Vol. 704
No. 2

Thursday,
4 March 2010

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

DÁIL ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Thursday, 4 *March* 2010.

DÁIL ÉIREANN

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Déardaoin, 4 *Márta* 2010.
Thursday, 4 *March* 2010.

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

———

Paidir.
Prayer.

———

Requests to move Adjournment of Dáil under Standing Order 32.

An Ceann Comhairle: Before coming to the Order of Business, I propose to deal with a number of notices under Standing Order 32. I will call on the Deputies in the order in which they submitted their notices to my office.

Deputy Finian McGrath: I seek leave to move a motion for the adjournment of the Dáil under Standing Order 32 to discuss an issue of national importance and concern, namely, the urgent need for a serious jobs programme to deal with the current financial crisis and to ensure that job packages target Dublin North Central as a matter of urgency, particularly Edenmore, Coolock, Artane, Donnycarney, Fairview and Marino.

Deputy James Bannon: I seek the adjournment of the Dáil under Standing Order 32 to raise a matter of national importance, namely, the misleading of consumers and the threat to the income of our farmers caused by the false country of origin labelling by Bord Bia; the threat to the viability of our economy given the lack of return to the State from stamping foods from outside the country as Irish; when this practice is likely to be curbed in the interest of the livelihoods of farmers; and the urgent need to support Ireland in this time of economic recession with a full and genuine effort to encourage people to buy Irish in the full knowledge that they are doing so rather than buying items such as chicken which are labelled as Irish products but which may, in fact, have been reared in Northern Ireland or elsewhere.

Deputy Tom Hayes: The Ceann Comhairle will have to allow that. There is no doubt about that.

An Ceann Comhairle: Having considered the matters raised, they are not in order under Standing Order 32.

Order of Business.

Minister for Transport (Deputy Noel Dempsey): It is proposed to take No. 24, Criminal Procedure Bill 2009 [*Seanad*] — Second Stage (resumed); and No. 4, Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010 — Order for Second Stage and Second Stage.

An Ceann Comhairle: There are no proposals to be put to the House today.

Deputy Caoimhghín Ó Caoláin: On a point of order, I want to establish whether it is the preserve of Government only to determine the arrangements for the ordering of business.

Deputy Mary Hanafin: Yes.

An Ceann Comhairle: Yes, under Standing Order 26.

Deputy Caoimhghín Ó Caoláin: Is it within the gift of the Opposition even where there are no proposals? I suggest there is a serious——

An Ceann Comhairle: I am not empowered to change it. We have structures to do that.

Deputy Caoimhghín Ó Caoláin: I am asking for clarification. Is an Opposition Deputy empowered to put forward a proposal for the inclusion of an item in today's business?

An Ceann Comhairle: No. It is a matter for the Government of the day.

Deputy Caoimhghín Ó Caoláin: It is an absolutely outrage that we are here this morning——

An Ceann Comhairle: The Deputy has received an answer to his query.

Deputy Caoimhghín Ó Caoláin: ——and there is not an accommodation——

An Ceann Comhairle: Deputy Ó Caoláin must resume his seat. I call Deputy Kenny on the Order of Business.

Deputy Caoimhghín Ó Caoláin: ——of the most important issue for address at this time and that is the withholding of reports on the care and tragic realities of children in this State over many years.

Deputy Enda Kenny: My intention was to object to the Order of Business but the Ceann Comhairle has dealt with that matter.

Does the Minister of State with responsibility for children intend to come to the House today to make a statement to the Dáil following the laying before the Houses of the Oireachtas by Deputy Alan Shatter yesterday of a report into an appalling case of neglect by the State? If ever I saw a classic example of why the House is wrong in how it does its business it was yesterday when the HSE was deemed to be the organisation to deal with this matter when it should involve ministerial accountability.

We understand from this morning's news bulletins that 20 reports have been completed on cases similar to the case which Deputy Shatter laid before the Houses of the Oireachtas yesterday. I want to hear from the Minister of State with responsibility for children. When was he informed of these reports? How many does he have in his possession? When does he intend to publish them? This is a classic case of the worst kind of hands-off politics I have ever seen. Everybody in the country has been criticising the Catholic Church for covering up child sexual abuse and rightly so as those matters should be published. What is the difference between that and the HSE and the Minister of State with responsibility for children covering up reports that indicate serious, appalling and fundamental State neglect of children in care? It is a shocking indictment of Ireland in 2010.

I understand that 20 children died while in the care of the State. I want the Minister of State with responsibility for children in the House this evening to answer on this and speak out. This is his duty. If we cannot look after the children of our nation, what business do we have being in here? The Order of Business should be set aside as Deputy Ó Caoláin suggested. This matter goes to the heart of our very being and our very Irishness. The very least the Minister of State with responsibility for children can do is come here and put on the record when he was informed of these 20 reports, how many he has in his possession and when they will be published. When will the House have an opportunity to debate and put in place structures and procedures to prevent this from happening again?

This morning, we heard from child experts that, at present, children are very vulnerable and may experience this tragic precedent. We know it happened and we know it is happening. Let us for God's sake put politics aside and do something about it. Will the Minister of State with responsibility for children come to House so we can hear what he has to say?

Deputies: Hear, hear.

Deputy Eamon Gilmore: Time should be provided today for the Minister of State with responsibility for children to come to the House and report to it on this matter. We need to address a number of issues. As Deputy Kenny stated, we have been told that 20 children died while in State care over the past decade and that there are a number of HSE reports relating to those deaths. We should hear a full statement on what reports are outstanding in the HSE and why they have not been published to date. There is a distinction to be drawn between the delays occasioned by the HSE itself and delays in the publication of the report arising as a result of sensitive issues contained in the report which relate to the children and their families. That distinction has to be made. We need to have political accountability on this matter. Time needs to be set aside today for the Minister of State with responsibility for children to make a statement to the House, answer questions and provide the answers Members of this House and the public are seeking as to why those reports have been delayed and what was going on. More important, we need to look not just at what happened in the past but at what is happening currently, to examine the extent to which there might still be children in State care who are at risk and what steps are being taken to address that.

Deputy Caoimhghín Ó Caoláin: This is a very serious matter. It is compounded by the fact that we as parliamentarians, representatives of the people, are being denied the full information by the Department of Health and Children. The Minister of State with responsibility for children, Deputy Barry Andrews, is present but the Minister with overall responsibility is not present. We are being denied the full facts and information on a consistent basis when we make inquiries on behalf of our constituents and in the pursuit of best practice in society. It is not only the Department of Health and Children that is responsible, it is the Health Service Executive. Let us make no mistake about it on this issue.

I tabled a parliamentary question on 7 July last year, a full eight months on Monday. The inquiry was straightforward; to ask the Minister for Health and Children the number of reports that have been conducted by either the Health Service Executive or the former health boards during the past 20 years, which have not been published or have only been published in redacted form, the subjects of those reports and if she would make a statement on the matter. I have repeated that request *ad nauseam*, page after page, and the response I receive repeatedly is that is has proven difficult to obtain all of the information sought. That goes right up to the beginning of this week, a full eight months later, yet a representative of the HSE could go on "Morning Ireland" this morning and advise people that there are at least 20 reports relating to the outrageous treatment of children in the State's care by this State over all of that time.

It is high time that parliamentarians, Members of this House, made it clear that this will not be tolerated into the future. We are being kicked to touch by the Minister for Health and Children. We are being ignored continually by the HSE and critical information that should have been provided to Members of this House is being systematically withheld by the system that has been entrusted to govern the matters concerning——

An Ceann Comhairle: The Deputy cannot initiate a debate on the report today. We are on the Order of Business.

Deputy Caoimhghín Ó Caoláin: I will finish my sentence — govern the matters concerning health and children in this State. It is an absolute disgrace. We have every right to expect——

An Ceann Comhairle: We are on the Order of Business. I have allowed considerable latitude on the Order of Business.

Deputy Caoimhghín Ó Caoláin: ——that these matters can be properly addressed on the floor of this House today and nothing less will satisfy.

Deputies: Hear, hear.

Deputy Noel Dempsey: I agree with the leader of Fine Gael that we should put politics aside in this very tragic case. We should not play politics with cases as tragic as this. It is and was a very tragic case. Members have been talking about their right to discuss the matter but there are rights of privacy involved, rights of family members to be consulted, and the right of the mother to be consulted as well before a case as tragic as this is stuck up on websites or publicised in any way. That particular aspect of this case is one that everyone in this House should remember.

I reject totally the accusation made by Members opposite that the Minister is covering anything up. Proper procedures are in place to deal with reports such as this. Consultations were taking place. I understand from the HSE that it did intend to publish that report in the very near future. The Government has no problem in principle discussing this case, or any other case, once proper procedure has been followed and the rights of the individuals concerned are fully vindicated.

I understand from the HSE that there are 20 reports, as indicated by Deputies opposite——

Deputy Alan Shatter: ——into children who died in care.

Deputy Noel Dempsey: Ten of the children involved died of natural causes. All 20 reports are nearing publication and it is intended to publish them once people's rights are respected. I ask Members to respect those rights as well.

Deputy Pádraic McCormack: What is the reason for the delay?

Deputy Noel Dempsey: For the record, this tragic case dates back to 2002. The recommendations in that report have been or are being——

Deputy Alan Shatter: "Are being". We heard the HSE this morning. "Are being" could be in the next decade.

Deputy Noel Dempsey: ——put in place. Special care orders have been put in place since 2002. The HSE now tries to ensure uniform delivery of services throughout the country, as opposed to what was happening.

Deputy James Reilly: Tries but fails.

Deputy Noel Dempsey: This case dates to a period when health boards were in operation. An assistant national director for children and families has been appointed in the HSE. Social workers, who deal largely with those cases, are exempt from the moratorium imposed by the Government on employment in the health service and across the public service generally.

Deputy Jan O'Sullivan: There is still a huge shortage of social workers.

Deputy Noel Dempsey: In addition, it was agreed that 270 extra social workers could be provided within the health service.

Deputy James Reilly: But have not been.

Deputy Noel Dempsey: More recently in the budget €15 million was provided for the implementation of the Ryan report. It is not true to say that nothing has changed.

This was a non-statutory inquiry. People co-operated with the inquiry. In general it is easier to get people to co-operate with non-statutory inquiries because they expect their own confidentiality and that of the inquiry to be respected. I hope the actions of the past 24 hours do not change that.

Deputy Enda Kenny: I will go into a long tirade. This is about accountability. I thank the Minister for his comments. I will not play politics with this issue. What I want, in the interests of the people, is for the Minister for children to inform this House this evening about the 20 reports. I do not want to know the names or the details but I would like to know when the children involved died, when the Minister was informed by the HSE as to the completion of the report, at what stage it is in the procedures that have to be followed before publication can follow. That is in the interests of everyone. It is not dealing with the detail.

The Minister had the report dealt with by Deputy Shatter yesterday for over a year. The HSE had it for a year and a half. Last year 9,000 children in vulnerable situations were not even assessed. The uncle of the young girl who died tragically, who was the subject of the report made public yesterday, called for its publication in January 2009.

"Are being dealt with" could mean five, ten or 15 years. In the interests of the children of the nation whom we are supposed to cherish equally, I want the Minister to come to the House to outline cases Nos. 1 to 20, not the details of the people involved but when the child died, when the Minister was informed by the HSE that the report was completed and at what stage he is in the procedures in each of the cases from Nos. 1 to 20 so that we get at least some fix on putting in place structures and procedures. Child care professionals need to know as well what has happened and what is being done. This is a case of the accountability of the Minister with responsibility for children, not the HSE or anyone else. This is a case of ministerial accountability to the people. This is the people's forum.

I suggest respectfully that the Minister for Transport consult with the Minister of State with responsibility for children in order to allow an hour of the House's time this evening, perhaps from 5 p.m. to 6 p.m., so that the latter can outline cases one to 20, indicate when he was informed of them, how long the report has been in his possession and what stage we are at in the procedure before publication can be achieved.

Deputy Eamon Gilmore: I have no intention of making a political issue out of this; it is far too serious and sensitive for that. The request that Deputies Kenny, Ó Caoláin and I have made is that time be made available in the House for the Minister of State with responsibility for children, Deputy Barry Andrews, to tell us the state of play in regard to this report. As Deputy Kenny said, we need to know when the children died and when the report was commenced. I do not understand why — and there may be a good reason for it — there is a queue of reports about children who died over a ten-year period. Why are those reports not yet complete? If there is a reason for that, I would like to hear what it is. My party would like to be in a position to probe that further.

I would also like to know about any recommendations arising from this. Is it the case that the investigations that were conducted by the Health Service Executive into these deaths have not yet produced recommendations arising from the handling of the cases? If there were recommendations, it is important that we hear what they are, whether they have been implemented and what type of practice now applies. We should remember that, arising of the report of the all-party committee, we are preparing to have a referendum on the rights of children in this country. These are precisely the types of hard cases that will be the subject of debate and discussion during the course of that referendum.

An Ceann Comhairle: The Deputy is going into detail that is not appropriate for the Order of Business.

Deputy Eamon Gilmore: Therefore, we must have a reasoned discussion in the House about what happened, get all the information, see what the situation is and take it from there. I appeal to the Government to recognise that it is not a good idea to let today pass without this being discussed in the Chamber, with the Minister of State saying what he has to say and providing us with an explanation and with whatever information he has so that we can see where to go from here.

Deputy Caoimhghín Ó Caoláin: This is not an inter-party political issue, but it is a political issue nevertheless because it can only be addressed by the best performance of politics in learning the lessons of the past. It is essential that we know the detail of the particular reports currently unexposed. It is perhaps irrelevant at this point if, for whatever reason, the identities must be withheld. What matters is that we have the facts in regard to the care regime that applied for each of these young people, tragic cases that they all must have been, that lessons are learnt and that from those lessons best practice is implemented.

I go back to the point that it is an outrage that elected Members of this House — I do not refer only to the Opposition benches, because I have heard the same remarks privately expressed by backbenchers of the Government parties — should meet with such great difficulty in trying to ascertain factual information from within Departments, particularly the Department of Health and Children. There can be no better example of that than this case.

An Ceann Comhairle: The Deputy is going off on a tangent.

Deputy Caoimhghín Ó Caoláin: Why is it that, eight months later, we could not have been advised that in this particular area, there were some 20 reports that were not yet published? That would be part of the information that was clearly sought and up to this point has been withheld but could be so easily shared with everybody today on "Morning Ireland". That points up a major deficiency within the system in terms of accountability by Departments, particularly the Department of Health and Children, and the HSE. I urge action on the part of the Government to make sure we will not see a continuation of this worst practice situation. I join with Deputies Kenny and Gilmore in again requesting the Government to accommodate a proper opportunity to address these very important matters, including the TF case, before close of business today.

Deputy Noel Dempsey: I repeat what I said in regard to this particular case. There are specific difficulties and consultations with the family that have to take place. There are two other children involved in this. In these circumstances, their right to privacy must take precedence over anything else.

(Interruptions).

Deputy Alan Shatter: We preserved their right to privacy. The Minister of State referred to the family's name on RTE's "News at One" yesterday and then had the gall to make accusations against me.

Deputy Barry Andrews: Deputy Shatter named them yesterday himself.

Deputy Alan Shatter: At no stage did we mention names.

An Ceann Comhairle: The Minister must be allowed to speak without interruption.

Deputy Noel Dempsey: I do not want this to degenerate——

Deputy Alan Shatter: The Minister of State stumbled onto the 1 o'clock news having concealed the report for a year.

Deputy Barry Andrews: Deputy Shatter should be ashamed of himself.

Deputy Joan Burton: It was the Minister of State who named the family.

(Interruptions).

Deputy Alan Shatter: The Minister of State had a year to respond but the child's uncle said he never heard a word from him.

Deputy Barry Andrews: The Deputy should be ashamed of himself.

An Ceann Comhairle: Deputies must allow the Minister to continue.

Deputy Pádraic McCormack: He is being interrupted by the Minister of State.

Deputy Alan Shatter: The Minister of State is misusing the family and these children for his own political benefit. He is playing a political game on an issue that is far too serious.

An Ceann Comhairle: I have asked Deputy Shatter to allow the Minister to speak.

Deputy Alan Shatter: This issue is far too serious for children to spend another day at risk in this country because of the failure of the Government to act.

Deputy Noel Dempsey: As I was saying——

Deputy Pádraic McCormack: The Minister was saying nothing.

Deputy Noel Dempsey: As I was saying, there are specific issues——

Deputy Alan Shatter: This is the man who wants Dáil reform.

Deputy Michael Ring: He is there today because the chairman put him in. It is like the team in England just before the goal. The chairman gave him the vote of confidence.

Deputy Timmy Dooley: Members opposite would know all about that.

An Ceann Comhairle: Members must allow the Minister without interruption.

Deputy Noel Dempsey: There are specific issues in regard to this case. The request made by Deputies Kenny and Gilmore for a general discussion on the 20 cases that were mentioned this morning is not unreasonable. I am not in a position to say whether the Minister of State with responsibility for children will be able to get that information today.

Deputy Alan Shatter: Is the Minister seriously telling us that the Government does not know the details of children who died in care and on whom reports have been completed? Does it not even matter if a child dies in care?

An Ceann Comhairle: Deputy Shatter must resume his seat.

Deputy Alan Shatter: This is a farce.

Deputy Timmy Dooley: The only farce is the Deputy.

Deputy Alan Shatter: I raised this issue a year and a half ago at which point the Minister of State was looking for information from the HSE.

An Ceann Comhairle: If Deputy Shatter does not resume his seat I will have to ask him to leave the House.

Deputy Alan Shatter: No other Parliament would tolerate a Minister of State with responsibility for children who does not have information on children who died in care. It is an outrage.

An Ceann Comhairle: Deputy Shatter must resume his seat.

Deputy Noel Dempsey: Has the Deputy finished using the families concerned? What I am prepared to say is that we can look to see what information we can obtain. If it is possible to provide accurate information, we will try to arrange something for this afternoon. If not, I suggest that the Government provide time on Tuesday for this matter.

Deputy Terence Flanagan: There are 20 files.

Deputy Noel Dempsey: That is at the end of the document.

Deputy Caoimhghín Ó Caoláin: This is unsatisfactory.

Deputy Alan Shatter: The Minister of State should telephone the HSE and find out the information.

An Ceann Comhairle: I am calling Deputy Gilmore. We have spent a considerable amount of time on this and the Minister has responded accordingly.

Deputy Eamon Gilmore: The offer of having this dealt with on Tuesday is not satisfactory. I accept entirely that there may well be matters in these reports of a sensitive and private nature and which cannot be discussed in public. However, in this instance, as I understand it, it was the Minister of State, Deputy Barry Andrews, who identified the family publicly, not anybody on the Opposition benches. I do not accept that it is not possible for the Minister of State to assemble the basic information that the House requires on this. Deputy Kenny and I have asked some basic questions, including when the children died — that is straightforward — what stage are the respective reports at, why in respect of children who died a number of years ago have the reports not been completed, when they will be completed and how they will be handled. We have also asked whether recommendations were contained in the reports and, if so, whether they have been put into the system.

What type of recommendations have been made and are some still outstanding? I do not accept that the Minister of State is not in a position to get such information from the HSE. If he is not in a position to so, the relationship between the Minister of State with responsibility for children and the HSE is extraordinary, as is the handling of the situation. This matter must be dealt with. As today is Thursday, there will be an entire weekend of public commentary, etc., on this issue. It is not in anyone's interest, including that of the Minister of State, to leave this matter without being dealt with and not addressed between now and next Tuesday.

11 o'clock

Deputy Caoimhghín Ó Caoláin: I believe the proposition from the Minister to defer addressing all the pressing matters that have been raised here this morning until next Tuesday constitutes a disservice to a process that should commence today. I acknowledge this is a process and Members do not expect immediate and full disclosure of all the facts pertaining to all these cases and reports. However, this process of address must commence without delay and it is within the Minister's gift and the Department's responsibility to come before the House today and to commence this process. Lessons must be learned and to allow the situation to drift over the course of the weekend and into next week's business is absolutely irresponsible.

