved that bring my Department's level of investment down to an appropriate level for a school of this size.

The school authority is due to revert to my Department when they have considered the matter further.

232. **Mr. Wall** asked the Minister for Education and Science the position regarding an application by a board of management and a parents' association (details supplied) for a new school; if she plans to meet with the board of management; and if she will make a statement on the matter. [6181/05]

Minister for Education and Science (Ms Hanafin): My Department proposes to build a new 16 classroom primary school in Castledermot. The property management section of the OPW, which acts on behalf of my Department regarding site acquisitions generally, is exploring the possibility of acquiring a site for this development. Progress on the project will be considered in the context of the school building programme when the site has been acquired. In the circumstances it is not my intention to meet the board of management at this time. However, officials in the school planning and building unit of my Department will keep the board of management informed of developments.

233. **Mr. Wall** asked the Minister for Education and Science the position regarding a new school building (details supplied); if she has agreed to meet with a deputation from the town council and RAPID officials in relation to the school; the timescale for progress at the school; and if she will make a statement on the matter. [6183/05]

237. **Mr. Wall** asked the Minister for Education and Science the position regarding a new school building (details supplied); if she has agreed to meet with a deputation from the town council and RAPID officials with regard to the school; if she will give a timescale for the school's progress; and if she will make a statement on the matter. [6235/05]

Minister for Education and Science (Ms Hanafin): I propose to take Questions Nos. 233 and 237 together.

The building project for the school referred to by the Deputy is at an early stage of architectural planning. I recently announced details of 122 major school building projects which will progress to tender and construction phase over the next 12

to 15 months under the €3.4 billion multiannual funding secured for the years 2005-09. I am anxious to ensure that a consistent flow of projects to tender and construction can be sustained into the future. I plan to make a number of announcements in the near future regarding the schools building and modernisation programme, including details of those school projects which will further progress through the design process. All projects in architectural planning, including the school in question, will be considered as part of this process. I have advised the organisations mentioned to contact the Kildare-Wicklow regional office and officials there will make arrangements to meet with them to discuss the project in question.

School Closures.

234. **Mr. Broughan** asked the Minister for Education and Science if she will liaise closely and consult with the principal, staff, students and parents of a school (details supplied) in Dublin 5 to ensure that the full curricular and educational needs of students are fully resourced and met during the period up to the proposed closure of the school in June 2007. [6184/05]

Minister for Education and Science (Ms Hanafin): Teacher allocations to second level schools are approved annually by my Department in accordance with established rules based on recognised pupil enrolment. Each school management authority is required to organise its timetable and subject options having regard to pupils needs within the limit of its approved teacher allocation.

The rules for allocating teaching resources provide that where a school management authority is unable to meet its curricular commitments, my Department will consider applications for additional short term support, that is, curricular concessions. Any such application from the school concerned will receive full consideration. An independent appeals mechanism is available to school authorities which wish to appeal the adequacy of their teacher allocation.

235. **Mr. Broughan** asked the Minister for Education and Science if it is intended to make payments of any kind to the trustees of a school (details supplied) in Dublin 5. [6185/05]

Minister for Education and Science (Ms Hanafin): It is unclear what type of payments the Deputy has in mind. However, I confirm the question has not arisen in my Department.

236. **Mr. Broughan** asked the Minister for Education and Science if there will be close liaison with the principal and staff at a school (details supplied) in Dublin 5 regarding grave concerns among staff over the lack of consultation from her Department on the impact of the proposed closure of the school in 2007 on full-time and part-time teaching staff. [6186/05]

Minister for Education and Science (Ms Hanafin): A decision was taken by the trustees of the school concerned that the school will close in June 2007. Officials of my Department have met with representatives of the teacher unions involved concerning the closure of the school. Arising from this meeting, the position of the teachers in the school is under consideration within my Department. Further meetings will be held in the near future with the relevant parties.

Question No. 237 answered with Question No. 233.

Bullying in Schools.