It is well within the compass of the Department and the Minister of State with responsibility for children to appear before the House and the Opposition parties today to discuss the salient matters. Such a debate must focus on the care regimes that were in place and the lessons that must be learnt, which presumably must be incorporated in the recommendations and conclusions of such reports. Moreover, to set about implementing those recommendations, firm commitments should be made to this House and through this House to the people of this State. That is Members' duty and responsibility and I join with the earlier calls to insist again that this process should commence today.

Deputy Enda Kenny: I will be helpful to the Ceann Comhairle. This is quite incredible. Were the Minister of State to return to his office to contact that HSE official to request copies of the 20 aforementioned reports to be on his desk within an hour, it would be perfectly in order for him to have a synopsis of each case, without giving away sensitive details, outlining the date the child died——

Deputy Barry Andrews: This did not concern Deputy Shatter yesterday.

Deputy Joan Burton: The Minister of State named her.

Deputy Enda Kenny: The Minister of State himself named the child on radio yesterday. Deputy Shatter did not mention the child or give any indication about that child and it is wrong of the Minister of State to suggest that.

Deputy Barry Andrews: He released sensitive details. Moreover, he issued the name in the details of a parliamentary question he tabled.

Deputy Enda Kenny: My point is that if the Minister of State has an interest in this matter, he should return to his office, contact the HSE official and ask for the aforementioned 20 reports to be delivered to his office as Minister within an hour. It would be perfectly in order for him to be able to provide a synopsis, without giving away sensitive or family details. He could designate them as cases Nos. 1 to 20 and could return to the House this evening at 5 p.m. to outline this for Members, the professionals involved and for the people. It would be possible for the Minister of State to state what point has been reached in respect of the procedures that must be followed each of those 20 cases and what point has been reached regarding the publication of each report. This information is necessary and the Minister of State, who has ministerial responsibility for it, should now be accountable for his responsibility.

An Ceann Comhairle: The Minister, to respond.

Deputy Noel Dempsey: If Members opposite were listening, I stated that if full information can be obtained and provided to the House, it will be provided this evening. I am sure Members do not want incomplete information.

Deputy Enda Kenny: The reports have been completed.

Deputy Noel Dempsey: If it is possible to do so, it will be done this evening.

Deputy Charles Flanagan: The Department has had them for years.

An Ceann Comhairle: We have had a considerable ventilation of this issue. Is there anything else on the Order of Business?

Deputy Enda Kenny: At what time will this commence this evening? The Order of Business must be changed.

Deputy Noel Dempsey: After Question Time.

An Ceann Comhairle: While it will be a matter for the Whips, the Minister has indicated it will take place after Question Time.

Deputy Enda Kenny: The reports have been completed.

Deputy Alan Shatter: Years ago.

Deputy Olivia Mitchell: This will be discussed on a Thursday night.

Deputy Enda Kenny: Consequently, the full information, which Members seek, is contained in the reports. Will this be done at 5 p.m. or at 4.45 p.m.?

An Ceann Comhairle: Making such arrangements on the hoof within the Chamber is rather unsatisfactory. Surely the Whips can meet and discuss this.

Deputy Enda Kenny: As the Ceann Comhairle is aware, many arrangements are made on the hoof, both inside and outside this Chamber.

An Ceann Comhairle: I know.

Deputy Denis Naughten: Including mortgaging this country to the banks.

Deputy Enda Kenny: The House's business today is due to finish at 4.45 p.m. Will there be an hour-long discussion thereafter? Can the Whip make a suggestion?

Deputy Noel J. Coonan: All the hooves will have gone.

An Ceann Comhairle: It has been suggested that this should take place after Question Time.

Deputy Enda Kenny: After Question Time for one hour.

An Ceann Comhairle: We will move on.

Deputy Enda Kenny: May I ask another question on the Order of Business?

An Ceann Comhairle: Yes.

Deputy Enda Kenny: Given that the Minister for Transport is present, I am concerned about Deputy Ciarán Cuffe, who also is present and who has a different view on the Department of the Environment, Heritage and Local Government from the incumbent. I was going to ask the Minister for Transport, who was one of the central figures involved in the negotiations between the Fianna Fáil Party and the Green Party, whether he knows anything about this Lanigan clause in the negotiations.

An Ceann Comhairle: Does this pertain to promised business? The Deputy should not be too facetious as he has been given a lot of latitude this morning. We must move on.

Deputy Enda Kenny: Was the good Minister from County Meath called aside and told *in sotto voce* by Johnny G. that, in fact, another deal is going on at the same time, whereby Deputy Cuffe will be made Minister for the Environment in two and a half years' time?

An Ceann Comhairle: Deputy——

Deputy Enda Kenny: Perhaps it was Deputy Gogarty, who is not present. I do not know.

An Ceann Comhairle: The Deputy is anticipating the debate on the motion. Can we move on?

Deputy Enda Kenny: This is in the national interest.

An Ceann Comhairle: Deputy Kenny, please.

Deputy Enda Kenny: It pertains to the Cabinet and is about jobs for the boys and girls.

An Ceann Comhairle: Deputy Kenny, please.

Deputy Enda Kenny: I seek a straight answer from the Minister, Deputy Dempsey.

An Ceann Comhairle: Deputy Kenny, please. I call Deputy Gilmore.

Deputy Enda Kenny: Was the Minister informed about this secret Lanigan clause in respect of the Green Party element of the programme for Government?

An Ceann Comhairle: Deputy Kenny will be able to raise this point when the motion comes before the House.

(Interruptions).

Deputy Paul Kehoe: The Minister knows.

Deputy Alan Shatter: Members need to know the reason the Minister, Deputy Eamon Ryan, has a rotation exemption.

An Ceann Comhairle: I call Deputy Gilmore.

(Interruptions).

Deputy Michael Ring: Did the Minister not tell the Green Party that these jobs were like FÁS jobs, with one week on and one week off?

An Ceann Comhairle: Members are interrupting Deputy Gilmore now. Deputy Ring, please.

Deputy Michael Ring: Did the Green Party think that being in government was like being in FÁS, with one week on and one week off, or two and a half years on and two and a half years off?

An Ceann Comhairle: Deputy Gilmore is in possession. Deputy Ring, please.

Deputy Michael Ring: Government is not a FÁS scheme even if the Green Party thinks so.

Deputy Johnny Brady: The Deputy should not talk too soon.

An Ceann Comhairle: Members, please. I call Deputy Gilmore.

Deputy Charles Flanagan: Riverdance Government.

Deputy Dermot Ahern: The Deputy is rotating to the Labour Party.

Deputy Eamon Gilmore: I wish to raise a couple of issues with the Minister for Transport.

Deputy Johnny Brady: It is good to have somebody serious.

Deputy Eamon Gilmore: I thank Deputy Brady.

Deputy Michael Ring: Deputy Val Falvey.

Deputy Joan Burton: The Deputy should not be making overtures.

Deputy Alan Shatter: Has Deputy Brady yet voted in this House along the lines of what he says outside?

Deputy Eamon Gilmore: I can always rely on Deputy Brady to back me against the Minister for Transport and I thank him. Constituency is everything.

Yesterday, I raised the serious dispute that had arisen at Green Isle Foods, Naas, and I was glad to learn that a resolution of the dispute has been arrived at this morning. I wish to pay tribute to the efforts of two Members of this House who worked very hard to mediate in that dispute, namely, my colleague, Deputy Jack Wall, and Deputy Bernard Durkan.

Deputies: Hear, hear.

Deputy Eamon Gilmore: The House should express thanks to them. It was a highly sensitive situation and they worked very hard over a period to bring it to a resolution and I am glad this has happened.

What arrangements will be made regarding a debate in the House on the national pensions framework and the issues arising therefrom?

As for the composition of the Government, this is now getting to the point of ridicule. It is bad enough to have a bad and incompetent Government but the Government is subject to so much ridicule that it not even able to fill the vacant places. It is a bit like having a team on the pitch when a man must go off but——

An Ceann Comhairle: Deputy——

Deputy Eamon Gilmore: ——the manager is unable to make up his mind as to who to put on as substitute.

Deputy Seán Power: It is a bit like New Agenda.

Deputy Michael Ring: They should put on super sub Brady.

An Ceann Comhairle: Deputy Gilmore, please.

Deputy Eamon Gilmore: While we are on the subject of the Minister — for the time being — for the Environment, Heritage and Local Government——

Deputy Michael Ring: If we get one.

Deputy Eamon Gilmore: ——this week he replied to a parliamentary question in which he told Members that the Government had established a task force to wind up the electronic voting episode.

Deputy Brendan Howlin: A task force.

An Ceann Comhairle: Deputy, we are turning the Order of Business into a farce.

Deputy Eamon Gilmore: I wish to raise two matters. First, when will this task force report?

Deputy Michael Ring: Will it vote?

Deputy Eamon Gilmore: Second, it always has troubled me that the Minister, Deputy Martin Cullen, took all the blame for electronic voting as the Minister for Transport, who is taking the Order of Business, was the man who thought up the idea.

Deputy Olivia Mitchell: He bought the machines.

Deputy Eamon Gilmore: Will he now take up the opportunity to take full credit and responsibility for the electronic voting episode——

An Ceann Comhairle: Deputy, this is a matter for another occasion.

Deputy Eamon Gilmore: ——and let poor Minister Cullen off the hook at last?

An Ceann Comhairle: Question Time is a suggestion. I call Deputy Ó Caoláin.

Deputy Eamon Gilmore: I have not received a reply to my question.

Deputy Joan Burton: The Ceann Comhairle should allow the Minister to answer.

An Ceann Comhairle: Yes, the Minister to reply regarding the pensions issue.

Deputy Noel Dempsey: The national pension framework will be before the committee in the post-Easter period and can be discussed thereafter.

Deputy Eamon Gilmore: What of the task force? Is the Minister on it?

Deputy Noel Dempsey: No legislation is required.

Deputy Michael Ring: A good job.

Deputy Emmet Stagg: Leaving the poor old Minister, Deputy Cullen, on the hoof.

Deputy Caoimhghín Ó Caoláin: It is not often the opportunity is available to us, but I congratulate the Minister, Deputy Dempsey, on the finalisation of the details with his Northern counterpart, Conor Murphy, MP, MLA, of the single regime of fines and penalty points, as announced yesterday. This is another outworking of cross-Border co-operation. Is the Minister in a position to advise the House on whether legislation will be required to give effect to the measures announced yesterday and will he briefly indicate the full extent of its envisaged application?

An Ceann Comhairle: This matter might require a parliamentary question. Is any legislation necessary?

Deputy Caoimhghín Ó Caoláin: It is in the ambit of possible legislation.

Deputy Noel Dempsey: No legislation is necessary. The measures will be worked out through a memorandum of understanding.

Deputy Denis Naughten: Regarding promised legislation, the staff of Postbank in Athlone are in limbo as regards whether they will be retained within One Direct, Postbank or An Post.

An Ceann Comhairle: Are we discussing promised legislation?

Deputy Denis Naughten: This is causing the staff significant confusion and concern. Will the Minister use this opportunity to clarify the situation? When will the House see the Central Bank (consolidation) Bill?

Deputy Noel Dempsey: The Bill will be published later this year.

Deputy Denis Naughten: Can we have some clarity regarding the staff?

Deputy Róisín Shortall: The national pensions framework will be before the Committee on Social and Family Affairs in the coming weeks. Will the Minister give a commitment to allow the use of Government time for a full debate in the House, given the implications of the framework?

Deputy Noel Dempsey: There would be no problem with that. It is an important policy statement that will require much debate.

Deputy Pat Breen: Will the Government initiate talks with unions to discuss the work to rule, which is having an adverse effect on the general public? The work to rule is to be extended to local authorities next Monday, which will have a further impact on public representatives, particularly at local government level. It is already having a considerable impact on us.

An Ceann Comhairle: Is the Deputy asking a question?

Deputy Pat Breen: I am raising this matter in the context of the local government services (corporate bodies) (amendment) Bill. Perhaps the Minister would be kind enough to give me some answers. Is there to be no reply?

Deputy Noel Dempsey: It will be in the middle of this year.

Deputy Pat Breen: What about the talks?

An Ceann Comhairle: Are they not ongoing?

Deputy Seán Sherlock: At yesterday's meeting of the agriculture committee, a motion was put before it concerning the Lost at Sea scheme and a decision was taken on the Ombudsman's report. The Labour Party has circulated a motion for the House to seek that the Joint Committee on Agriculture, Fisheries and Food would discuss this matter. The House has the power to refer it to the committee in a bid to seek that a report be sent back to the House by a set date.

I am asking that the Ombudsman be afforded an opportunity to present her findings on the Lost at Sea scheme. She has not been afforded such an opportunity to date. Yesterday's vote by the committee denied her that opportunity, but we are seeking to table the matter before the wider House so as that the Oireachtas allows her an opportunity. It is vital——

An Ceann Comhairle: I have no control over the decision making of the committee.

Deputy Seán Sherlock: The motion will be tabled before the House. The issue is whether the House will take cognisance of the fact that the recommendations in the Ombudsman's report have been rejected. This is a serious matter. If the House decides that it will reject a report placed before it, then——

An Ceann Comhairle: We know, but the Labour Party has the option of Private Members' time.

Deputy Seán Sherlock: It is a serious matter. I am asking whether it could be taken——

An Ceann Comhairle: No. We have no control over the decision making of the committees.

Deputy Seán Sherlock: ——on Government time.

An Ceann Comhairle: No. The Labour Party has the option of Private Members' time.

Deputy Seán Sherlock: It is an important matter and I am asking that it be taken during Government time.

An Ceann Comhairle: Private Members' time is the best option.

Deputy Emmet Stagg: On a point of order, it is not true to state that we cannot interfere with the committees. Of course we can, as they are creatures of this House. The House can send matters to the committee for discussion at any time and give it a date by which it must report to us. We do so regularly.

Deputy Tom Sheahan: On the same issue, I must agree with Deputy Sherlock. The matter should be tabled before the House. The Ombudsman should be afforded the opportunity because——

An Ceann Comhairle: There is an option of using Private Members' time to table it before the House.

Deputy Tom Sheahan: The Ombudsman is trying for all her worth. Last week at the University of Limerick, she made a public statement criticising the Department of Agriculture, Fisheries and Food and the Minister of the day.

An Ceann Comhairle: We discussed this matter last week or the week before. We cannot have a rehash of it.

Deputy Tom Sheahan: The Government is muzzling and showing utter contempt for the Office of the Ombudsman.

An Ceann Comhairle: I must ask the Deputy to resume his seat.

Deputy Róisín Shortall: On the same issue——

Deputy Tom Sheahan: The Ombudsman wants to make statements, but she is not being afforded the opportunity.

Deputy Róisín Shortall: This is a serious matter. A report of a constitutional officer of the State made serious recommendations and expressed serious concerns. It is unacceptable that Government members of the agriculture committee voted to silence her. This is essentially what was done.

An Ceann Comhairle: Please, Deputy.

Deputy Róisín Shortall: This is not a matter for Private Members' business.

An Ceann Comhairle: The House has committee structures to consider all of these matters.

Deputy Róisín Shortall: This is a matter of concern to the House.

An Ceann Comhairle: There were statements on the issue in the House and, apparently, the committee considered it yesterday. Rehearsing it on the Order of Business is not appropriate.

Deputy Róisín Shortall: The committee considered it and decided to block any debate. It is a serious matter of concern to both sides of the House. We would be remiss in our responsibilities if we did not pursue it any further.

An Ceann Comhairle: There were statements on the matter in the House and the committee considered it yesterday. If the Labour Party wishes to pursue it in the House, there is the option of Private Members' time.

Deputy Róisín Shortall: That is completely inadequate. It is not a matter of the committee deciding anything. That its Government members decided to shut down this debate is unacceptable. We have a right to debate this issue, as serious concerns have been raised by the Ombudsman. We want a proper debate. It is in the gift of the Minister to agree——

An Ceann Comhairle: It is within the Deputy's power to raise it during Private Members' time on Tuesday and Wednesday.

Deputy Róisín Shortall: ——to refer the report to the committee. Why is the Government so afraid of a debate on the Ombudsman's report?

An Ceann Comhairle: We must move on.

Deputy Michael Creed: The Minister is offering.

Deputy Róisín Shortall: He is offering.

An Ceann Comhairle: We have spent much time on this issue and we must move on.

Deputy Róisín Shortall: We are asking that the report be referred to the committee.

An Ceann Comhairle: I ask the Deputy to resume her seat.

Deputy Róisín Shortall: Allow the Minister to respond.

Deputy Emmet Stagg: He wants to respond.

Deputy Seán Sherlock: On the same issue, what goes to the heart of this matter, which is apolitical——

Deputy Noel Dempsey: To be helpful, the Government gave——

An Ceann Comhairle: Please, Deputy Sherlock.

Deputy Seán Sherlock: The fact remains that, if any citizen of the State makes a complaint, he or she will have no confidence that the complaint will be heard——

An Ceann Comhairle: The Minister is replying.

Deputy Seán Sherlock: ——if the report is rejected.

Deputy Noel Dempsey: The Government gave time to this matter in the Dáil and the Seanad and we will not provide further time. If this is such an important issue for the Opposition, it knows what it can do, that is, put it down for Private Members' business.

Deputy Michael Creed: Circling the wagons and protecting Deputy Fahey.

Deputy Róisín Shortall: Why is the Government afraid to listen to the Ombudsman?

An Ceann Comhairle: Please, Deputy.

Deputy Róisín Shortall: It is outrageous that she is being silenced like this.

Deputy Mary Hanafin: We have discussed this already.

An Ceann Comhairle: Will Deputy Shortall resume her seat? We are moving on. We are on the Order of Business.

Deputy Róisín Shortall: It is outrageous that the Government is trying to silence the Ombudsman.

An Ceann Comhairle: If the Deputy does not resume her seat, I will suspend the sitting.

Deputy Tom Sheahan: The Government is treating the Office of the Ombudsman with contempt.

Deputy Michael Creed: Circling the wagons.

Deputy James Reilly: With one day to go, there is no prospect for the 300 jobs on offer at Dublin Airport. Given the mismanagement of the issue and the opportunities that the Minister for Transport and the Tánaiste overlooked through inaction or other excuses, the people of Dublin North and beyond will not forget. Given that the globalisation fund is also withdrawing support, how will these highly skilled workers maintain their skill sets? Will the Tánaiste make some provision for additional resources so as that workers can be retrained or allowed to retain their skill sets in order to maintain their certifications?

An Ceann Comhairle: This matter is not appropriate to the Order of Business. There are other ways in which it can be raised.

Deputy James Reilly: I am alluding to the qualifications (education and training) Bill. There is not much point in having a Bill if there is no funding to go with it and to help people to retain skills they have evolved over 30 years.

Deputy Noel Dempsey: That Bill will be published later this year.

Deputy Fergus O'Dowd: Will the Minister for Transport publish the report, which his Department has, on wrongdoing in the Foynes Harbour Authority in relation to the sale of land and the hire of a boat? If he will not publish that report, will he publish the internal report on the same matter by officials of his Department?

The Road Traffic Bill 2009 is before the House. Will the Minister reverse his decision to refuse funding to the National Roads Authority for the provision of rest areas on motorways, which are essential for safety and have the full support of the Road Safety Authority and other safety organisations?

An Ceann Comhairle: No legislation is promised on this matter.

Deputy Brendan Howlin: Has the Government considered the all-party report on the constitutional amendment on children? Is there a timeframe with regard to it, has legislation been decided upon and when will we see that legislation?

Deputy Noel Dempsey: The report has not been fully considered by the Government. The matter will be discussed in the House next week and that debate will be also taken into account.

Deputy Michael D. Higgins: I raise three matters relating to promised legislation. First, when will the mental health Bill be published. It was originally suggested that the disposal of property

[Deputy Michael D. Higgins.]

might fund significant changes in mental health services. It would be proper to have the mental health Bill before us before any irrevocable decisions are taken.

Second, the biological weapons Bill, if it were passed, would enable us to sign the UN convention. The Bill seems to be very similar to the Cluster Munitions Bill so there is no reason for delay.

Third, there seems to be considerable confusion about the Údarás na Gaeltachta Bill. The Taoiseach and the Tánaiste have answered queries on the matter. The Tánaiste suggested that the Údarás na Gaeltachta Bill, which remains on the Government legislative programme, will not now proceeded. She says reachtaíocht úr, fresh legislation, will replace it. Cén stadas atá ag reachtaíocht i leith Údarás na Gaeltachta, is é sin Bille um Údarás na Gaeltachta (Leasú)? Tá amhras ar a lán daoine go mbeidh an t-údarás ag cailliúint a lán fheimhmeanna agus gurb é an toradh a bheidh air sin ná go mbeidh na gaeltachtaí uilig thíos leis.

Deputy Noel Dempsey: We expect the heads of the mental health Bill this year. The Minister of State with responsibility for mental health made announcements about funding for that area earlier this week. The heads of the biological weapons Bill have been cleared and we expect it to be taken during the course of this year. There is no final date for the Údarás na Gaeltachta Bill. It is dependent on the draft strategy, which is before the Joint Committee on Arts, Sports, Tourism, Community, Rural and Gaeltacht Affairs. When consultations are completed we will be in a better position to give a timeframe.

Deputy Michael D. Higgins: In the consultation process an údarás na Gaeilge Bill is being considered. I have been taking part in the consultations myself. What is listed in the legislative programme is a Bille um Údarás na Gaeltachta (Leasú). People are asking if it is the Government's intention to have an údarás na Gaeilge chomh maith le hÚdarás na Gaeltachta. Has the Údarás na Gaeltachta Bill been withdrawn from the Government's legislative programme? I do not wish to misconstrue anything said by the Tánaiste or the Taoiseach but I understood the Tánaiste to say, explicitly, that the Údarás na Gaeltachta Bill was gone and that there was now to be reachtaíocht úr.

This is important for the existing functions of Údarás na Gaeltacht with regard to employment, services, cultural activities and so forth. Clarification would be useful.

Deputy Noel Dempsey: I will get clarification for Deputy Higgins. It is my understanding that the Údarás na Gaeltachta Bill must be considered in the context of the ongoing discussion of the 20 year strategy. Some measures in the Bill must be considered in the context of that strategy. That is why decisions are not finalised with regard to it. I will clarify the matter for the Deputy.

Deputy David Stanton: The Minister for Transport has a personal interest in motion No. 80 on the Order Paper of Tuesday, 23 February, which deals with Dáil reform. Three of the Ministers present today are members of the Government's Dáil reform committee, which met last May. Will the Government give time to discuss this motion, which proposes that a supplementary question be allowed on the Adjournment Debate? Will the Government make progress on Dáil reform? The Joint Committee on the Constitution will meet next week but nothing has come from Government, despite the Chief Whip's best efforts. This has become a national joke. What is the Government's position on Dáil reform and on this motion?

Deputy Noel Dempsey: I am not sure this refers to promised legislation. However, I am very much in favour of Dáil reform and was active in this area when I was Chief Whip, as were my colleagues to my left at various times. I am not in favour of piecemeal reform. I would prefer to put a full package before the House.

Deputy Róisín Shortall: We have been hearing this for 15 years.

Deputy David Stanton: When will that package be forthcoming?

Deputy Noel Dempsey: I know, from my time as a Whip, that it is not a good idea for governments to decide to reform the Dáil because they would not get co-operation from the Opposition. It takes two to tango.

Deputy Róisín Shortall: The Government has unilaterally decided not to reform the Dáil.

Deputy David Stanton: We have tangoed but we have no dancing partner. The Government is not on the dance floor. Will the Government join the Opposition in a debate on this matter? We might then make some progress.

Deputy Eamon Gilmore: I refer to the Minister's reply to the issue raised by Deputy Sherlock, which is the Government's handling of the lost at sea report.

An Ceann Comhairle: That matter can be raised in Private Members' Time

Deputy Eamon Gilmore: The Ombudsman sent a report to the Oireachtas and we have a role with regard to the Ombudsman's reports.

Deputy Michael D. Higgins: The report was placed before the Oireachtas.

Deputy Eamon Gilmore: The Ombudsman said she made a recommendation which was rejected by a Department. This is highly unusual. It happened on only one previous occasion, when the issue was resolved by an Oireachtas committee. We ask that the same procedure apply and that the matter be dealt with by the Joint Committee on Agriculture, Fisheries and Food. For some reason, the Government does not want that to be done.

The Minister for Transport suggested that the Opposition move the motion in Private Members' Time. If we do that the issue, inevitably, will be politicised and that is not in anyone's interest. I ask the Minister to reconsider my request. A motion in the name of Deputy Seán Sherlock proposes that the matter be referred to the Joint Committee on Agriculture, Fisheries and Food. I ask the Government to reconsider its position on this motion. I will raise this matter again next week. If the Government does not accede to our request the issue will become a partisan one.

An Ceann Comhairle: A reply was given to this question earlier. We may park it for the moment.

Deputy Enda Kenny: The Minister said clearly on behalf of the Government that we would not have time here. Does he object to the committee dealing with it?

An Ceann Comhairle: The committee orders its own business.

Deputy Enda Kenny: Does the Minister object to that?

Deputy Noel Dempsey: The committee orders its business and not the Government.

Deputy Enda Kenny: The Minister is speaking on behalf of the Government. Does he have any objection if the committee decides to deal with this matter in committee?

An Ceann Comhairle: It is a matter for the committee to decide.

Deputy Enda Kenny: I would like a "Yes" or "No" answer.

An Ceann Comhairle: We must move on.

Deputy Enda Kenny: Does the Minister have any objection to the committee dealing with it?

Deputy Noel Dempsey: Is Deputy Kenny finished?

Deputy Enda Kenny: I am.

Deputy Noel Dempsey: Then he should sit down.

Deputy Enda Kenny: I will. The Minister should answer the question.

An Ceann Comhairle: The committee can debate the matter itself. I call Deputy Kathleen Lynch.

Deputy Enda Kenny: The Minister said categorically that the Government would not provide time here. Does he object——

An Ceann Comhairle: Deputy Kenny has the option of Private Members' time.

Deputy Enda Kenny: That is a farce and the Ceann Comhairle knows it. All I want to know from the Minister is whether he would object if the committee decides to deal with this.

Deputy Noel Dempsey: It is not for the Government to make any decisions in regard to committees or to make its views known about that kind of thing.

Deputy Enda Kenny: The Minister cannot answer "Yes" or "No". That is where the cover up is.

Deputy Kathleen Lynch: In view of the number of special needs assistant being let go, when we will see the reintroduction of the Education for Persons with Special Educational Needs Act, which deals with education for children with special needs? It was suspended two budgets ago and as a result——

An Ceann Comhairle: Is legislation promised?

Deputy Kathleen Lynch: Is the Government promising to reintroduce that legislation?

An Ceann Comhairle: Is the Deputy inquiring about promised legislation? Is legislation promised?

Deputy Noel Dempsey: No.

Land and Conveyancing Law Reform (Review of Rent in Certain Cases) (Amendment) Bill 2010: First Stage.

Deputy Ciarán Lynch: I move:

That leave be granted to introduce a Bill entitled an Act to amend provisions of the Land and Conveyancing Law Reform Act 2009 dealing with the review of rent in certain cases; and to provide for connected matters.

An Ceann Comhairle: Is the Bill opposed?

Minister of State at the Department of the Taoiseach (Deputy Pat Carey): No.

Question put and agreed to.

An Ceann Comhairle: Since this is a Private Members' Bill, Second Stage must, under Standing Orders, be taken in Private Members' time.

Deputy Ciarán Lynch: I move: "That the Bill be taken in Private Members' time."

Question put and agreed to.

Criminal Procedure Bill 2009 [*Seanad*]: Second Stage (Resumed).

Question again proposed: "That the Bill be now read a Second Time."

Deputy Joe Carey: The Minister has not been shy or lazy in his legislative programme. One could not say we are in short supply of legislation. The constituents and citizens of Louth can be happy with their man who has created something of a whirlwind when it comes to legislation.

Having said that, one must benchmark a canon of legislation against activities on the ground. How effective is the implementation? How are things operating on the ground? We must consider how the Garda will work with all this new legislation. Have all senior experienced posts been filled following the exodus of senior management last year? Are the Garda and the Director of Public Prosecutions properly equipped to get cases to court and to enforce the legislation? The Government can introduce legislation but if there are impediments in regard to resourcing, perhaps we would be better off coming down a gear or two.

Having said that, there are some points I wish to raise in regard to the Criminal Procedure Bill and victims of crime. The victims' charter and guide to the criminal justice system 1999 committed to giving victims of crime a central place in the criminal justice system but here we are 11 years later with the Minister's legislative proposal to establish these principles. In 2008 the Minister, in response to Deputy Alan Shatter's Private Members' motion on the subject of victims' rights, spoke about a new ground-breaking Bill to be drafted and presented to the Oireachtas by spring of 2009. We now have that Bill, except that in the interim it has become in the Ministers words, "A Bill that undoubtedly breaks new ground but it does so in a way which is measured and which respects long-established and cherished legal principles". "Breaks new ground" is, as the Minister says, quite a measured phrase. "Ground-breaking" as a phrase sounds much more dynamic and forthright. There is a touch of the "Yes Prime Minister" in the Minister's use of words. One must ask the question, what happened along the way?

The Minister has not gone far enough with this legislation in regard to the treatment of victims before and after a relevant trial. He said, and I acknowledge it, that this legislation places victims of crime on a new and stronger footing within the trial process. There is a new emphasis on the importance of the victim impact statement and this is welcome.

However, the Minister has missed an opportunity to place the dignity of the victim at the centre of events during the important junctures in the criminal justice system. What happens before trial in preparation for a forthcoming ordeal and after trial when issues concerning either acquittal, sentencing or parole of the accused or convicted plays such a significant role in how the victim subsequently deals with the matter.

Crime victims will not look on this legislation as something that eases their burden or vindicates their rights. The aspects of this legislation that apply to their plight will do little to convince them that the balance in the system has tipped back in their favour. I would have preferred if the Minister had used this legislative opportunity to present a more robust enhancement of victims' rights.

There are many instances where the victim has had to deal with the impact of the crime committed against them. I recall one case from my own constituency where a criminal trial concluded in Dublin with a suspended sentence for the convicted person, subject to clear restrictions whereby the convicted persons was not to go near the victim. Both parties shared

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the train home from Dublin and on arrival at Limerick station, the convicted person proceeded to flick a cigarette butt at the victim.

The incredible nature of the event was that it occurred on the way home from the court. Due to the fact the victim still had the fortitude to report the breach of condition, the convicted person ultimately received a custodial sentence. One must ask the question, how many victims would have had the strength to follow through on a day such as this?

This type of incident illustrates my point that the victim is not afforded proper recognition and protection in Ireland. In many cases, the perpetrator of the crime believes that he or she can continue in a manner such as this because he or she has little or no respect for decisions of the court.

That we still abide by age-old and well established principles within the court does not mean we cannot offer more robust supports to victims both inside and outside of the court. One could not, in any way, describe this legislation as centred on the victim. The Minister has not moved the pendulum of the criminal justice system much back towards the victim with this legislation. The changes proposed, although welcome, are modest in nature.

The manner in which this legislation deals with retrial is one of potential difficulty. The integrity of any retrial which is, in essence, a new trial must be protected. One would expect that from the list of potential crimes which this legislation covers, that great care should be taken to avoid publicity in advance of a new trial — publicity that might influence potential jurors.

The very nature of a retrial of more high profile cases may place the Director of Public Prosecutions in the invidious position of finding it difficult to prepare a case which is not, in some way, influenced by the previous case. There is a precedent for this as per the comments of the Minister for Health and Children on the former Taoiseach, Mr. Charles Haughey, in that the higher the profile of the original trial, the more difficult it is to create correct circumstances for a new trial. I hope the Minister will tease out this issue on Committee Stage.

The Minister was specific on the issue of retrospective application and was at pains to explain his position on the matter. He appears to be acutely conscious of the separation of powers between the Oireachtas and courts. I fail to see how the general presumption in criminal law against retrospection would be undermined were this legislation to be applied in a retrospective manner.

The Minister made much of the fact that Article 15 of the Constitution and Article 7 of the European Convention on Human Rights both make clear that an act that was not an offence when committed may not later be regarded as an offence. This is not the issue at stake. Surely the point is that a retrial takes place on the basis that the original trial was tainted and the original trial is only tainted by the fact that a recognised offence has taken place.

The instruments to be used with regard to retrials once the legislation has been enacted do not undermine the separation of powers. This objective set out in the Bill has been achieved in other jurisdictions which practise common law. I remain unconvinced by the Minister's argument in this respect and ask that the issue be more comprehensively addressed on Committee Stage.

While I welcome the provisions of the Bill, I am disappointed the Minister did not go further to address how the State treats victims of crime outside of the courts. The legislation is a missed opportunity.

Deputy Ciarán Cuffe: The Criminal Procedure Bill 2009 does two things. It expands the categories and offences in which a victim impact statement can be made and changes the rules pertaining double jeopardy, namely, the rule that a person may not be tried for the same

offence twice. As a result of the proposed change, a person may be tried again when new and compelling evidence emerges or where an acquittal has been achieved through an offence against the administration of justice. An offence against the administration of justice could be corruption, witness intimidation or jury tampering.

I welcome the provision to expand the circumstances in which a victim can make a statement and the categories of persons who can make such a statement. It is important that the legislation provides that families of victims will have a statutory right to give a victim impact statement. Essentially, we have looked across the water at changes in England and Wales and, more important, decided to implement change here along the lines recommended by the balance in the criminal law review group. This is a positive development.

The legislation also introduces sensible safeguards for children and guardians to give evidence by video link. In addition, it provides that an inference cannot be drawn where a victim does not wish to give a victim impact statement.

I raise a minor but significant point regarding the definition of a family member for the purpose of a victim impact statement. It is proposed that the family member definition include "spouse" and that family member means a spouse or partner of the person, a child, grandchild, parent, grandparent, brother, sister, uncle, aunt, nephew or niece of the person, a person who is acting *in loco parentis* to the person, a dependant of the person or any other person whom the court considers to have had a close connection with the person. The definition does not include the status of civil partner as a defined family member. While the court has discretion to allow a victim impact statement from a person who has a close connection, given that the Civil Partnership Bill is moving through the House, will the Minister consider tabling an amendment to specifically define a civil partner as having a statutory right to make a victim impact statement? I will be in the hands of the Minister or Parliamentary Counsel on this issue. Given that Committee Stage of the Civil Partnership Bill is expected to be taken later this month, we should, however, make provision in anticipation of the Bill's enactment later in the year for a victim impact statement to be made by a civil partner.

The double jeopardy rule is a long held common law feature that seeks to provide certainty in law that those acquitted of a crime do not fear further prosecution. It also draws a line under the relevant offence. When altering this rule it is important, therefore, that certain safeguards inherent in the Constitution, European Convention on Human Rights and international human rights instruments are protected. I note, for example, that under Article 14.7 of the International Covenant on Civil and Political Rights relating to the right to a fair trial, retrials for the same criminal offence should not take place. The article states: "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country." This requirement must be balanced with the capacity of the Director of Public Prosecutions, in a case where new and compelling evidence has come to light following a criminal acquittal, to retry a case in the interests of the common good.

Striking a balance between the rights of the individual and the common good is an increasing tension in our criminal corpus. Under the legislation, the retrial procedure may be enacted where new and compelling evidence emerges. The term "new and compelling evidence" is defined in section 7 as evidence which was not adduced in the proceedings in respect of which the person was acquitted and which could not, with the exercise of due diligence, have been adduced during those proceedings. It is evidence which is reliable, substantial and implicates the person concerned with a high degree of probability in the commission of the relevant offence. The Director of Public Prosecutions is enabled to apply for the Court of Criminal Appeal to determine when these criteria are met.

The question is whether the four part test which must be satisfied is sufficiently robust to safeguard against the rights of an individual being trampled and balanced against the need for

[Deputy Ciarán Cuffe.]

a retrial to serve justice. Within this test there is sufficient scope to determine the answer to this question. I note that experience in other jurisdictions suggests this procedure is rarely used. We need only look across to England and Wales to see that the use of the procedure is the exception rather the rule. I hope the infrequency of its use elsewhere coupled with the four part test will ensure it is also used here infrequently.

At this point, I am satisfied that care will be taken in determining whether to apply the measure provided for in the Bill. I am pleased the definition of a "victim" for the purposes of a victim impact statement has been expanded and hope the Minister will consider widening the definition of "family member" to include a civil partner. Given that legislation on civil partnerships is on track to be passed by the House in the coming months, any failure to take into account the significant changes the Bill will introduce would create a lacuna.

Deputy Aengus Ó Snodaigh: Gabhaim buíochas leis an Ceann Comhairle as ucht an deis seo a thabhairt dom labhairt ar an mBille ríthábhachtach seo, the Criminal Procedure Bill 2009. The Bill amends the law with regard to victim impact statements and the double jeopardy rule. It addresses peculiar circumstances which have arisen in recent years, in particular, the victim impact statement which, of late, has become an accepted and welcome part of the sentencing process. This allows the victim of a serious crime to have some input into the sentencing of a person convicted of an offence against them. This written or spoken statement by a victim or their representative about the physical and emotional impact of a crime allows them to provide information to a court regarding the effect of a crime on them and their loved ones. That is obviously an aid to the court in administering an appropriate sentence. It also allows a judge to have the full facts of a case, which in the past were not available because the effects and the victim's viewpoint were not reflected in the proceedings. The new change in recent years is a welcome one and, in that regard, the changes contained in the Bill constitute a welcome addition also. The situation properly reflects and respects victims' rights, thus ensuring that their views and the impact of a crime upon them, are properly communicated at the appropriate stage of the criminal justice process.

We must always bear in mind that a victim impact statement does not interfere with the right of the accused to an unbiased trial. The victim impact statement, with appropriate regard for the rights of the accused, can be, and, to date, has been, a valuable part of the experience of the criminal justice process for a victim of crime. Often the first step towards the attainment of justice for a victim of crime is recognition of the wrong done to them and the injustice they have suffered. In that respect, the victim is not removed from the court proceedings, which up to recently featured the State versus the accused, with victims happening to be a side-show.

Being able to address the court and helping them to acknowledge and understand the suffering and long-term effects of a crime, as well as the opportunity to face an accused perpetrator, can be an important part of the rehabilitation of a victim, and of their sense of justice being done. It is also an opportunity for a victim to get across the full enormity of a crime that has been perpetrated against them. That is why, in the past, I have welcomed the introduction of victim impact statements. Unfortunately, however, this Bill does nothing more for victims. The Government has not gone far enough and is rolling out cheap and easy legislation. This Bill is not contentious and does not deal with some of the other aspects that should be addressed. It is being rolled out under the guise of a significant victims' initiative, instead of taking real action to deliver the practical supports that victims of crime require. The Minister did not even properly consult victims' organisations when he put this scheme together. The legislation could have gone further if that had been done.

As regards victim impact evidence, a court is currently only required to take into account the testimony of the direct victim. Likewise, the entitlement to provide a victim impact statement is restricted to the direct victim. There are obvious shortcomings to this approach. In cases where

the victim is incapable — due to age, disability or any other reason — of delivering an impact statement, or where the victim has been killed or incapacitated due to the crime that was committed against them, there has been no mechanism to allow some sort of victim impact statement to be made. This means that this part of the legal process is closed off to some victims.