238. **Dr. Upton** asked the Minister for Education and Science her views on whether each secondary school should have an anti-bullying policy in place; the guidelines her Department has issued in this regard; and if she will make a statement on the matter. [6295/05]

Minister for Education and Science (Ms Hanafin): Every school should have in place, as part of its code of behaviour, a policy which includes specific measures to deal with bullying behaviour. Such a code, properly devised and implemented, can be the most influential measure in countering bullying behaviour in schools. My Department, in its document entitled, Guidelines on Countering Bullying Behaviour in Schools, has provided the framework within which individual school management authorities may meet their responsibilities for implementing effective school based policies to counter bullying. These guidelines were drawn up following consultation with representatives of school management, teachers and parents. The purpose of the guidelines is to assist schools in devising school based measures to prevent and deal with instances of bullying behaviour and increase awareness of the problem among school management authorities, staff, pupils and parents. They are sufficiently flexible to allow each school authority to adapt them to suit the particular needs of the school. The guidelines remind schools of their responsibility in formulating a written code of behaviour and discipline which should include specific measures to counter bullying behaviour.

Higher Education Grants.

239. **Mr. Timmins** asked the Minister for Education and Science the position with regard to a course (details supplied) which is not yet on the list of Department approved courses for students applying to the VEC for third level grants; and if this will be dealt with as speedily as possible. [6313/05]

Minister for Education and Science (Ms Hanafin): Under the higher education grants scheme 2004, my Department has approved six courses for the purposes of the third level grant scheme at St. Patrick's, Carlow College, as fol-

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lows: diploma in humanities; diploma in theology; BA degree in theology; national certificate in applied social studies in social care; national diploma in applied social studies (Social Care); and bachelor of arts in humanities.

To have courses approved for the purposes of the grants scheme St. Patrick's, Carlow College, must make an application in writing to my Department outlining the details of the course proposed for inclusion in the scheme. An application has been received for the approval of a one year add-on BA (Hons) in applied social studies in social care to the 2004 higher education grant scheme. This application is being considered by my Department.

Special Educational Needs.

240. **Mr. Kehoe** asked the Minister for Education and Science , further to Question No. 500 of 15 February 2005, the reason for the delay in passing on the outcome of the special needs assistance provision review for a school (details supplied) in County Wexford; and if she will make a statement on the matter. [6314/05]

Minister for Education and Science (Ms Hanafin): The review of special needs assistant, SNA, provision in primary schools commenced in September 2004 and is continuing. The review is concerned with the level and deployment of SNA posts in mainstream classes. The intention is to ensure that the level of approved SNA support in schools and the manner in which that support is being allocated are such as to ensure that the special care needs of pupils are being appropriately met. Decisions regarding the appropriate level of SNA support in respect of applications made to my Department will be based on the outcome of this review.

The school in question was reviewed in December 2004. My Department is finalising administrative matters in the context of all schools reviewed. I expect that this process will be completed shortly and the schools in question will be advised of the outcome of the reviews undertaken as quickly as possible thereafter.

Schools Building Projects.

241. **Mr. Timmins** asked the Minister for Education and Science the position regarding the provision of an extension at a school (details supplied) in County Wicklow; if this can be dealt with as a matter of urgency; and if she will make a statement on the matter. [6315/05]

Minister for Education and Science (Ms Hanafin): The project at the school to which the Deputy refers has been assessed in accordance with the published prioritisation criteria, which were revised following consultation with the education partners. Progress on the project is being considered in the context of the school building programme from 2005 onwards. In this regard, the Deputy will be aware that I recently announced the first phase of the 2005 school building programme which provided details of 122 major school building projects country wide for which tenders will be prepared and construction will begin during 2005.

This announcement is the first in a series of announcements I plan to make in the coming period regarding the schools building and modernisation programme which will include: details of schools identified as suitable for construction under public private partnerships; an expansion of the number of schools that will be invited to deliver their building projects on the basis of devolved funding; details of schools with projects approved under the 2005 summer works scheme; schools whose projects will further progress through the design process; and schools that will be authorised to commence architectural planning.