In cases where it is not possible for a victim to make a statement, this Bill allows a member of their family to provide a statement. It also provides that a vulnerable person, such as a young child or a person with a mental disability, can have their impact statement delivered by a family member on their behalf. This is a welcome and positive step towards equality for victims in the judicial system. It would be inappropriate for a victim of crime to be denied the right to contribute fully in the judicial process due to an inability to communicate or any other impediment, particularly if this comes as a direct result of the crime in question. Some victims are too afraid to come into court and give a full account when the accused is sitting there. It is important, therefore, to recognise the need for such a mechanism in these instances. The Bill goes some way towards addressing past shortfalls.

Where any aids are available to convey a victim's sentiments accurately, they should be used. I therefore welcome the relevant sections in this Bill dealing with the provision of assistance to help victims communicate their views fully to the court. In cases where the victim feels vulnerable or for some other reason cannot be present in the court — for example, if somebody is still in hospital — the ability to provide victim impact evidence by video-link without the necessity of being in the courtroom will be valuable in ensuring that the rights, both of the victim and the accused, are satisfactorily upheld. The television link is an effective way to allow a victim, or their representative at the very least, to make a statement in secure and non-intimidating surroundings.

In cases where the victim is deceased, particularly if this is as a result of the offence committed against them, it is the family and loved ones of the victim who suffer the long-term effects of a crime. They are the ones who are left with a sense of loss and injustice, so it is only right that they should be afforded the opportunity to make an impact statement. The lives of the bereaved have been detrimentally affected. Therefore, I welcome the provisions in this Bill that require a court to take into account the effect of an offence on the family members of the deceased. Likewise, in cases where the victim is under 18 or has a mental disorder, the ability of a family member to make a victim statement on their behalf is also a welcome development.

The use of family members to provide evidence throws up some interesting questions as to who is deemed to be entitled to make a statement on behalf of a victim. The Bill defines a "family member" as follows: a spouse or partner of the person; a child, grandchild, parent, grandparent, brother, sister, uncle, aunt, nephew or niece of the person; a person who is acting in place of the parent and has legal responsibilities to the person; a dependant of the person; or any other person whom the court considers to have had a close connection with the person.

The debate on the Civil Partnerships Bill 2009 has given this House an opportunity to discuss the legitimacy of different types of relationship with regard to legal protections and rights. From listening to the debate surrounding that Bill, it is widely accepted among all parties that a consideration of the rights of same-sex and co-habitant couples must be reflected in any legislation regarding family rights. The Bill before us is no different. Many issues were raised with me by concerned constituents who are involved in relationships that were not, are not and will not be recognised under the Civil Partnerships Bill. These included non-sexual co-habitant relationships and those of carers of sick and elderly people.

12 o'clock

The Government should provide a more detailed set of guidelines to accompany the Bill before us, outlining fully how these types of relationship will be catered for, and who can be

[Deputy Aengus Ó Snodaigh.]

considered by the court to have a close connection with the person, which is the final definition of a "family member". Are the people I have mentioned in various relationships covered by that final definition? If not, we need to amend that section to afford the same rights to people who are in a relationship, but who are not family, as currently constituted in this State. This may be reflected in the Bill, but I would like clarification on the issue.

I take this opportunity to endorse the Irish Council of Civil Liberties recommendation that the legislation be amended to assign clearly responsibility for walking victims or their family through the appropriate impact statement process. This responsibility should be assigned to some part of the justice system, whether the Garda Síochána, someone from the Office of the Director of Public Prosecutions or the Courts Service or the judge's office. This would ensure that families are fully aware of what can or cannot form part of an impact statement, the effect it will have and what exactly it means. Recently, I saw some documents produced by the Courts Service aimed at young children going to court. These documents explain the courts system to them and explain what a person brought before the court can expect. This is welcome.

Recently, I dealt with people who had never had cause to deal with the justice system, either the Garda or a court, who were absolutely fearful of the legal procedure. It is important that we are aware of this when dealing with the legal system, whether victim impact statements or any other aspect of the system. Many people in society fear the system. Therefore, it is vital, particularly for victims who have already suffered, that we walk them through what happens in court. I have been a witness in a number of court cases and have found that procedure is not explained properly to victims or witnesses. They do not understand what is going on around them. Witnesses do not understand they do not have to sit through the whole court case or why they need to sit around for hours on end. This is a job of work that needs to be done. Families and people who will make impact statements in particular must be helped to understand the process fully.

The Bill also empowers the court to restrict the publication of all or part of any impact statement that is made orally. This is vitally important to safeguard against abuse of the victim impact statement facility, which is supposed to be an aid to victims and not meant to be sensationalised by the media. However, that is what has happened on some occasions. Victim impact statements are an aid to the judicial process. The need for this power was evidenced in a speech made by Mr. Justice Paul Carney during an address to the Law Society in which he was somewhat critical of his experience of the process, in particular the way in which it had been exploited by the tabloid press. The Bill should be amended to clarify that the power to restrict publication applies to both impact statements made orally and those made in writing. The restriction should only be imposed in the interest of justice or in the best interest of the victim. It should not be imposed lightly and, therefore, there may be a need to add to the explanation for these restrictions.

I would like to address the proposed changes to the double jeopardy rule. The Bill introduces certain exceptions to the rule where new evidence has come to light or where a person is convicted of an offence against the administration of justice, which offence may have resulted in their original acquittal. The principle of double jeopardy is a valuable principle that has stood the test of time. Everyone is entitled to be protected from repeat trials relating to the same offence. The relentless pursuit, harassment and abuse of innocent people by prosecuting authorities has happened on occasion in this and other jurisdictions. We cannot ignore this and must have a system that protects against it. The shameful case of Frank Shortt in Donegal is evidence of the lengths to which a corrupt Garda can go in a dogged attempt to frame an innocent person. There have been a number of other cases in this and the neighbouring jurisdiction and this should be borne in mind when we start to tamper with the double jeopardy rule.

The double jeopardy rule also incentivises investigating and prosecuting authorities to do their job properly the first time round. It incentivises prosecuting authorities to investigate a crime thoroughly instead of rushing to court with a case which is not fully thought out because of the possibility of catching the criminal later if the case is lost. The offences for which retrial after acquittal is available should be very limited and should only include serious cases such as murder and other offences involving serious violence, including rape. The "new evidence" required to trigger a retrial post acquittal should be limited to the result of forensic tests — new tests — that were unavailable at the time of the initial trial. We now have such tests, such as new DNA tests for evidence that were not available ten or 20 years ago. We should also allow "new witness" evidence that was not available for some reason. For example, a witness could end up in a coma for some years. If the witness than came out of that coma, he or she could provide new evidence, or perhaps somebody who had left the jurisdiction returned or became available to provide evidence. In such cases we could consider whether the evidence that could be provided was substantially different from the original evidence.

As with so many justice legislation proposals emanating from the Government, I am not sure a persuasive case has been made for the necessity of the double jeopardy change or the extent of it or the need to change a system that has worked well. I do not oppose the change, but I would like to tease the issue out further on Committee Stage. In how many cases has new and compelling evidence come to light that would result in conviction? Can the Minister bring forward substantial evidence for the necessity of this change?

Overall, I welcome the Bill. However, we need to be careful with regard to any proposal that undermines the principle of trial by jury. The Bill must be seen in the context of the Criminal Justice (Amendment) Act 2009 which came before it and which purported to deal with gangland crime. Both pieces of legislation can or have eroded the right to trial by jury by removing juries from the outset in certain circumstances and by allowing a judge only court to overrule a jury decision, and possibly order a retrial without a jury. This is permissible under the new 2009 Act. Jury trial is a cornerstone of any democratic criminal justice system and Sinn Féin is opposed to any dilution of this right. I will return to this issue on Committee Stage.

I welcome the Bill, in particular the changes with regard to widening the facility for victim impact statements and the safeguards attached. I urge the Government to use the legislation as an opportunity to introduce a statutory requirement for all criminal justice organisations that interact with victims to reflect the internationally recognised set of victims' rights within their codes of practice, to legislate to ensure appropriate information for victims at various stages of the criminal justice procedure and to ensure availability of a comprehensive spectrum of health and social services and other relevant assistance for victims.

Deputy Damien English: This Bill and its provisions are, in large part, welcome. However, it must be highlighted that in 2008 Deputies Shatter and Flanagan published their Victims' Rights Bill to give victims of crime comprehensive statutory rights under Irish law; unfortunately, it did not receive the support of Government at that time. The current Bill is a useful first step in providing recognition for victims but it does not fully reflect the comprehensive nature of Fine Gael's proposals, which is disappointing.

I welcome in particular the proposed changes to the law on victim impact statements and the extension of the category of persons entitled to deliver same. As stated by Ms Justice Macken, such statements can be of assistance to the sentencing judge in determining the appropriate sentence to be imposed and it affords the family or friends of the deceased victim an opportunity to express their loss. However, we must be careful about tilting the scales of justice too far in favour of the victim. It is well established in Irish constitutional law that in the event of a conflict between the public right to have crimes effectively prosecuted and the accused's

[Deputy Damien English.]

right to trial in due process, the latter must always take precedent. The same must also apply in any conflict between the rights of the accused and the rights or interests of victims.

Care must be taken to ensure that the section is applied for its proper purpose. The victim impact statement it is not intended as an opportunity for adducing further evidence or suggesting that the accused is guilty of a more serious offence than that of which he or she has been convicted. This point was made clearly by the Court of Criminal Appeal in Director of Public Prosecutions *v*. O'Donoghue, a case in which we all took a great interest and from which we learned a lot. In this case the judge stated that when a family member is giving a victim impact statement, a copy of the statement must be provided to the sentencing judge and the legal representative of the accused. The court stated that this should be done before the reading so it can be checked for anything untoward. The judge further highlighted that the person making the statement should be warned by the sentencing judge that if in the course of making the statement he or she departs in any material way from the content as submitted, he or she may be liable to be found in contempt of court.

I recommend that these guidelines presented in the O'Donoghue case be enacted in this legislation. It is important that people are aware that the purpose of the victim impact statement is not to place unfounded or unproven allegations in the public domain. As stated by the Irish Council for Civil Liberties, the protection of victims' rights does not and should not require a corresponding diminution of the rights of the accused.

I welcome section 5 of the Bill, which allows children, persons with a metal disorder or any other person with the leave of the court to give victim impact statements by means of a live television link. I also welcome the provision in section 5A(1)(B) that neither the judge nor counsel is to wear a wig or gown when a child or person with a mental disorder is giving his or her victim impact statement by video link. This was a recommendation of the Children's Rights Alliance and it allows for a more child-friendly environment. It is important that we listen to the views of the Children's Rights Alliance, because it knows best. Sometimes the justice system, and certainly the courts system, can be off-putting to people who are not confident and are perhaps not of an age to be able to understand all the proceedings.

The court may direct that where the victim impact statement is to be given by a child or person with a mental disorder via a live television link, any question to be put to the victim be put through an intermediary. This will be less traumatic for the child and is thus to be welcomed. The recommendations of the second report of the Joint Committee on the Constitutional Amendment on Children proposed that all lawyers involved in the prosecution or defence of cases of child sexual abuse or sexual offences against children and all judges hearing such cases should be required to undergo a specialist program of training to enable them to perform their functions in a manner that is least traumatic for child complainants and witnesses. It further recommends the development of a child witness support service.

We should listen to that committee, which has done much work. There is no point in not considering its views. If the Government is to fully protect and vindicate the rights of children in Ireland, such proposals need to be implemented. A referendum needs to be called as a matter of priority to allow for the rewording of Article 42 of the Constitution to allow our children to be treated as individual citizens with stand-alone rights. The rights of children in Ireland must be given paramount importance. I call on the Cabinet to support the calling of a referendum as matter of urgency.

The Government further needs to examine whether appropriate changes to the Constitution need to be made to allow for the collection and exchange by relevant authorities of soft information with regard to employees and volunteers whose work entails substantial unsupervised

access to children and vulnerable adults. There have been numerous calls for the expansion of our vetting system to include soft information in order to create a comprehensive system. Indeed, the Children's Rights Alliance supports the introduction of a comprehensive child protection system that incorporates the use of soft information within its vetting process.

We as a nation have failed our children in the past. This Bill will help to alleviate some of the pain a child endures during a court hearing. This is welcomed, but we need to decrease the number of children who become victims in the first place. Instead of concentrating on drafting measures to ensure the courtroom process is child-friendly, we need to concentrate on measures to ensure the number of child victims is minimised.

In my time on the Joint Committee on Education and Science a number of years ago, we discussed the issue of soft information and it was generally felt this was something we should consider. It is a delicate matter and may be seen as encroaching on people's rights, but there is justification in many cases for the passing of information among the authorities and the various officials in the community. We encouraged the various groups and stakeholders to meet on a regular basis; that would be an ideal opportunity for soft information to pass from hand to hand.

A person came to me recently with informal information about an act committed by another person who is now working with young people. There have been no legal proceedings on the basis of the alleged act because it was supposed to have taken place 19 or 20 years ago. This person is in a difficult position and does not know how to get that information into the right hands. The person cannot instigate a criminal investigation because the act was not perpetrated on him or her. Thus, there is no place to go with the information. Yet the person in question can continue working with children. There are many more cases such as this. The Garda does an excellent job in keeping an eye on certain people about whom it has suspicions, even without having received direct information. It does a good job in terms of profiling and keeping an eye on things. This is workable and useful in small towns and villages but it is quite difficult in large cities.

Part 3 of the Bill sets limitations on the rules on double jeopardy. The proposals in the Bill mirror quite closely the laws enacted in the UK. In that jurisdiction, a law allowing for retrial where there has been a conviction for interference with the administration of justice in the relevant case was enacted in 1996. In 2003, the UK enacted the Criminal Justice Act, which allows for retrial where new and compelling evidence comes to light. Hence we are, as usual, falling behind, although I acknowledge the Minister's efforts to introduce legislation with reasonable urgency.

I am hopeful that these measures will allow for the arrest of more gangland criminals. Every other week we hear of shootings taking place on the streets and in our neighbourhoods. We have been losing the fight against such crimes for some considerable time. Why are we only now debating the introduction of such amendments to our laws? Is it because we have a relatively new Minister with clear aims and intentions in this area? We have had other Ministers — particularly former Deputy Michael McDowell — who promised to deal with crime. Mr. McDowell said that gangland crime was "the sting of a dying wasp". He had all the answers. Yet, with many of the Bills he brought through the House, he would not listen to any ideas or proposed changes. He drove many Bills through the House which, he claimed, would solve the problem. That former Minister has a long record of legislation to his name but not a long record of results.

I hope this Minister will not fall into the same trap. I listened to him recently giving a rundown of all the work he has been doing, but he will be judged on the results on the streets. Gangland crime is something we really need to tackle and this Bill is a step in the right direc-

[Deputy Damien English.]

tion. People are afraid out there. We are all afraid that the gangland crimes familiar in certain areas will spread to more towns and villages, because we have suspicions that many of the members of criminal gangs are moving to new towns. We have a duty to try to nip this in the bud.

Not a week goes by when we do not hear about some kind of shooting. Apart from enacting new laws, in order to tackle gangland crime, we must match the resources of the criminals. Some of these people make more money in a weekend from drugs than we spend in a whole year tackling the drugs problem. There is a serious gap between their spending power and our spending power. They end up with the best technology and equipment and the best cars in town. Our gardaí will always be trailing behind in terms of equipment due to difficulties with resources. I accept that, but we must strive to give the Garda what it needs to take on these gangs. It is not just new legislation as there should be new equipment and more resources put in place. I accept that money has been put into certain areas in this country but that is not enough. Serious amounts of money are being made through gangland criminal activity and we will be way behind unless we can try to match it somehow with resources.

The prohibition encapsulated within the double jeopardy principle has a strong history going back in some accounts to biblical and classical years. St. Jerome, writing towards the end of the fourth century AD, is usually credited with the statement that "even God himself does not punish twice" for the same offence. In more recent times a number of justifications have routinely been offered for the prohibition of repeated prosecutions.

These justifications include the fact that a retrial may result in a further financial burden. Whereas the burden of legal costs is eliminated where legal aid is available, an acquitted person may suffer other financial burdens such as the disruption of normal employment or business. A retrial will inevitably involve delay in the final determination of the charge. It might be anticipated that delays could have a severe psychological impact on many acquitted persons, particularly if there is a possibility of the acquittal being quashed and a retrial ordered. Furthermore, the State with all its resources should not be permitted to pursue a person with criminal charges indefinitely, as this may lead to an innocent person being convicted.

We must tread carefully. I understand that the purpose is to nail certain people and gain good evidence. In the process, innocent people could be unlucky enough to face a retrial and we have a duty to leave as little disruption to people's lives as possible. We have to assume people are innocent until proven guilty.

We have a responsibility to offset some of the justifications for a strict application of the double jeopardy rule. To counteract these justifications, it is prudent that the State should consider free legal aid in all retrials under Part 3 of this Bill, irrespective of the financial resources of the defendant. I would like to hear the Minister's opinion on this and I am not saying that I am right, although there might be a case for considering the matter.

Delay in such retrials should be kept to a minimum; this will reduce the negative psychological impact on the defendant. It is also submitted that the defendant should have the option of acquiring the services of a psychologist at the expense of the State during the interim of being told that he or she will be retried and the retrial itself.

This is important for several reasons for a person who thought he or she was free but who will have to face trial again. It is important we ensure the system is efficient. By imposing restrictions, the process might be achieved more quickly and the issue could be dealt with quickly. We all know that it is more beneficial to punish crime quickly rather than leave the process drag on. If a person is young, in particular, an extended period between the crime and

punishment can be detrimental or reduce the effect. The more quickly justice is applied, the better, and if retrials result in massive delays, they should take priority where possible.

Although protection against double jeopardy is clearly identifiable in Irish case law, certain limitations already exist. For example, in Considine *v.* Shannon regional Fisheries Board the Supreme Court refused to invalidate a statutory provision which permitted an appeal to the Circuit Court against an acquittal on the merits or otherwise of the District Court. The court seemed clearly of the view that whereas protection against double jeopardy was well established in Irish law, statutory exceptions were permissible provided they were expressed in clear terms. It can be argued that prosecution appeals against lenient sentences could also be regarded as double jeopardy.

As stated, the changes in law introduced by Part 3 are welcomed but one must be careful that the changes in law relating to double jeopardy are not used as measures to negate our responsibility to have a fully fledged and equipped Garda service. Due to budget cuts and reform in 2009, as well as fears that the tax system would change, many experienced gardaí retired, taking knowledge and expertise that cannot be replaced overnight. At this point how close are we to having 15,000 gardaí, as was promised under the programme for Government? An accused person's right to trial in due process cannot be undermined due the Government's failure to provide sufficient resources and funding.

I have a problem with the number of gardaí doing what I would regard as civilian duties. There have been numerous commitments and promises made over the years to try to put as many people on the beat carrying out real Garda work, as long as they could be replaced by civilians doing some of the paperwork. It is important that such work gets done but do we really need fully trained gardaí doing it?

We have failed in this respect and the problem must be addressed, particularly as there are so many people who are unemployed and looking for work. We should find some way to slot people into the system who might not be trained gardaí but who may take on some of the more mundane duties. This would free Garda time and resources so real problems can be tackled.

The Minister might be able to inform me in his reply or at a later date on how we are progressing in bringing people into the Garda force who may not have gone through the system of being trained as a garda. People may have a degree in criminology, for example, or be an expert in forensics. It still seems difficult, if not impossible for those people to be employed without becoming a garda first. We discussed a Bill in the past which made allowances for this to change, and it would have allowed people with expertise to be given a job. Is that happening?

People have come to see me with different qualifications who would like to be part of the Garda force but could not afford to train as a garda. Others felt they should not have to start at the bottom of the ladder when their qualifications could be of great use in activities such as collecting or analysing evidence. There is much talent in the country that could be used by the Garda if the system changed. I stand to be corrected on this as there does not seem to be much progress in the area. It may not be appropriate to this Bill but the Minister could give a statement on it at some stage.

Part 3 allows for reactive measures to be taken on witness intimidation. This is welcome but it is not sufficient. In 2007, Fine Gael proposed the establishment of a special witness protection unit, a witness protection hotline and draft guidelines for the Garda Síochána on how to use the programme. I also note that the Labour Party called for the scheme to be put on a statutory footing but the Government has paid no heed to our calls.

This is very disappointing, especially when one considers the criticisms of our present witness protection scheme. Mr. Justice McCracken has stated:

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> Undoubtedly the witness protection programme was badly thought out and almost developed a life of its own. One of the most worrying features is that there never seems to have actually been a programme. Instead the system remained "fluid" with no clear guidelines with witnesses increasing their demands under the programme when their time to give evidence arrived.

I listened recently to a programme I would not normally listen to. On it a person was discussing life as a protected witness, or rather the lack of life. I accept Ireland is a very small country and it is hard to tackle the issue but the person has 24-hour Garda protection and cover. It is a serious invasion of privacy and intrusion into one's life. As we have seen in the past, the programme does not always guarantee safety. The Bill attempts to address the issue but a proper witness protection is required.

One could argue that there is an absence of comprehensive data on both the extent or circumstances of witness intimidation in Ireland but according to Mr. Michael Murray, the Limerick State prosecutor, one in ten criminal cases cannot be successfully prosecuted in Limerick due to intimidation. This is significant, especially when anecdotal evidence shows that the proportion is probably greater.

Studies in Britain by the Home Office have considered levels of witness intimidation and according to the analysis in the 1998 British crime survey, the level is much higher than Mr. Murray's indication. If we are to accept the relevance of the analysis of the 1998 British crime survey to this jurisdiction, then we are accepting that up to one in four crimes is not reported due to intimidation and that almost one in ten reported result in overt intimidation.

Action needs to be taken to counteract acts of interference with the administration of justice. Again, this Bill allows for reactive actions to be taken to findings of interference but we need to be proactive and reliance on the provisions in this Bill relating to double jeopardy need to be minimal. The introduction of a statutory witness protection scheme is in line with the recommendations of the US Justice Department, which has stated that a formal structure is important in order to achieve the benefits of inter-agency co-operation and efficient use of resources.

The National Institute of Justice provides five reasons for a highly structured and formal approach to witness protection but I will not go into them now because my time is nearly up. I accept we live in a very small country and it is hard to operate a proper witness protection scheme but we must try to make some serious advances on the issue.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I thank the Deputies who have spoken on this debate and thank them for their overall support of the Bill. Deputies Flanagan, Rabbitte, Ó Snodaigh, Cuffe and others all gave it a broad welcome. The broad agreement is indicative of the general recognition of the need to address the concerns of victims of crime and to assist them in dealing with their experiences. There was a difference between Deputy Flanagan and myself on how to achieve those ends. Fine Gael promoted a Bill which took on board the practice of other jurisdictions, but I feel it is far better to deal with this on a non-statutory basis.

I have established a victims of crime office in my Department and, along with the commission for the support of victims of crime, it is providing the support groups with substantial assistance, financial and otherwise. I do not accept Deputy Ó Snodaigh's comment that I did not liaise with victims' groups. I spent a day with a victims' group in the Croke Park Hotel before I brought forward these proposals. They expressed great satisfaction with the way in which I and my officials dealt with the situation and they subsequently gave a broad welcome to the pro-

visions of this Bill and the setting up of the victims of crime office. This is a dedicated office with civil servants who assist victims and victims' groups.

The Bill gives strong expression to the victim's rights to contribute at the sentencing stage in a trial. It is a matter of considerable satisfaction that we are recognising that persons other than the direct victim are hurt and damaged by crime. The Bill makes generous provision for the rights of the wider family to participate in the victim impact process.

One of the Bill's other main achievements is to ensure those whose acquittals are undeserved cannot expect to enjoy immunity from further prosecution. Deputy Ó Snodaigh is right that we need to be careful. Any change to an existing acquittal will only be based on court authorisation. Making retrials possible will boost confidence and respect for our legal processes, and that must be welcomed. It is only the latest of a number of initiatives in recent years that ensures our laws and procedures are adapted to enable the prosecution authorities deal with current circumstances. The Criminal Justice (Surveillance) Act 2009 is another example where the thought processes have been changed on how to deal with surveillance.

The re-trial possibilities presented by this Bill will be of particular interest and consolation to victims and their families. There can be no greater scandal for a victim than to see his or her assailant enjoying the fruits of an undeserved acquittal. This Bill offers a real possibility of addressing this unacceptable situation.

Deputy Flanagan and his colleagues argue that the EU framework decision can have effect only if enshrined in legislation. This is at variance with the facts. Much of the support for victims is delivered through voluntary effort. Over the years, many of the support groups have developed remarkable expertise in their particular area of interest. This expertise and the outstanding commitment of the personnel involved ensures a service that is responsive to victims, that can be accessed by them quickly and in the knowledge that they will be treated sympathetically. My role is to support and encourage those dedicated people who run the support groups. I am pleased to say that my Department's funding has been substantial in recent years, with over €6 million granted between 2005 and 2010, rising from €685,000 in 2005 to over €1.25 million in 2009. That level is likely to be maintained this year.

We have an effective victim support system. It would be unwise to impose a statutory framework when there is no evidence to suggest that such a framework would improve on current arrangements. Therefore, I will continue to address victim's concerns through a combination of legislative changes, as well as support for voluntary effort.

The victims' charter is central to the support systems for victims. I can tell the House that work on a revised charter is progressing very well. The charter is much more than just a list of services provided to victims of crime by a wide range of criminal justice agencies, even though that of itself is very helpful to victims. Its real importance lies in the fact that it represents firm, public commitments to put the care and support for victims at the centre of the services those agencies provide. I hope to be in a position to publish the new charter in the not too distant future.

Deputy Rabbitte mentioned the recent document by the Irish Council for Civil Liberties that deals with the Bill. I have examined the document and I am pleased to note council's general welcome for the proposals on victim impact evidence. However, I was disappointed to see the comment that there should have been more consultation with the victim support groups. Clearly, the ICCL is unaware of the extensive consultation process undertaken during late 2006 and early 2007 by the Balance in the Criminal Law Review Group, whose report and recommendations provide a basis for many of the Bill's proposals. Neither is the ICCL aware that I organised and hosted a day-long meeting with support groups from all over the country in September 2008. The groups welcomed the fact that the consultation took place and most

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of them were complimentary about the way in which we addressed the situation, both from an administrative point of view and a legislative point of view. The consultations continued during 2009. The commission for the support of victims of crime organised two meetings of the consultative forum. I attended these meetings and the developments relating to the Bill were outlined and discussed. There has been extensive and structured consultation and I cannot therefore accept what the ICCL claims on that point.

The ICCL states that the case has not been made for a change to re-trial proposals. Its members obviously have not read the review group report. The group set out the case clearly. Does the ICCL think we should wait until a case arises where the procedure could be employed, only to find we are unable to do so because we failed to provide a legal basis in good time? Delay, as advocated by the ICCL, would only deny victims the benefit of the changes I am now proposing.

The ICCL suggests the solution to undeserved acquittals lies in revamping the witness support arrangements, but it is missing the point. To suggest that new evidence will arise only when a previously intimidated witness comes forward is not in line with the facts. New evidence is more likely to result from confessions or from new forensic evidence. Even in the case of tainted acquittals, the perjury or whatever the taint happens to be can easily be the result of a misguided witness hoping to assist the defendant, not as a result of intimidation. I had hoped for a well argued, soundly based commentary from the ICCL. However, I am afraid the analysis offered in this document has added little to the debate.

Deputy English raised the issue of Garda numbers. By the end of 2009, Garda numbers reached 14,550, with 232 students in training. The Deputy also spoke about the witness protection programme. Putting this on a statutory basis would not give the Garda Síochána the flexibility that is required, and this is a view that has been expressed many times by Garda management. The Garda management also make the point that because we have a closely knit community in Ireland, there is a severe reluctance on the part of people who have been the victims of serious crime and who have been involved in serious cases to go into the witness protection system. I have tried to encourage a number of people involved in such cases to go into the system, but they have shown a great reluctance to do so, even though they are in severe danger. They do not want to give up family, friends and locality. They do not want to start a new life in another country.

The desire to opt out of participating in this way does not appear to be the case in many other countries, particularly in the US. This is probably due to two factors, namely, that the populations in these countries are much larger and that communities there are much less tightly knit than is the case in Ireland. The operation of the witness protection programme is supported by complementary legislative provision. For example, section 40 of the Criminal Justice Act 1999 makes it an offence for any person, without lawful authority, to try to identify the whereabouts or new identity of a witness who may be relocated under the programme.

A number of Deputies referred to the definitions of "family member" and "civil partner" in respect of victim impact statements. As the House is aware, it is hoped that Committee Stage of the Civil Partnership Bill will be taken at the end of this month. I intend to amend that legislation in order to provide specific reference to the ability of a civil partner to make a victim impact statement. The position is already catered for in this Bill. The new section 5(6) to be inserted into the 1993 Act states that a family members is:

(*a*) a spouse or partner of the person,

(*b*) a child, grandchild, parent, grandparent, brother, sister, uncle, aunt, nephew or niece of the person,

(*c*) a person who is acting in *loco parentis* to the person,

(*d*) a dependant of the person, or

(*e*) any other person whom the court considers to have had a close connection with the person;

When the Bill is passed, it will be possible for the court to determine that a civil partner is capable of being included under this section. As already stated, however, the position will be made more explicit when the Civil Partnership Bill is passed.

I thank Members for the general compliments they uttered in respect of the Bill. What we are doing represents a significant step and it is not one that is taken lightly in any criminal justice system. The Bill will facilitate the reopening of trials. As already stated, when I entered office one of the reports I read from cover to cover was that of the balance in the criminal law review group. I thank the members of that review group, particularly its chairperson, Mr. Gerard Hogan S.C., for their report, which provided us with a good grounding to make, like other jurisdictions, progress in this area. I expect that, in the context of retrials, the legislation will be used sparingly and only with judicial authorisation.

There are circumstances where a person acquitted of murder can walk outside the court and confess to the crime. Under existing legislation, he or she could not be prosecuted. That is both grossly unfair and wrong. The new Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010, the Second Stage debate on which is due to commence in a few moments, will dramatically alter the landscape as it relates to investigations. Given that we are learning from experience and taking on best international practice in respect of DNA and forensics, the criminal justice system should have the wherewithal — if new DNA evidence comes to light and where an acquittal was undeserved — in limited circumstances to change an acquittal in fairness to everyone concerned. I again thank Members for their compliments in respect of the Bill.

Question put and agreed to.

An Leas-Cheann Comhairle: I understand it is proposed to refer the Bill to the Select Committee on Justice, Equality, Defence and Women's Rights. Does the Minister wish to move the motion of referral now?

Criminal Procedure Bill 2009 [*Seanad*]: Referral to Select Committee.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I move:

That the Bill be referred to the Select Committee on Justice, Equality, Defence and Women's Rights, in accordance with Standing Order 122(1) and paragraph 1(*a*)(i) of the Orders of Reference of that committee.

Question put and agreed to.

Business of Dáil.

Minister of State at the Department of the Taoiseach (Deputy Pat Carey): I move:

That notwithstanding anything in Standing Orders or the order of the Dáil of this day, the Dáil shall sit later than 4.45 p.m. and business shall be interrupted on the conclusion of No.

[Deputy Pat Carey.]

24*a*, statements on the death of children in the care of the State since the year 2000, which shall be taken at 4.45 p.m. and which shall, if not previously concluded, be brought to a conclusion at 5.45 p.m. and the following arrangements shall apply: (i) the statements shall be confined to a Minister or Minister of State and the main spokespersons for Fine Gael, the Labour Party and Sinn Féin, who shall be called upon in that order and who may share their time, which shall not exceed ten minutes in each case; and (ii) a Minister or Minister of State shall take questions for a period not exceeding 15 minutes and (iii) a Minister or Minister of State shall be called upon to make a statement in reply which shall not exceed five minutes.

Question put and agreed to.

Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010: Order for Second Stage.

Bill entitled an Act to amend the law to authorise the taking of bodily samples from persons suspected of certain criminal offences for forensic testing; to provide for the taking of certain bodily samples from persons who volunteer to have such samples taken from them for the purpose of the investigation of offences or incidents that may have involved the commission of offences; to provide for the establishment and operation by Eolaíocht Fhóiréinseach Éireann of the Department of Justice, Equality and Law Reform of a DNA Database System; to provide for the taking of certain bodily samples from persons suspected or convicted of certain criminal offences for the purpose of generating DNA profiles in respect of those persons to be entered in the investigation division of the DNA Database System; to provide for the taking of bodily samples from certain persons for elimination purposes and the entry of their DNA profiles in the DNA Database System; to provide for the taking of certain bodily samples from persons, or samples from things, for the purpose of generating DNA profiles in respect of those persons or missing persons to be entered in the identification division of the DNA Database System; to provide for the purposes of that System; to provide, in certain circumstances, for the destruction of samples taken under this Act and the destruction, or removal from the DNA Database System, of any DNA profiles generated from those samples; to repeal the Criminal Justice (Forensic Evidence) Act 1990; to give effect, in part, to Council Decision 2008/615/JHA of 23 June 2008 O.J. No. L210, 6.8.2008, p.1.; to amend the Criminal Justice (Mutual Assistance) Act 2008; to amend the criminal law relating to the taking of fingerprints and palm prints from certain persons; and to provide for related matters.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I move: "That Second Stage be taken now."

Question put and agreed to.

Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010: Second Stage.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I welcome the opportunity to present the Criminal Justice (Forensic Evidence and DMA Database System) Bill to the House. As the title suggests, the Bill has two main aims, namely, to update our laws on the taking of samples from suspects for use in evidence and to upgrade our criminal intelligence capacity. This latter aim will be achieved through the establishment of a DMA database system. I will endeavour to address all the major aspects of the Bill, particularly the provisions relating to the taking, use and destruction of samples. I will also deal with the structure of the database, oversight arrangements and international co-operation in this area.

Without doubt, the establishment of a DNA database is a major innovation. It will ensure that the Garda Síochána will be able to take full advantage of DNA technology in the detection of crime. By helping to identify previously unsuspected persons as possible perpetrators and eliminating innocent persons quickly, it will be invaluable to the Garda in focusing its investigations and in using its resources efficiently. It will also have the potential to play a major role in finding missing persons and in identifying unknown persons.

In providing such a powerful resource I am conscious of the importance of limiting its impact on individual freedoms. I am particularly conscious that biological samples contain a person's genetic code. With this in mind, I ensured that close attention was paid to finding the right balance between the public interest in the detection of crime and securing justice for victims, on one hand, and the rights to bodily integrity and privacy, on the other.

The Bill has 12 parts and two schedules. Part 1 deals with preliminary and general issues, many of which are standard provisions. However, I wish to highlight sections 2 and 3. These provide definitions and interpretations that are critical to understanding the overall framework. Section 4 provides the basis for the transmission of samples or DNA profiles outside the State in response to requests for mutual assistance and will ensure that we can meet our international obligations in this regard. Sections 6 and 7 deal with the Criminal Justice (Forensic Evidence) Act 1990, providing for its repeal and for the necessary transitional arrangements, to protect, for example, proceedings under way.

It will be clear from a quick perusal of the Bill, particularly Parts 2 to 7, inclusive, that much of it is concerned with powers to take samples from different categories of persons for different purposes. Before outlining these powers, I wish to make a few general remarks with regard to sampling.

It is the purpose for which a sample is required that determines the type of sample that may be taken. For example, where a sample is required from a person solely for the purposes of the database, it will be either a mouth swab or plucked hairs. These are the least intrusive and do not require medical input. Where samples are required from a suspect for the purposes of a particular investigation, the type of sample will be determined by the nature of the offence concerned, the circumstances of its commission and the evidence lifted from the crime scene. For example, swabs from the skin of a suspect may be required to determine whether the suspect had contact with a particular substance or a victim. The Bill recognises this by permitting a broad range of what are termed intimate and non-intimate samples to be taken for forensic testing in connection with a particular investigation. The term "forensic testing" is broadly defined. It includes the generation of DNA profiles but is not limited to it. I highlight these points to emphasise that the scope of the Bill goes beyond the taking of samples capable of being used for DNA analysis.

Before I deal in detail with the powers in Parts 2 to 7 to take samples, I will outline the arrangements for the database. Responsibility for its establishment and operation is allocated to Forensic Science Ireland, or EFE as it will be called. This will be the new name of the Forensic Science Laboratory as of 1 July. This name change is intended to better reflect its remit. The laboratory has a distinguished record in providing independent expertise in the forensics field and it is well placed to take on the role of custodian of the database.

The purposes of the database are stipulated and limited by section 57, which provides that the database may be used for only two purposes: the investigation of criminal offences; and the finding or identification of missing persons and the identification of unknown persons. Reflecting these distinct purposes, the database is divided into an investigation division and an identification division. The investigation division will comprise five indexes of DNA profiles: the crime scene index will contain crimes scene profiles including historic crime scene profiles;

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the reference index will contain profiles relating to suspects and offenders; and the elimination indexes, of which there are three, will contain the profiles of personnel, including Garda and EFE personnel whose duties put them at risk of inadvertently contaminating crime scenes. The identification division will comprise the missing and unknown persons index. It is the results of the searching within and between these indexes that will be of invaluable assistance to the Garda. I would emphasise that the searches are limited to those permitted by section 65. These limitations ensure transparency in the operation of the database and that DNA profiles are used only for the purpose for which the related sample was taken.

To return to the powers to take samples, it is important to put on the record that, with effect from the commencement date, samples may be taken from most persons detained under the statutory powers listed in section 9 and from persons who are, at that time, still subject to a sentence for an offence to which those detention powers apply. These categories will provide the core material for the reference index and I will elaborate on these aspects as we go through the provisions.

Part 2 focuses on suspects in Garda custody. An important point to note is that section 26 ensures that on commencement the common law system which operates in parallel with the statutory regime and which permits the Garda to take samples from suspects on a consensual basis will be terminated. In view of the expansion of the Garda powers to take samples from suspects I believe that a single statutory regime is preferable.

I must stress that not all suspects will be subject to the Garda powers to take samples under sections 11,12 and 13. The powers apply only to those who have been detained under one of the existing powers listed in section 9. Subject to a limited exception, the effect is that only those suspects detained in connection with serious offences, by which I mean offences attracting a maximum sentence of imprisonment of five years or more, may be required to provide a sample. This high threshold ensures that suspects arrested in connection with, for example, minor public order offences will not be subject to these sampling powers.

It is important to recall that although the Bill provides that samples may be taken for various purposes, section 11 provides for the taking of samples from suspects solely for the purposes of the database. Samples taken under section 11 will be instrumental in populating the database and ensuring its effectiveness as an intelligence source. The consent of the suspect is not required. I draw the attention of Deputies to a number of limitations on the power created by section 11. They are prompted by the need to treat children and "protected persons" with great care.

As regards child suspects, it is already the law that they may be detained where this is necessary for the proper investigation of an offence. Generally the detention powers may not be exercised in respect of children under 12 years. This Bill does not make any change in that regard but it does exclude child suspects under 14 years from the scope of section 11. I have selected 14 years as the lower age threshold for the taking of samples for the purposes of the database as to exclude all child suspects would, I believe, result in a real loss of intelligence. Section 11(6) commits me to reviewing this on the basis of experience.