Educational Disadvantage.

242. **Mr. Timmins** asked the Minister for Education and Science the position in regard to the involvement in the SSRI strand of the school completion programme of a school (details supplied) in County Wicklow; if she will re-examine the decision and allow the school to continue the good work started to ensure the maximum number of students stay at school until they have completed their leaving certificate; and if she will make a statement on the matter. [6316/05]

Minister for Education and Science (Ms Hanafin): A review of educational disadvantage programmes is being finalised by my Department. Decisions to expand or extend any of the initiatives aimed at addressing educational disadvantage are being considered in this context of this review, the purpose of which is to build on what has been achieved to date, to adopt a more systematic, targeted and integrated approach, and to strengthen the capacity of the system to meet the educational needs of disadvantaged children and young people. I hope to announce the outcome of this review shortly.

Special Educational Needs.

243. **Dr. Upton** asked the Minister for Education and Science , further to Question No. 150 of 17 February 2005, the expert advice her Department obtained to assess the needs of the person in question; and if she will make a statement on the matter. [6332/05]

Minister for Education and Science (Ms Hanafin): The matter has been considered by my Department's inspectorate and the advice is that adequate provision exists within the State to cater for the special educational needs of the person in question. It is not, therefore, proposed to make funding available to the person in question towards an educational placement abroad.

Waste Management.

244. **Mr. G. Mitchell** asked the Minister for the Environment, Heritage and Local Government his plans to provide or support the provision of a paper and cardboard waste recycling facility following the announced closure of a company (details supplied); if he is aware that 360,000 tonnes of paper and cardboard waste are generated annually in the State; and if he will make a statement on the matter. [6126/05]

Minister for the Environment, Heritage and Local Government (Mr. Roche): My Department — under the auspices of the North South Market Development Group, and in conjunction with the Northern Ireland Department of the Environment and the UK waste resources action programme, WRAP — recently commissioned a consultancy study to examine the feasibility of developing new paper mill capacity on the island of Ireland with a view to utilising greater volumes of collected waste paper and cardboard locally. If a viable option can be identified, this would provide stable domestic recycling capacity and produce new recycled paper and cardboard products for the domestic market. The commissioning of this consultancy study, which is being undertaken by a multinational consortium and is due for completion by the end of March, is timely. I await its conclusions with interest.

A range of measures to promote the recycling of paper is already in place and the available data show that they are having a significant impact. These measures have included the progressive roll-out of segregated household collection of dry recyclables, or kerbside green bin collection services, to more than 560,000 households, or some 42% of all households in the State. It is estimated that newsprint and other paper and cardboard waste account for more than 50% of the material being collected from households via the green bin collection service. The 2003 packaging regulations imposed a mandatory obligation on those placing packaging on the market to segregate specified back-door packaging waste arising on their premises and have it collected by authorised operators for recycling. Paper and cardboard are among the specified materials that must be segregated for this purpose. A public service waste management programme which is being prepared will ensure that all public authorities will routinely use recycled paper. Moreover, a producer responsibility initiative, PRI, is under discussion with the newsprint industry with a view to improving recovery rates for newsprint.

The EPA has reported in its National Waste Database Interim Report for 2003, published in December 2004, that an estimated 925,329 tonnes of paper and cardboard waste were generated in that year, of which 358,878 tonnes were collected for recycling, representing a recovery rate of 38.8% for this waste stream. The plant referred to in the question had a capacity to process approximately 45,000 tonnes of paper and cardboard annually, which is relatively small by international standards. While the closure of this plant is regretted, the vast majority — approximately 87.5%, or 313,878 tonnes — of the increasing volumes of paper and cardboard collected for recycling was already being sent abroad. All the indications are that the recycling position generally, including the recycling of paper and cardboard, will continue to improve as a result of the ongoing implementation of the local and regional waste management plans.

Water and Sewerage Schemes.