I have also excluded "protected persons" from the scope of section 11. For the purposes of this Bill such vulnerable persons are defined as adults or children who, by reason of a mental or physical disability lack the capacity to understand the general nature and effect of the taking of a sample, or lack the capacity to communicate by any means whether they consent to the taking of a sample. It will be a matter for the member in charge who already has statutory responsibility for the treatment of persons in custody to determine whether a person is a pro-

tected person. Provision is made for medical assessments if required. Being under the influence of an intoxicant is not sufficient.

I emphasise that section 11 samples are taken for the database — there is no requirement that they assist in the particular investigation at hand. However, the taking of samples for this purpose must be justified not only by the gravity of the offence for which the person has been detained but also by the nature of the offence. By nature I mean whether it is an offence, the investigation or prosecution of which could be assisted by DNA evidence. Such evidence would not, in all probability be relevant to, for example, taxation and company law offences. Section 11 therefore provides for orders to exclude certain offences. This provision has the added advantage of flexibility. If it subsequently transpires that sampling becomes relevant to a particular category of offences the order can be revised.

Section 11 samples are of critical importance to the success of the database as an intelligence tool. Samples taken under sections 12 and 13, on the other hand, are of critical importance to the prosecution of offences. They provide for the taking of intimate and non-intimate samples respectively for use in evidence.

Intimate samples require the consent of the suspect. They include blood, urine, swabs from the genital regions and dental impressions and, as can be readily appreciated, they cannot be taken without the co-operation of the suspect. However, a refusal to consent must not be without consequence. Section 19 provides that in the event of a refusal adverse inferences may be drawn in certain circumstances in subsequent proceedings.

Samples taken for evidential purposes must be authorised by a Garda not below the rank of inspector who has reasonable grounds for suspecting the involvement of a person in the commission of the offence in question and for believing that the sample will tend to confirm or disprove that involvement. The rank of inspector has been selected in this instance whereas a sergeant may authorise the taking of a sample under section 11. This graduated approach reflects the nature of the decision that is required and the potential consequences for the suspect.

The need for an intimate or non-intimate sample in connection with a particular offence may arise from a database hit or independently of any intelligence generated by the database. A further sample must be taken for use in evidence when a hit links a previously unknown suspect to an unsolved crime. This is necessary because to use the hit as evidence could be prejudicial to the accused. It could suggest to the jury that the accused had a previous criminal record or, at the very least, previous contact with the Garda. The added benefit of re-doing the forensic tests is that it acts as a quality control mechanism.

I wish to make a general comment about the value of DNA evidence at this juncture. DNA is highly discriminating and the facility to generate DNA profiles adds a very powerful tool in the investigation and prosecution of crime. However, as a rule, other evidence is also required.

1 o'clock

For example, where a person's DNA is found at a crime scene there may be a perfectly legitimate reason for it being there. DNA evidence shows a link between a suspect and a crime scene but we must remember that how that link came about is still very much a matter for evidence at trial. Therefore, the Bill does not accord any particular status to DNA evidence. It will continue to be treated in the same way as other expert evidence. I have already referred to the issue of consent; it must be in writing and it must be informed. In the case of suspects, it is required only in the case of intimate samples. Section 15 specifies who may give consent. Clearly, an adult suspect who does not lack capacity can consent on his or her own behalf. Special arrangements are required in regard to children and protected persons. In the case of protected persons and children under 14 years, the consent

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of a parent or guardian is required or an order of a District Court judge. In the case of children aged 14 years and upwards, the child's consent is also required.

The possibility of an inspector applying to a District Court judge for authorisation to take an intimate sample from a protected person or child may arise in a number of circumstances, including where the parent or guardian cannot be contacted despite reasonable efforts by the Garda; they are not willing to attend at the Garda station within a reasonable timeframe; or they are excluded from giving consent because one of them is a victim of the offence; or has been arrested in connection with or is complicit in the offence. Such circumstances cannot be allowed to act as an absolute bar to the collection of vital evidence from a suspect. Providing recourse to a District Court judge ensures consideration of where the interests of justice lie having regard to the interests of the suspect, the victim and the public.

Section 24 sets out the circumstances in which reasonable force may be used to take samples under Part 2. It is restricted to the taking of samples under sections 11 and 13. It does not apply to the taking of intimate samples. To ensure that this power is used appropriately and only when strictly necessary, a range of safeguards is provided, including that the use of force must be authorised at superintendent level and that its use must be done in the presence of an inspector and video-recorded. Some further limitations apply in respect of children. For example, reasonable force may not be used to take samples for database purposes, under section 11, from child suspects.

I have already highlighted a number of exceptions to the sampling arrangements in Part 2 where children and protected persons are concerned. Other special provisions included in this Part ensure that vulnerable suspects have someone other than a member of the Garda to support them when a sample is being taken. That other person may receive any information that is required to be given to a suspect. A parent, guardian or other adult relative may fulfil this role. However, in some circumstances, for example, in the event of the absence of a parent, the member in charge may be required to nominate a person other than a garda. That person must be of the same sex as the person from whom the sample is being taken and, in the case of protected persons, is required to have experience in dealing with persons who have physical or mental disabilities.

As can be seen, Part 2 is very important in the overall scheme of the Bill. However, I now move on to Part 3 which deals with the taking of samples from persons who are not suspects or offenders, the latter being dealt with in Part 4. Essentially, this Part is concerned with the procedure to be followed by the Garda when requesting a person to volunteer a sample in connection with a particular investigation. Such persons could include a victim or perhaps a member of the public who comes upon a crime scene. I should make it clear that this Part is limited to the taking of samples from a person for the purpose of generating that person's DNA profile. The samples are, therefore, restricted to mouth swabs or plucked hairs. In the event that other samples are required, for example, from a victim of a sexual assault, they will continue to be governed by existing practice.

It is important to note that samples taken from volunteers are taken on the basis of a consent which is limited to their use in connection with a particular offence. The consent does not extend to the entry of the DNA profile in the database. Nevertheless, there may be circumstances in which it would be useful for the Garda to be able to enter the profile of a volunteer in the database for the purpose of speculatively searching it against the crime scene index. The Bill recognises that but requires a separate written consent on the part of the volunteer who must be properly informed of the effect of such entry. In no circumstances may a volunteer who is a victim, a protected person or a child be requested to consent to the entry of their DNA profile in the database.

This Part also provides for mass screenings. A mass screening involves inviting a group of individuals determined by reference to a particular characteristic such as sex or age to provide samples for a specific investigation. The decision to conduct such a screening must be an operational one but, due to the cost and its intrusive nature, authorisation by a chief superintendent is required. In no circumstances will the DNA profile of a participant be entered in the database. In the event that the screening identifies a potential suspect he or she may be arrested and detained in connection with the investigation in which case the sampling powers in Part 2 will apply.

Part 4, together with section 11 to which I have referred, will be instrumental in populating the database and ensuring that it has the capacity to generate intelligence. It provides for the taking of samples for the database from offenders and former offenders. In the case of offenders, the following are required to provide samples: all offenders subject to a sentence of imprisonment for a serious offence at commencement whether they are in prison or living in the community on licence, temporary release or subject to a suspended sentence; those sentenced to imprisonment after commencement in respect of a serious offence; those transferred to prisons in the State following conviction abroad in respect of a serious offence; and those who, on or after commencement, are subject to the sex offender registration requirements.

Where the offender is in prison, the sample will be taken by a prison officer with the use of reasonable force where necessary following authorisation at senior level. Where the offender is in the community, he or she will be required to attend at a Garda station to have the sample taken. Failure to attend will constitute a summary offence. Similar arrangements apply in the case of child offenders but with additional restrictions on the use of force to take a sample from a child in a children's detention school.

This Part also provides for the taking of samples from former offenders, in other words, those who have served sentences for serious offences or have been subject to the sex offender registration requirements and who continue to be of concern to the Garda. The Bill provides comprehensive guidance to the Garda to assist it in identifying which former offenders should be requested to provide a sample for the database. In some cases an application to a District Court judge will be required. The power extends to former offenders who are now ordinarily resident or have their principal residence in this country regardless of where they were convicted. I am very conscious of concerns around the risks posed by mobile former offenders and I believe giving the Garda the power to require such persons to provide samples for the database will go some way towards alleviating those concerns.

I will touch on Part 5 briefly. Its provisions are consequential to the expansion of the use of DNA technology. It provides for the taking of samples from persons who in the course of their duties are at risk of inadvertently contaminating crime scene samples. It applies to Garda personnel, the staff of EFÉ and such other bodies as may be prescribed. Examples of such bodies include the State Pathologist's Office and the Garda Síochána Ombudsman Commission. Deputies will recall that I have already mentioned that the profiles will be on specific indexes in the investigation division of the database. The advantage of having these DNA profiles is that it avoids the Garda wasting time and effort investigating an unidentified crime scene stain that in fact belongs to one of the investigation team or to the scientist dealing with the case.

I have so far focused on the taking of samples in connection with the investigation of crime. Part 6 is focused on the taking of samples for the identification division of the database. This facility will be invaluable in the event of a disaster resulting in mass casualties but will also be useful in individual cases. Three situations are addressed — missing persons, unknown living persons and unknown deceased persons. Where it is proposed to take a sample from a living

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person, for example, the blood relatives of a missing person, consent is required. The profiles generated from the samples taken under this Part will be entered in the missing and unknown persons index and may be searched against other entries in that index but also against the investigation division where this would assist identification.

Deputies will recall that consent is required in some cases before samples may be taken under Parts 3 and 6. As is the case with suspects under Part 2, special arrangements are required on who may consent on the part of children and protected persons. These arrangements, which overlap to some extent with those in Part 2, are set out in Part 7.

Before leaving the subject of when samples may be taken, I draw attention to a number of overarching provisions in Part 12. Section 109 requires samples to be taken in circumstances affording reasonable privacy and only in the presence and view of such persons as are necessary to take the sample; and in the case of suspects, no samples may be taken during questioning. Section 109 also states clearly that nothing in the Bill authorises the taking of a sample in a cruel, inhuman or degrading manner. While section 110 permits making regulations in regard to taking samples, the principles set out in section 109 are of such a fundamental nature that primary legislation is appropriate. Section 111 requires those bodies empowered to take samples, namely, the Garda Síochána, Ombudsman Commission, Prison Service and youth justice service, to prepare draft codes of practice in consultation with the director of EFE for ministerial approval. These codes will provide practical guidance on the procedures for taking samples and will go a long way towards ensuring proper adherence to the statutory framework and consistency in approach.

It is important that the database and related arrangements employed by EFE, for example, in the receipt, storage and handling of samples, generation of profiles for the database, conduct of searches, reporting of results and destruction of samples, are subject to rigorous oversight. Part 9 achieves this by providing for an independent statutory oversight committee chaired by a senior judge. Schedule 2 gives details of membership and other matters. Members should note that the committee will include a nominee of the Data Protection Commissioner. The committee will have power to make recommendations to the director of EFE and to the Minister. It will also have power to review any matter relating to the operation and management of the database of its own accord. Its reports, subject to some limited restrictions relating to, for example, the security of the database, will be laid before both Houses and published. I am confident these arrangements, taken together with the risk of criminal prosecution for the disclosure of information on the database for any purpose not permitted by the Bill, will safeguard the security and integrity of the database.

Part 10 concerns the destruction of samples and the destruction or removal of DNA profiles from the database. This matter has been the subject of an important judgment by the European Court of Human Rights in S & Marper *v*. the United Kingdom. The very detailed and nuanced arrangements in Part 10 have been developed following careful consideration of that judgment which requires us to balance the public interest in the detection of crime and the individual's right to privacy. Part 10 does this by prescribing different treatment for convicted persons and persons who are not convicted, adults and children, and samples and DNA profiles, respectively. This last distinction arises from the realisation that a much greater amount of personal information is contained in a biological sample than in a profile. A sample contains the whole of a person's DNA. A profile, however, is a series of numbers and letters derived from a very small portion of that person's DNA and which contains far less genetic information.

Starting with samples taken from suspects and offenders for the database, a default destruction period of three years will generally apply. In the case of DNA profiles, it is only those relating to convicted persons that will be retained indefinitely. An exception will apply in the

case of some former child offenders who do not re-offend; their profiles may be removed from the database within ten years. In the case of persons who are not convicted, or persons who have had their conviction quashed or declared to be a miscarriage of justice, default time periods will apply to the removal of their profiles from the database. Generally the default periods will be five years in the case of children and protected persons and ten years in the case of adults. In advance of the expiry of these periods such persons may apply to the Garda Commissioner for the destruction of their sample and the removal of their DNA profile from the database. In the event of a refusal of their application they may appeal to the District Court. The prescribed periods may be altered, mostly downwards, based on a review of the operation of the Bill. For example, I hope it will be possible to reduce the three-year default destruction period applying to database samples. However, for the moment, I am satisfied that the approach taken strikes a reasonable balance.

Part 11 is concerned with international co-operation. It transposes the DNA-related aspects of Council Decision 2008/615/JHA of 23 June 2008, the text of which is set out in the first schedule. The Prüm Council decision, as it is often called, requires member states to permit automated searching of our DNA databases for criminal investigation purposes on a reciprocal basis. Such searches are conducted on anonymous data. In the event of a hit, the matter must be pursued within the mutual assistance framework. Bearing in mind the international mobility of criminals, access to the databases of other member states has the potential to be very useful. These Prüm-related provisions cannot be commenced until the data protection requirements of the Council decision have been transposed. My Department is considering how best to make provision for new data protection requirements in the criminal context. While no decision has been taken, I hope to be in a position to do so in the not too distant future.

Another provision that merits attention is section 103. It removes any doubt that a person may be required to give a sample under any provision of the Bill even though he or she may have provided a previous sample. This is essential as there is a wide variety of circumstances in which a person who has given a sample for one purpose may be required at a later date to provide a sample for another.

I will refer now to the issues that I am examining and may wish to bring forward as Committee Stage amendments. I am giving consideration to the arrangements for the retention of fingerprints and photographs. I am also considering whether further provisions are required in the area of international co-operation and to give fuller effect to the automated search provisions of the Prüm Council Decision. This Bill may also present an opportunity to transpose Council Framework Decision 2009/905/JHA of 30 November 2009 on accreditation of forensic service providers carrying out laboratory activities. Apart from these matters, I will have other amendments, many of a drafting or technical nature, but also some aimed at elaborating aspects of the Bill and refining the operation of some procedures.

It would be remiss of me not to acknowledge that many of the Bill's provisions take account of the analysis carried out by the Law Reform Commission for its comprehensive report on the establishment of a DNA database. This Bill marks a major step up in the use of DNA technology by the Garda Síochána in the fight against crime but does so in a balanced and carefully constructed manner which ensures that individual freedoms are not sacrificed in the pursuit of a public good. I have been at pains to ensure a system that will also be efficient and effective at its operational level. I am satisfied that the Bill provides for such a system and I am pleased to commend it to the House. We took the judgment in the S & Marper case very much into account in drafting it.

Deputy Michael D'Arcy: This Bill seeks to establish, in line with international standards, a DNA database for use in the investigation and prevention of crime. Drafting of the Bill has

[Deputy Michael D'Arcy.]

been fundamentally influenced by a 2008 decision of the European Court of Human Rights with respect to the regulation of the DNA database in England and Wales in which the court held that there was a breach of Article 8, relating to the right to a private life, of the European Convention on Human Rights, ECHR. Although the court accepted that the retention of DNA samples for the detection and prevention of crime was a legitimate aim, it concluded that the retention of those samples was an interference with the right to private life of the applicants, albeit one that could be justified in certain circumstances. In this case, however, the court struck down the "blanket and indiscriminate nature of the power of retention in England and Wales" and concluded that the applicants' right to private life had been violated. The court identified the Scottish system as being most consistent with the ECHR. There data is retained for up to three years in respect of unconvicted people where the charge involves a violent or sexual crime.

The major tenets of the argument surrounding the establishment of a DNA database lie in the challenge of striking a balance between the rights of the individual to privacy, bodily integrity and the privilege against self-incrimination with wider societal interests in preventing disorder and crime. Striking such a balance raises complicated questions such as how useful it may be to retain DNA information, what weight should be given to the interests of the police, those whose information they hold and the general public, including those who are or may become the victims of crimes, how the database should be populated, and whose records should be retained. In addition, the establishment of a DNA database raises concern with regard to possible future permutations of its use, often referred to as function creep. These concerns have arguably been reflected in the evolving uses of databases in the United States, England and Wales where, in some instances, they have extended far beyond the scope of what was originally envisaged.

The difference between samples and profiles is pivotal. The science of DNA now is well-established but is an area of intense study and rapid growth in the field of human genetics that may yet have much to reveal. The amount of information that can be deduced from a biological sample may be much wider in ten or 20 years than is the case today. The revolutionary nature of DNA evidence as a forensics tool has been described as being the single greatest advance in the search for truth since the advent of cross-examination. The Law Reform Commission's comprehensive report on the subject, published in 2005 at the request of the Attorney General, identifies the purpose of a DNA database as assisting in identifying links between crimes such as in the case of stains left at the scene of the crime by serial offenders, the rapid exclusion from the ambit of the investigation of suspects who already are on a database and whose profiles do not match and the making of cold hits, that is, where a stain is matched with a profile of a person on the database who was not a suspect.

At the trial stage, DNA evidence is presented in court via the cross-examination of expert witnesses as to the scientific basis for declaring a DNA match and the statistical likelihood of that match appearing in the population at large. At the post-trial phase, DNA evidence has facilitated the reopening of cases, at times leading to the exoneration of wrongfully convicted defendants. The cases of the Birmingham Six and Guildford Four are good examples. In addition, DNA profiling has led to the identification of unknown deceased persons. However, it is at the pre-trial stage that the greatest scope exists for the role of a DNA database in the context of the investigation and prosecution of crime. Samples gathered from crime scenes or from volunteers, such as victims of crime, can be used to generate profiles, which then can be compared to profiles already stored. By comparing unknown crime scene profiles to known reference profiles, such as, for example, those of offenders, former offenders or arrestees, hits will help the Garda to generate suspects but also may eliminate other known profiles from

suspicion because a hit does not occur. Likewise, matches generated by comparing crime scene profiles would indicate a serial offender and would provide investigative leads.

The establishment of a national database would have an inevitable impact on a number of rights guaranteed by the Constitution of Ireland and the European Convention on Human Rights, which, of their nature, must be safeguarded. No right, including a constitutionally-protected right, is absolute and where there are sufficiently compelling reasons for doing so, a constitutional right may be interfered with provided the interference is proportionate to the desired objective and required to protect stronger competing interests or the requirements of the common good. The debate surrounding the establishment of a DNA database concerns a number of rights recognised by both the Constitution and the courts.

The right to privacy is implicated in a number of ways by the establishment of a national database, first, by the taking of samples and, second, by the retention of samples and the profiles derived therefrom, which in some circumstances may be for an indefinite period. Third, the exchange of samples or information based upon them between the original custodians of the sample or profile and law enforcement agencies in other jurisdictions. Finally, the privacy of third parties also may be threatened.

The privilege against self-incrimination sometimes is referred to as the right to silence and has been held to be a constitutional right by the Supreme Court on numerous occasions. In common with other rights, the privilege against self-incrimination is not an absolute right and there are a number of strictly-defined statutory restrictions placed upon it. Notwithstanding the limitations on the exercise of the right, the onus of proof in any criminal trial rests on the prosecution. As for the right to trial in due course of law, Article 38.1 of the Constitution states "[n]o person shall be tried on any criminal charge save in due course of law." The phrase "in due course of law" has been held to incorporate a number of different principles, some of which are particularly relevant in the context of DNA evidence. The Irish courts have interpreted Article 38 to require that all criminal trials be conducted in accordance with the presumption of innocence, a concept that interacts with evidential rules regarding the burden of proof, which in the criminal law context is guilt beyond all reasonable doubt. The constitutional status of the presumption of innocence and its centrality to the criminal justice system was confirmed by Mr. Justice Costello in O'Leary *v.* Attorney General and has been described by the courts as being:

> personal to the dignity and status of every citizen. It means that he or she is entitled to the status of a person innocent of criminal charges until such has been proven in a court conducted in accordance with law.

The compatibility of DNA retention regimes in respect of those arrested but not subsequently convicted of an offence and the presumption of innocence is an area of particular controversy. The Human Genetics Commission, HGC, which is the United Kingdom's advisory body on new developments in human genetics and their effects on individuals, addressed the issue succinctly when it argued that adopting a middle ground between the less practical extremes of a database storing only profiles of convicted offenders or the population at large must be strongly justified. It stated:

> To treat an unconvicted person as having a diminished entitlement to privacy in the same way as a convicted person, i.e. to treat them "as if" they were guilty of an offence despite their guilt not being proven at the outcome of a judicial process, would be to set aside the judicial process and the presumption of innocence in favour of a balance of probabilities or a simple, untried belief that the person had committed the offence but evaded conviction.

[Deputy Michael D'Arcy.]

The HGC goes on to argue that, to justify holding personal genetic information of unconvicted persons, there must be robust criminological evidence to show that some groups of people who have not been convicted nevertheless present a higher than average risk of committing criminal offences. Some of the problems experienced in the United Kingdom in adducing such evidence are addressed later.

In addition, a further element of Article 38 pertinent to DNA profiling is the principle of equality of arms, defined by the Irish Human Rights Commission in the following terms:

> The principle of equality of arms implies that everyone who is a party to proceedings must have a reasonable opportunity of presenting his case to the court under conditions which do not place him or her at a substantial disadvantage . . . . A fair balance must be struck.

In this context, it has been suggested that where DNA evidence is adduced by the prosecution, adequate State funding should be made available to the defence in order to carry out independent testing and thus meet the State's case on a roughly equal basis. In the State (Walshe) *v.* Murphy, the High Court quashed a conviction for drunken driving on the grounds that the defendant did not have adequate opportunity to "have the specimen which he has retained analysed and to contest the validity or correctness of the certificate".

The right to bodily integrity was first recognised by the Supreme Court in the seminal case of Ryan *v.* Attorney General. As originally recognised, the right to bodily integrity protected the citizen from having his health endangered by the State. The right was subsequently expanded upon and now covers the right to refuse medical treatment. It is also settled law that the legality of any medical treatment is predicated on the consent of the patient. Where medical treatment is carried out in the absence of a patient's consent, a battery at common law is committed for which the doctor may be liable. It also is a criminal offence under the Non-Fatal Offences Against the Person Act 1997. The significance of the right to bodily integrity is particularly relevant in circumstances in which a DNA sample may be obtained using reasonable force as is proposed under the terms of the Bill.

The laws of evidence must be considered. The admissibility of DNA or any other evidence in a criminal trial is contingent upon its relevance to the case. In other words, the only admissible evidence is that which is relevant. This is not to say that all relevant evidence must be admitted. The leading case on the admissibility of evidence is People (Attorney General) *v.* O'Brien, in which the Supreme Court held that, where evidence has been obtained in circumstances involving illegality, the trial judge could, in his or her discretion, rule to exclude the evidence.

The use of DNA in a criminal trial is dependent upon the presence of a suitably qualified individual capable of interpreting it. In this way, DNA evidence is a form of opinion evidence in respect of which a considerable body of law has accumulated. Opinion evidence is generally not admissible, since witnesses are normally only permitted to testify as to matters within their knowledge as opposed to what may be of their opinion. It is for the jury as the trier of fact to arrive at a conclusion. In this regard, opinion evidence is an exception to the general rule. Where evidence of a scientific nature is adduced, an expert in that particular field may give evidence. This creates a specific problem in the context of criminal litigation, a difficulty that has been described as being cultural, namely, a clash between the scientific world accustomed to black holes and scientific revolutions and the legal world where such qualified certainties are not sufficient.

The general scheme of a criminal justice (forensic sampling and evidence) Bill was published in 2007. The proposals drew from the LRC's 2005 report and were followed by a consultation

process during which submissions were received from a number of civil society groups. In 2006, a review was commissioned by the Government on the resource needs of the Forensic Science Laboratory and the wider scientific context, culminating in the production of the Kopp report. However, the general scheme was never published as a Bill and was the subject of numerous redrafting exercises in the years that followed. This delay was directly related to the close scrutiny of DNA databases at European level, with close attention paid to the decision of the ECHR and the UK's compliance with the judgment.

The Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010 repeals the Criminal Justice (Forensic Evidence) Act 1990 and partly gives effect to the Prum Council decision of 2008. The purposes for which the DNA database is established is restricted to the investigation of criminal offences, the finding or identification of missing persons, the seriously ill or severely injured who are unable to indicate their identity and the identification of the bodies of unknown deceased persons.

It is beyond the scope of this paper to engage in a section-by-section analysis of the Bill. The principal themes will be addressed, looking in particular at the proposed content of the database, the collection of samples for the purposes of extracting profiles and the data retention regime to be put in place. The current framework surrounding DNA is provided by the 1990 Act, as amended by section 14 of the Criminal Justice Act 2006, which regulates the taking of bodily samples for forensic testing and applies where a person is in Garda custody under section 30 of the Offences Against the State Act 1939, section 4 of the Criminal Justice Act 1984 or section 2 of the Criminal Justice (Drug Trafficking) Act 1996 or where a person is in prison and would, but for that imprisonment, be liable to be arrested and taken into custody for an offence under these Acts. The taking of samples under the 1990 Act is confined to the taking of samples for evidential purposes. It is used in tandem with the taking of samples on a voluntary basis under the common law.

The DNA database will consist of two divisions, namely, the investigation and identification divisions. The investigation division will consist of three separate indexes, each populated with profiles from different categories of person. The reference index, provided for in Parts 2 and 4 of the Bill, consists of profiles generated from the samples of offenders, both adults and children, former offenders within the meaning of the Bill and the bodies of deceased persons who are suspected of having committed an offence. These provisions are laid out in sections 30 to 34, inclusive. Profiles generated from samples collected from those detained in custody on suspicion of having committed a relevant offence under Part 2 of the Bill may also be entered on the index. Suspects include persons arrested on suspicion of having committed a relevant offence and detained under section 30 of the 1939 Act, section 4 of the 1984 Act, section 2 of the 1996 Act or section 50 of the Criminal Justice Act 2007.

For the most part, the offences concerned carry a maximum sentence of five years or more, with a limited number of exceptions in the case of the 1939 and 1996 Acts. This represents a key difference in the proposed Irish regime in comparison to that of England and Wales, which concern all those arrestees suspected of committing a recordable offence, namely, all offences above a minor threshold. The taking of blood or urine samples is provided for under other statutory frameworks, such as the Road Traffic Acts, for the investigation of offences carrying lesser penalties. These will not be concerned by the Bill unless they fall within the offences defined in the four sections listed. An example would be the offence of dangerous driving causing death, which carries a maximum penalty of ten years.

Under the Bill, offenders include those who are still serving a sentence before the commencement of section 30, who are sentenced after commencement and those prisoners transferred to the State under relevant legislation in respect of an offence that corresponds with a relevant

[Deputy Michael D'Arcy.]

offence under the Bill. Also included are all those on the sex offenders register. A similar regime is to be put in place in the case of child offenders, although the word "child" is to be understood in light of the fact that section 155(2) of the Children Act 2001 allows certain offenders detained in child detention schools to remain there for a period of up to six months after attaining the age of 18 years.

Former offenders are those persons who are no longer subject to a sentence for a relevant offence or are no longer on the sex offenders register. This definition is subject to a number of exceptions, as some categories of person who have served a sentence are not categorised as former offenders for the purposes of the Bill. This includes someone whose DNA profile is already on the reference index of the DNA database and in respect of whom the Garda or a District Court judge is not satisfied that it is appropriate for a sample to be taken. In this instance, the number of relevant factors to be taken into account are listed in section 32(2)(*b*). Another category applies to people who are not ordinarily resident or have a principal residence in the State. Another exception applies if a period of ten years has elapsed since the expiry of the last sentence for a relevant offence or since the last notification period in the case of sex offenders. In the case of child offenders, only those convictions handed down that were triable in the Central Criminal Court are eligible for consideration, as well as any other offences prescribed having regard to their nature and seriousness. Failure or refusal to comply with the provisions of Part 4 constitutes an offence.

Section 34 of the Bill allows a garda of at least superintendent rank to apply to a District Court judge for an order to take a sample from a deceased person where the garda has a reasonable belief that the person committed a relevant offence and that creating a DNA profile for comparison would further the investigation of that offence. However, this section does not authorise the exhumation of the body of a deceased person relevant to section 34(15). While the profiles of volunteers are gathered only in respect of a particular investigation, volunteers may specifically consent to the entry of their profiles on the reference index.

The elimination index provided for in Part 5 of the Bill consists of profiles generated from samples collected from persons who, in the execution of their duties, are considered to be at risk of inadvertently contaminating crime scene samples with their DNA. There are three strands to the elimination index, those being, gardaí, crime scene investigators and prescribed persons. The crime scene index will contain profiles generated from samples found at or recovered from crime scenes, including samples generated before the commencement of the Bill.

The identification division will consist of the missing and unknown persons index of the DNA database, as provided for in Part 6 of the Bill, and refers to profiles generated from samples collected from missing persons, seriously ill or severely injured persons who are unable by reason of illness or injury to identify themselves and from unknown deceased persons. Under the 1990 Act, where a person is detained in Garda custody in the circumstances mentioned, a garda or medical practitioner, complying with appropriate safeguards and procedures, may take a bodily sample for the purposes of forensic testing. The Act draws a distinction between samples that require consent to be taken and samples that do not require consent. Section 2 of the 1990 Act lays out the requirements to be met by the Garda before they take a sample. Following amendments to the 2006 Act, taking samples of saliva or mouth swabs no longer require consent.

Part 2 foresees the collection of samples in respect of detention on a similar statutory basis to the 1990 Act, with the addition of a person detained under section 50 of the Criminal Justice Act 2007, which generally carries a maximum sentence of five years or more imprisonment.

The Bill, similar to the 1990 Act, differentiates intimate from non-intimate samples and imposes differing consent and authorisation regimes to each category. Intimate samples refer to samples of blood, pubic hair or urine, a swab from a genital region or a body orifice other than the mouth or a dental impression. Non-intimate samples on the other hand, refer to samples of saliva, hair (other than pubic hair), a nail or a skin impression, such as a footprint or a fingerprint. In addition, specific authorisation and consent regimes are envisaged for protected persons, who by reason of a mental or physical disability lack the capacity to understand the general nature and effect of the taking of a sample or to indicate consent. In the case of non-intimate samples information is to be given in a manner and language that is appropriate to the level of understanding of the protected person or child concerned and is age-appropriate in the case of a child. In the case of intimate samples distinctions are drawn among minors according to their age. For a child aged 14 or older the child's consent is required, along with that of a parent or guardian, or upon an order from a District Court judge, if required. For a child below the age of 14 consent of a parent or guardian or an order from a District Court judge is required.

Section 15 provides for a number of exceptions under which a parent or guardian may be excluded from giving consent, including where he or she is the victim of the offence, has been arrested in respect of the offence, is suspected of being complicit in the offence or is likely to obstruct the course of justice. Resort to an order of a District Court judge is provided for in the event that a parent or guardian cannot be located, refuses to attend the Garda station within a reasonable time, is excluded from giving consent under section 15 or refuses to give appropriate consent. The judge must take into account, where applicable, the reason for the parent's refusal, the nature of the offence, the best interests of the person concerned, the interests of the victim and of the protection of society. Non-intimate samples, that is hair or mouth swabs only, can also be taken from volunteers. The Bill also allows a sample of biological material to be taken from human remains to generate a DNA profile.

Section 19, similar to the 1990 Act, provides that a refusal to consent to the taking of a sample without reasonable cause may give rise to an adverse inference being drawn in subsequent criminal proceedings, which may in turn be treated as corroborating any evidence to which it is relevant. It cannot, however, be the sole or main basis of a conviction. However, the inference does not apply to protected persons or to a child under 14. Equally, it cannot apply to a child over 14 who gave consent but whose parent or guardian refused consent. Such inferences constitute an exception to the general principle that a suspect ought not to be obliged to provide evidence which may incriminate him or her.

Section 24 provides that in the case of a non-intimate sample, reasonable force may be used to collect a sample if authorised by a garda not below the rank of superintendent when the detained person is informed in advance of the intention to use reasonable force and the taking of a sample in such circumstances is video-recorded. Special provisions apply to the use of force on protected persons and children over the age of 12. Use of force is not allowed in the case of children under 12. Provisions are also set down for re-taking a sample in the event that it proves insufficient for forensic testing.

Sections 121 to 123 amend the Criminal Justice Act 1984 with respect to taking fingerprints and palm prints from persons arrested for the purpose of a charge.

I am concerned about taking a sample from a child between the ages of 12 and 18. Would the Minister consider prescribing a very clear schedule of exactly what this will entail? We must ensure that taking of a sample from someone between the ages of 12 and 18, where force is allowable, is very clearly prescribed.

[Deputy Michael D'Arcy.]

I appreciate the need for the delay in introducing the Bill. The Garda have called for this legislation since the late 1990s and the Law Reform Commission paper dates to 2005. It was correct and appropriate not to advance the Bill until there was a determination by the European Court of Human Rights. It was appropriate to await the judgment on the methodology used in England and Wales.

Fine Gael broadly supports the Bill. Our greatest concern is with the use of reasonable force to take samples from people aged between 12 and 18. While the penalties are reasonable and necessary, severe penalties should be applied to those who use information gained from the DNA database incorrectly. If those two matters are appropriately dealt with, the Government will have significant support from Fine Gael.

Deputy Pat Rabbitte: Balancing the competing imperatives of preventing or solving crime and ensuring the protection of human rights is a perennial challenge for legislators, especially in the criminal justice area. At times of high emotion generated by a particular atrocity or controversy, it is difficult to find a sympathetic audience for articulation of the necessity to balance these competing imperatives. It is all the more difficult when standards in our society have plumbed the depths where violence is commonplace, the vulnerable are exposed and unlawful killings are a regular feature. We may add to this explosive cocktail the impulse of justice ministers to be seen to do something, to introduce tough legislative measures and to be presented as standing up to the criminal fraternity. Often, there is little substance in these measures other than the licence to rhyme off actions taken by the minister, even if they are futile, unenforceable or simply ignored.

The Bill is a meaningful innovation that will permit gardaí to take full advantage of DNA technology in the detection of crime. In the matter of creating a DNA database which will contain DNA profiles generated from biological examples, this question of balancing the competing imperatives I have spoken about is especially relevant.

Forensic science can use DNA in blood, semen, skin, saliva or hair found at a crime scene to identify a matching DNA of an individual, such as a perpetrator. The process is called genetic fingerprinting or, more accurately, DNA profiling. In DNA profiling the lengths of variable sections of repetitive DNA are compared between people. This method is usually an extremely reliable technique for identifying a matching DNA.

DNA can be collected from any of the cells mentioned above and from that DNA sample, a DNA profile can be established. DNA profiling is a biological identification system. It is based on showing a particular sequence of DNA being repeated a number of times. For example, "9" means the sequence is repeated nine times, "7" means it is repeated seven times and so on. The expansion of this system allows the build up of a full sequence which is then placed on a database. Samples can then be compared on that database and identical DNA samples can be detected. This would allow the relationship to be determined between a sample from a crime scene and that of a person suspected of being involved in the crime. Many cases are recorded where DNA has been a very useful tool in connecting a crime scene to the perpetrator of the crime. The chance of two unrelated individuals having matching DNA is reported to be of the order of one in 1 billion.

The Labour Party agrees that, in line with the primary objective of preventing and detecting crime, the gardaí should have at their disposal the benefits of modern science and technology. DNA profiling was developed as relatively recently as 1984 and the potential benefits of a DNA database are awesome. In this context of DNA science, the potential of this crime control technique is constrained by the absence of a permanent collection of reference profiles to which samples obtained at a crime scene can be compared.

The purpose of this Bill is to replace the existing statutory and common law arrangements governing the taking of bodily samples for forensic testing from suspects for use as evidence in criminal investigations and to provide for the establishment of a DNA database system for use by the Garda Síochána as an intelligence source for criminal investigations. A DNA database enables a person, not previously suspected of committing a crime, to be identified as the possible perpetrator of an offence or to exclude a person from further investigation.

It is also true that identification can be complicated if the crime scene is contaminated with DNA from several people. DNA samples are, therefore, capable of being compromised. Although the probability of two persons having the same DNA profile are very small, it is an important point of principle and for that reason conviction based solely on DNA should not be considered sufficient. Additional corroborating evidence should be required.

Internationally, the practice now is that people convicted of certain types of crimes may be required to provide a sample of DNA for a database. On the one hand, this has helped investigators to solve old cases where only a DNA sample was obtained from the scene. On the other hand, some convicted people in the United States have been released from prison on the basis of DNA techniques which were not available when a crime had originally been committed. Sometimes the guilty have been convicted; sometimes the innocent have been acquitted.

Human rights advocates have argued that storing the DNA of innocent persons is a disproportionate invasion of privacy when weighed against the actual convictions using DNA. The European Court of Human Rights, in the case referred to by the Minister of S and Marper in the UK, found that the law as it existed in England and Wales, under which DNA samples of people who are arrested but not charged or convicted can be retained indefinitely, constituted a disproportionate interference with the right to respect for private life and, therefore, violated Article 8 of the European Convention on Human Rights.

In regard to the above point, the issue referred to by Deputy D'Arcy of function creep is an important one. This means that gradually the DNA database might be used for additional reasons other than those originally intended. This needs to be carefully monitored — for example, if DNA could be used to determine health risks or genetically determined diseases, this might have implications for getting life insurance cover or for obtaining a mortgage, although the banks are able to determine this at the moment without the benefit of DNA.

It is beyond question that the technology will continue to develop and evolve and more sophisticated systems will emerge for analysis of the DNA, providing more and more detailed information which has the potential to discriminate or exclude certain categories of people in a most unfair manner.

There is no question about the intrinsic value of DNA in the solving of crime, clearing a person's name, aiding identification, tracing a missing person and so on. It is a question of striking a balance between the values outlined above and ensuring the right to privacy of the individual.

The right to privacy was first recognised by the Supreme Court in Kennedy *v*. Ireland where the unlawful tapping of the telephones of two journalists was held to be a violation of the individuals' right to privacy. The privacy commissioner of Canada, for example, has observed that, "No surveillance technology is more threatening to privacy than that designed to unlock the information contained in human genes".

The right to privacy is implicated in a number of ways by the establishment of a national DNA database. First, by the taking of samples and second, by the retention of samples and the profiles derived from them which, in some circumstances, may be for an indefinite period of time. Also, the exchange of DNA samples or information based upon them between the orig-

[Deputy Pat Rabbitte.]

inal custodians of the DNA sample or profile and law enforcement agencies in other jurisdictions.

There are a number of important judgments handed down by the European court in the area of privacy and, as the Minister said, the most important of which is S and Marper *v*. UK. As a result, the importance of having clear detailed rules that govern the scope and application of measures that allow for the taking of bodily samples and the creation of DNA profiles as well as minimum safeguards concerning duration, storage, usage, access to third parties and procedures for preserving the integrity and confidentiality of data and procedures for its destruction.

Sections of the Bill that will require focus on Committee Stage include the provisions for the taking of samples from various categories of persons — for example, those in Garda custody — a person in prison, the taking of intimate samples for evidential purposes, taking a sample from a child and the need for the presence of a parent or guardian, taking samples from a protected person, the use of reasonable force, the retaking of a sample, taking samples from volunteers, mass screening of persons — for example, by time, age, sex, geographic basis and so on.