245. **Mr. O'Shea** asked the Minister for the Environment, Heritage and Local Government the position regarding the connection of the Mahon River to the Ballyshunrock Reservoir in County Waterford; and if he will make a statement on the matter. [6237/05]

Minister for the Environment, Heritage and Local Government (Mr. Roche): The east Waterford water supply scheme, stage two, phase two, has been approved for construction as part of my Department's water services investment programme for 2004 to 2006, at an estimated cost of €20.25 million. The scheme includes a new source of water from the River Mahon and a pumping station and rising mains to the Ballyshonnock impoundment.

Waterford County Council's reports on tenders for the civil, mechanical and electrical works related to this element of the scheme are under examination in my Department and will be dealt with as quickly as possible.

Housing Grants.

246. **Mr. Wall** asked the Minister for the Environment, Heritage and Local Government the number of local authorities that have sought funding in regard to the provision of independent living units in each of the past three years; the number of units constructed in each local authority area in each of the past three years; and if he will make a statement on the matter. [6270/05]

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. N. Ahern): I assume the question refers to assistance from my Department under the voluntary housing capital assistance scheme. The number of local authorities that have sought funding under this scheme for the years 2002 to 2004 is set out in the following table:

2002	2003	2004
28	33	29

The available information on the number of units completed in each local authority area in respect of the scheme in 2002 and 2003 is published in the Department's annual housing statistics bull-

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etins for the years in question. Copies of these bulletins are available in the Oireachtas Library. Figures for 2004 are being compiled and will be published in due course in the 2004 annual bulletin.

Social and Affordable Housing.

247. **Mr. Wall** asked the Minister for the Environment, Heritage and Local Government if he has satisfied himself that developers are not providing affordable housing as part of their schemes and are instead offering financial contributions to the relevant local authority; if not, his plans to address this serious matter; and if he will make a statement on the matter. [6271/05]

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. N. Ahern): Apart from the provision of housing units to the local authority on or off site, an agreement under part V of the Planning and Development Acts 2000 to 2004 provides for the transfer of land or sites to the local authority within the area of proposed development or within the functional area of the local authority; the transfer of fully or partially serviced sites to the local authority within its functional area; the transfer of fully or partially serviced sites to an approved housing body or other nominated persons; the payment of money in lieu of land, new units or sites; or any combination of these options.

Part V is fully operational in all local authorities and all relevant residential planning applications are subject to a part V agreement. While it is a matter for local authorities to identify the order of priority to be given to each of the above options in their housing strategies, I understand that most local authorities favour the provision of housing units on site as the preferred option. On the basis of returns to my Department, at the end of September 2004, a total of 390 social and affordable housing units had been acquired by local authorities, more than 1,800 were in progress and almost 2,700 proposed on foot of part V agreements with developers.

On this basis, I am satisfied that the provisions of part V are being suitably progressed and that they will contribute significantly to the supply of social and affordable housing into the future.

248. **Mr. Wall** asked the Minister for the Environment, Heritage and Local Government his views in regard to affordable housing policy; his further views in regard to the number of houses allocated under the scheme; his plans to improve the number of houses to be allocated; the number of meetings he has had with local authorities in this regard; and if he will make a statement on the matter. [6273/05]

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. N. Ahern): Access to affordable housing for first-time buyers is an important objective of Government housing policy and we will continue to monitor and review housing developments and policies as necessary to achieve this aim. Our policy has been to make housing supply more responsive to demand and, in this way, to bring moderation to house price increases, thus improving affordability and access, particularly for first-time buyers.

There is clear evidence that the measures introduced by this Government to boost supply are having effect. The year 2004 is likely to be the tenth year of record overall house completions with more than 75,000 completions expected. From 2001 to the end of September 2004, a total of 233,000 private houses have been completed in the State. This increased supply, supported by Government measures, means the market is supplying houses in many areas of the country at affordable prices.

In addition to measures to support a market response to unprecedented demand, the Government has placed a particular emphasis on the delivery of targeted schemes of affordable housing. This includes the shared ownership scheme, the 1999 affordable housing scheme and, more recently, the provision of affordable housing through part V of the Planning and Development Acts 2000 to 2002 and the Sustaining Progress affordable housing initiative.

Substantial growth is anticipated in affordable housing output over the coming years, as the part V mechanism and the Sustaining Progress affordable housing initiative take effect. Since 1997, more than 13,000 households have benefited through affordable housing measures and it is envisaged that more than 11,000 units will be delivered from the various affordable schemes between 2005 and 2007. This year alone, it is provisionally estimated that these schemes will produce some 3,500 affordable housing units.

The allocation of affordable houses is a matter for each local authority in accordance with the scheme of allocation priorities adopted by its elected members. My Department is in regular contact with local authorities concerning different aspects of the various affordable housing schemes and, where necessary, meets with local authority officials to discuss these matters.

Affordable housing targets are included within the five-year action plans for social and affordable housing introduced last year. My Department has discussed these plans with all the local authorities involved.

Local Authority Housing.

249. **Mr. Stanton** asked the Minister for the Environment, Heritage and Local Government the powers and responsibilities of local authorities to ensure that local authority tenants maintain their premises and keep them litter and pest-free; the actions that the local authorities can and are obliged to take if a tenant allows rubbish and litter to build up in the vicinity of the prop-

erty; and if he will make a statement on the matter. [6274/05]

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. N. Ahern): The management, maintenance and improvement of their rented dwellings is a matter for each housing authority. The powers conferred on them under the Housing Acts, including, where necessary, the recovery of possession, are intended to ensure they have the capacity to fulfil their responsibilities.

Under the Litter Pollution Act 1997, the occupiers of residences let in two or more dwellings have a statutory duty not to create litter. In addition, the occupiers of properties located within the confines of a speed limit area, other than the general or motorway speed limits, are required to keep any footpaths or pavements adjoining the road free of litter. Local authorities are responsible for enforcement of this legislation, which carries a fine of up to €3,000 on conviction for an offence and up to €600 for each day of a continuing offence.

The Housing (Standards for Rented Houses) Regulations 1993, made under section 18 of the Housing (Miscellaneous Provisions) Act 1992, prescribe minimum standards for rented houses and require common areas, yards, forecourts and items such as walls and fences to be kept in good repair and clean condition.

The behaviour of tenants, normally including provisions relating to the upkeep of the dwelling, is governed by the tenancy agreement, which constitutes the legal basis of the relationship between the local authority and its tenants. My Department has no role in regard to individual tenancy agreements.

Election Management System.

250. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which were followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6276/05]

251. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6341/05]

252. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6342/05]

253. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6343/05]

254. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6344/05]

255. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting

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machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6345/05]

256. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6346/05]

257. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6347/05]

258. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6348/05]

259. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6349/05]

260. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6350/05]

261. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6351/05]

262. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor;

and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6352/05]

263. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6353/05]

264. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6354/05]

265. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6355/05]

266. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6356/05]

267. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6357/05]

268. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6358/05]

269. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6359/05]

270. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage

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facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6360/05]

271. **Mr. P. McGrath** asked the Minister for the Environment, Heritage and Local Government the procedures which followed to invite tenders for the contract to store the electronic voting machines by a local returning officer (details supplied); if national and local newspapers featured advertisements inviting tenders for storage facilities; if so, when these advertisements appeared; the number of tenders which were received; the cost of each; the lowest tender offered for the storage of this equipment; the person who was awarded the tender; if this was not the lowest tender submitted, the reason therefor; and if this tender included the storage of the electronic voting machines in addition to the ancillary equipment. [6361/05]

Minister for the Environment, Heritage and Local Government (Mr. Roche): I propose to take Questions Nos. 250 to 271, inclusive, together.

The procurement of appropriate secure storage accommodation for electronic voting machines and ancillary equipment is the responsibility of returning officers, who are statutorily charged with conducting elections and referenda. My Department has written to returning officers requesting information in regard to, *inter alia*, the procurement of such accommodation.

As regards information provided by returning officers on ownership of storage premises, I refer to the reply to Question No. 516 of 8 February 2005.