I welcome the provision for the appointment of a committee to oversee the management of the database system. However, I cannot see any definition of what category of person might be appointed to such a committee in terms of, for example, what qualifications they might have. The Minister referred specifically to the fact he intends to include a person from the Office of the Data Protection Commissioner, which I welcome. However, given the technical nature of the process, there should be some indication of the competences required for membership of that committee.

The establishment of a DNA database is expensive and requires careful management. Oversight of the collection, storage management and so forth is critical and should be rigorous. In this context it is worth noting the comments of the European Court of Human Rights in the S and Marper case. In particular, the court stated that "bearing in mind the rapid pace of developments in the field of genetics and information technology, the Court cannot discount the possibility that in the future the private-life interests bound up with genetic information may be adversely affected in novel ways or in a manner which cannot be anticipated with precision today".

2 o'clock

In its remarks on the Bill, the Minister's favourite civic society organisation, the Irish Council for Civil Liberties, ICCL, acknowledges that the Data Protection Commissioner and Irish Human Rights Commission were consulted on the Bill and "many human rights benchmarks have been incorporated". The ICCL, however, raises raise a number of concerns which will require to be teased out on Committee Stage.

I refer to two such concerns. The first relates to the retention and destruction of samples, on which the ICCL states:

> At certain stages, a person whose data has been retained in the database system may apply to the Garda Commissioner requesting its removal and the Commissioner must give reasons why this request cannot be facilitated. Notwithstanding that, the Bill also contains default periods for the removal of DNA data. Under Part 10 of the Bill, the default retention period for samples taken for evidential purposes is 3 years and 10 years for profiles which are entered in to the database system. However, under s. 8, the Commissioner can apply to the District Court to retain a sample beyond the default period. The samples of convicted persons can be retained indefinitely except for child offenders whose details may be removed after 10 years.

However, the samples retained relate to a range of offences, some of which, although they may potentially attract a prison sentence of 5 years or more, are not of a violent or sexual nature. Sampling applies to offences where a person can be detained under s. 4 of the Criminal Justice Act 1984. The ICCL questions the compliance of this provision with the ECtHR judgment in *S and Marper* given that the system most favoured by the ECtHR was the Scottish framework. In Scotland, DNA samples are only retained in respect of unconvicted persons where there was suspected involvement in violent or sexual crimes.

I ask the Minister to respond to this point.

I share Deputy D'Arcy's concern regarding the position of children, an issue we will have to address on Committee Stage. The second concern raised by the Irish Council for Civil Liberties relates to mass screening and volunteers and concerns the provision in Part 3 under which volunteers may be approached by a garda or authorised person for DNA sampling in the investigation of a particular offence. These samples will not be entered into the DNA database system unless consent of the volunteer is provided on request. The ICCL argues that the Bill does not incorporate sufficient safeguards in relation to this consent. I ask the Minister to respond on this point.

A more detailed and comprehensive critique of the Bill has just now come to hand from the Irish Human Rights Commission. Committee Stage may be the more appropriate forum for teasing out a number of matters raised by the commission in its submission.

I thank the Library and Research Service for its work on the Bill. The service continues to do good work in making legislation accessible in technical areas such as this. I also thank the Minister and his officials for the detailed presentation on the Bill. It is an intelligible and accessible explanation of the purpose of the Bill and what it seeks to obtain under the different divisions. It will be helpful when we try to frame amendments for Committee Stage.

Deputy Noel O'Flynn: The establishment of Ireland's first ever national DNA database, as proposed in the Bill, is a positive development, on which I commend the Minister. It will provide a powerful tool to gardaí in their fight against crime by giving them access to unprecedented levels of intelligence. It will enable them to quickly identify offenders, make earlier arrests, secure more convictions and identify critical leads for investigations. As well as leading to greater efficiency in the use of Garda time and resources, it is expected that the database will also act as a deterrent to offenders and re-offenders.

To examine the functions of the DNA database in more detail, it is important to know exactly what it will do and who it will affect. The database will contain DNA profiles generated from biological samples. These samples will be taken from various categories of persons, including offenders, former offenders and those detained on suspicion of committing a serious offence, as well as volunteers and missing or unknown persons. For elimination purposes, samples will also be taken from persons involved in crime prevention such as members of the Garda Síochána.

A DNA profile generated from the sample will be placed on the database with samples collected from the crime scene. These profiles will primarily be used in the investigation and prevention of crime. The analysis of the material on the database will produce "hits" that may indicate a link between the person and crime scene or other offences in which the individual was previously involved but with which no link had previously come to light. This means that not only will these samples be used to solve current investigations but they will also go a long way towards solving cold cases.

Another important function of the DNA database is that it will help identify deceased and missing persons. Every year countless people go missing in Ireland. Anything that helps shed

[Deputy Noel O'Flynn.]

some light on these disappearances and assists the families of missing people should be welcomed.

As any episode of "CSI" will show — I do not know if the Ceann Comhairle watches the programme — DNA testing is a staple of modern crime investigations. Described as the single greatest advance in the search for truth since the advent of cross-examination, DNA testing has revolutionised criminal investigations the world over. Deputies will have noted the major role DNA testing has played in our criminal justice system in recent years. We were reminded of its importance during the high profile trial of Eamon Lillis who was convicted of the manslaughter of his wife Celine Cawley earlier this year. As a result of DNA testing, forensic scientists were able to offer a detailed interpretation of the way events unfolded on the fateful morning in question. DNA testing also played a major role in the successful conviction of Brian Hennessy of Windgap, County Kilkenny, for the murder of Sharon Whelan and her two daughters on Christmas Eve in 2008.

To fully evaluate the debate on DNA testing and the establishment of a database it is first essential to gain a basic understanding of what is a DNA sample. The terms "samples" and "profiles" are often bandied without many of us understanding the main differences between them. A DNA sample is a sample taken from an individual, such as a mouth swab, plucked hair roots or blood, which contains the DNA of the individual for analysis. The sample is retained by the laboratory in secure, sterile conditions and bar coded to enable the sample to be matched to the profile if necessary. A DNA profile, on the other hand, is defined as a numerical representation following analysis of a DNA sample.

In examining the benefits of establishing a new DNA database, it is worth looking across the water to see how the database in the UK works. The United Kingdom National Criminal Intelligence DNA Database, most commonly referred to as NDNAD, was the world's first national DNA database and was, until recently, the largest. The majority of the active criminal population is now believed to have its DNA recorded and in turn, profiled. According to recent figures, the UK database holds 5.6 million profile records from approximately 4.8 million individuals, a figure which equates to roughly 7.8% of the population.

Police forces across Britain use DNA profiles to successfully solve thousands of cases every year. The overall hit rate for 2008-2009 is almost 60%. The match rates are highest in the case of burglaries, criminal damage and theft from vehicles, and of vehicles, more than 75% of crime scene to subject matches in 2008-2009 arose from these categories of offences. By all accounts, the establishment of a DNA database has revolutionised the way in which police work is conducted in the UK. There is no reason we cannot expect the same kind of success here.

There has been much discussion, even here today, in the context of this Bill of the rights to privacy of the individual. Article 1 of the UNESCO Universal Declaration on the Human Genome and Human Rights, 1997 states:

> The human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity.

It is, therefore, important that this Bill strikes the right balance between the rights of the individual to privacy and the wider interests of society in preventing crime and disorder. This requires that we give due consideration to the retention periods proposed for both profiles and samples.

In drafting this Bill, it was initially intended that all samples and profiles would be retained indefinitely, but I note what the Minister stated today and what Deputy Rabbitte stated in his

contribution. The position has been changed following a high profile case to which the other speakers referred, S & Marper *v.* UK in 2008 at the European Court of Human Rights. This case is critical to understanding the legal parameters of this Bill. As such, it is worth looking at it in some detail.

In S & Marper *v.* UK the European Court of Human Rights in Strasbourg ruled on the issue of DNA evidence and in particular, on the retention of DNA samples and profiles of those arrested but not subsequently convicted. At the age of 11, "S" was arrested for attempted robbery. Even though he was subsequently acquitted of the charge, his fingerprints and DNA samples were still taken. The other applicant, Marper had been arrested for harassment, and his fingerprints and DNA samples also taken, although the prosecution was subsequently discontinued. Both Marper and "S" applied to the English courts for their fingerprints and DNA samples to be destroyed but their requests were refused. This decision was upheld on appeal, both by the Court of Appeal and the House of Lords. The applicants then took their case to the European Court of Human Rights, where it was unanimously held that there had been an interference with the right to private life guaranteed by Article 8 of the European Convention on Human Rights and that such interference was disproportionate and unjustified by the competing interest of crime prevention.

This judgment has implications beyond the immediate issue of retention. It places the burden on the State authorities of demonstrating that a particular breach of Article 8 is justified. It introduced considerations of proportionality and tests such as necessity as well as consideration of the needs of particular groups, for example, children.

For further information on this — Deputy Rabbitte already referred to it — I recommend also that Members of the House refer to the excellent research done by the Oireachtas Library and Research Service. This can be found in its Bills digest series.

The European Court of Justice judgment has been examined closely by the Office of the Attorney General. It found this judgment can be relied on by the Irish courts. In light of this, it is now necessary to differentiate between samples and profiles. It is also necessary to differentiate between those who have been convicted and others. Finally, it is necessary to take account of particular concerns relating to specific groups such as children.

Reflecting this, the Bill now proposes a mixture of retention periods. In the case of convicted persons, samples will be destroyed after three years and profiles will be retained indefinitely. The profiles of child offenders will be destroyed ten years after the end of the sentence.

The situation surrounding the retention of suspects' samples has understandably garnered much attention. This Bill sets out that where suspects have not been charged or have been acquitted, their samples will be destroyed after three years. Profiles may be held for ten years or five in the case of children. The person in question, however, is permitted to apply to the Garda Commissioner before the expiry of the default periods for removal and destruction.

There is no doubt that these retention periods should be kept under constant review. I welcome that the Minister is required by the Bill to review the destruction/retention arrangements for samples and profiles within seven years, and at any other time which he considers appropriate.

Another issue which has come to my attention and must be looked at is the risk that the DNA profiles stored on the new DNA database will be used for purposes not originally envisaged. This is known as "function creep." It is important that we guard against any future erosion of individuals' privacy in this regard. Taking account of this, the Bill provides for the establishment of a DNA database system oversight committee. It will be the committee's task to ensure the database will only be used for the purposes for which it is intended — the

[Deputy Noel O'Flynn.]

investigation and prevention of crime and the identification of missing persons. It is the committee's job to ensure that this function creep is not allowed to take hold.

This Bill sets out that the oversight committee will be chaired by a former or sitting judge of either the Circuit Court or the High Court. *Ex officio* members will include the director of the Forensic Science Laboratory as well as a nominee of the Data Protection Commissioner.

The new national database will be operated by the Forensic Science Laboratory, which will be renamed and carry the Irish initials EFE. It will carry out the DNA analysis and communicate the results to the Garda.

I take this opportunity to commend the work of the Forensic Science Laboratory. Since its establishment in 1975, it has delivered world-class forensic services. It is involved in the investigation of murders, assaults, sexual offences, armed robbery, firearm offences, drugs offences, criminal damage, arson, explosives, hit-and-run traffic accidents, fraud and any other offences where physical evidence occurs. In 2008 alone, the laboratory examined more than 16,000 cases. I pay tribute to Dr. Sheila Willis, the Director General of the laboratory, Dr. Louise McKenna, the director of science, and Dr. Seán McDermott, the director of operations, for their contribution to forensic science down through the years.

It is also worth mentioning at this point that work is in progress on providing a new facility for the Forensic Science Laboratory. Notwithstanding current budgetary constraints, the project is being advanced as expeditiously as possible by the Office of Public Works. Having considered various options, it has been decided to locate the Forensic Science Laboratory to a new purpose-built facility on State land at the Backweston Campus in Leixlip, which is already the location of the State Laboratory and the Department of Agriculture, Fisheries and Food laboratories. This will maximise synergy between the expertise and resources of the various laboratories.

Naturally, the new laboratory will have the capacity to maintain and operate the new national DNA database. It is also important to note that despite the current downturn, Budget 2010 has provided €4.1 million for the development of the new DNA database. This, coupled with the fact that the Garda Síochána remains well resourced with a budget of €1.5 billion this year, shows that Government is fully committed to the prevention of crime in all its forms. The benefits of establishing an efficient and effective DNA database are manifold. It will help in the prevention and investigation of crime, provide critical leads in cold cases, help identify missing and deceased persons and will act as a deterrent to criminals. I have no doubt it will help to put Ireland at the forefront of forensics for the next number of years.

When this Bill was first announced by the Minister, I received a letter from a graduate of Cork University who graduated in chemistry and forensic science in May 2009. She pointed out in her letter that she had to travel to London to do a masters in forensic medical science as there were no postgraduate courses available in forensic science in Ireland. Members may be aware that forensic science related courses are being introduced here every year. University College Cork, Dublin Institute of Technology, the Institute of Technology Sligo, Institute of Technology Tralee, Institute of Technology Waterford and Institute of Technology Tallaght have all introduced such courses in recent years — I hope Deputy Charlie O'Connor is listening as I mention Tallaght. The introduction of these courses leads students to believe jobs will be available in the forensic science area. However, that is not the case. The young lady who wrote to me stated:

> I recently researched jobs for forensic science graduates in Ireland and found that only one forensic science laboratory exists in Ireland, (in the Phoenix Park, Dublin) and they are currently not recruiting. I then proceeded to email them, and requested information on the

type of qualifications and graduates they require and when would they be likely to be recruiting again. To date, I received no response.

I will not mention the name of the person who sent this letter to me, but she is from west Cork. I will e-mail this letter to the director of this project and I am sure she will be more than happy to forward information to this young graduate. We have no business running courses on forensic science if positions will not be available for them. The Minister told me that 50 people were recruited within the past 12 months for this project.

The national DNA database system in the United Kingdom is the leader of the world's databases, with those of the United States and Europe closely following. The UK's database is the largest of any country, with approximately 7% to 8% of the UK population on the database, compared to 0.5% in the USA. In the United Kingdom, the national DNA database has proved to be one of the most effective tools for the prevention and detection of crime. Maintenance and development of the database is one of the British Government's top priorities and the government and police have invested over £300 million in the system over the past five years. As well as an individual's DNA profile, information such as name, date of birth, gender, ethnic appearance, etc., is also inputted.

The database in the United Kingdom was set up in 1995 to store data derived from DNA profiles. It operates on the basis that identifying offenders more often and more quickly should lead to increased detection of crime and bring more offenders to justice. The DNA database is also intended to act as a deterrent to offending and re-offending. This, in turn, helps to raise public confidence by ensuring that those guilty of offending can be found and dealt with by the criminal justice system. The setting up of the database has revolutionised the way in which the police work to help protect the public. The majority of the active criminal population is now believed to have their DNA recorded and profiled. Police forces across Britain use DNA profiles to solve successfully thousands of cases every year. All in all, the United Kingdom operates an excellent and successful national DNA database system. This, in turn, puts the UK at the top of the list when it comes to solving crimes, catching criminals and clearing the innocent. Confidence in the DNA database in Britain is, therefore, understandably at an all time high. I have no doubt that once we establish our database, we will experience the same success. Therefore, I commend the Minister on bringing forward this legislation.

Deputy Joe Carey: I welcome the opportunity to speak on this important legislation. I thank the Oireachtas Library and research service for, once again, producing an excellent digest on the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010 that is before us today. The topic covered by this legislation generates much interest and debate. We in Fine Gael have long called for the introduction of DNA related legislation. The subject of DNA and forensic evidence and its application to crime has captured the imagination of the public, with numerous television programmes, films and novels portraying a system where criminals are eventually made to pay for their crimes thanks to the application of scientific methodology. We started with the "Scooby Doo" cartoons but these have now evolved into the "CSI" series currently on our televisions. We have seen this interest in forensics manifest itself through our education system, with an ever increasing demand by students for courses at university and third level colleges in this field. However, this portrayal of forensics does not really reflect the more mundane reality.

I would like to deal first with the issue of funding for the operation of the DNA database. I note that the Minister has set aside €4.1 million of his 2010 capital budget for the development of the DNA database. If I were the Minister, I would review some of this State's more recent forays into the world of information technology. The Minister, Deputy Dermot Ahern, should take a good look at our record on electronic voting, PPARS and various other IT initiatives.

[Deputy Joe Carey.]

These very quickly ran out of control from a cost point of view and ultimately were scrapped, providing none of the advantages to the Irish public they were supposed to bring.

The fact that the database system is electronic means that the Minister must take the point of view that the system is corruptible. I would welcome it if the Minister indicated whether he has considered this and invite him to address the issue in his response to the debate. Has he put in place the relevant safeguards to optimise the performance of the DNA database? The subsequent annual costs of maintenance and oversight must also be nailed down at this early stage. It is somewhat ironic that we are embarking on this interaction of science technology and the law when representative associations inform us that many of our Garda stations are not yet e-mail enabled. This is difficult to believe.

I would prefer that in publishing this Bill the Minister placed more emphasis on the area of juvenile justice. Statistics and data, as published by the Irish youth justice service and backed up by the Garda, show a marked drop off in criminal behaviour once a youth reaches the approximate age of 16 or 17. I would like to see a change in the period of time for which data is held for people of this age. There is a strong body of opinion that our juvenile justice system should be distinct from the adult criminal justice system. The Minister, in establishing similar sample retention times for those under and over 18, is flying in the face of the reforms his Department is pursuing in the area of juvenile justice. I hope this anomaly is addressed on Committee Stage. Deputy Rabbitte also referred to this.

The historical international experience in the use of DNA databases seems to have been one of establishment, followed by expansion, followed by review and then, to a certain extent, row-back. The operational systems of many countries have changed over the years. I understand that in this legislation the Minister has taken due cognisance of the ruling by the European Court of Human Rights in the case of S. and Marper *v*. United Kingdom. The results of this case are interesting in that the initial evidence for the original UK DNA database was provided when both S. and Marper were juveniles. I repeat my request to the Minister to create more of a distinction between juveniles and adults in the legislation.

The contentious element of the Bill is no doubt the retention of information on the DNA database from people who have not been convicted of or charged with any crime. The Minister must tread carefully, and the Bill requires more work in this regard. No matter how many times the Minister states there is no implication of guilt, when a person's details are maintained on a database as proposed in this Bill, this will not always be the case. The interaction between science and the law can be interpreted as an undermining of the basic tenet of innocent until proven guilty.

The review mechanisms proposed by the Minister need more scrutiny. Section 69(6) provides that in publishing any report or laying a copy of a report before each House of the Oireachtas, the Minister may

> omit any matter from the copy of the report that is so laid or published if he or she is of opinion that the disclosure of the matter—
>
> (*a*) would be prejudicial to the security of the DNA Database System, the security of the State or the investigation of criminal offences, or
>
> (*b*) may infringe the constitutional rights of any person.

Paragraph (*a*) could ultimately be interpreted as allowing for the prevention of any questioning of the system or the manner in which it operates. As I have already stated, we cannot make

such an assumption with regard to something that is by nature electronically based. I would like to see this aspect of the review mechanism discussed further on Committee Stage.

I welcome the publication of the Bill, which will, on balance, be an asset to the State in the fight against crime. It is a contentious Bill and still requires some work during its passage through the Houses of the Oireachtas.

An Ceann Comhairle: Deputy Peter Kelly has up to 20 minutes.

Deputy Peter Kelly: I will use ten, a Cheann Comhairle.

I am delighted to have the opportunity to speak on the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010. The establishment of Ireland's first ever DNA database marks an important step forward in the State's fight against crime. Giving the Garda access to intelligence on a scale that has never before been available in this country, will revolutionise the way criminal investigations are carried out. The DNA database will be used mainly in the prevention and investigation of crime. However, it will also be used to identify missing, ill or unknown deceased persons. Therefore, not only will it help to provide leads in current investigations but will also be invaluable in solving cold cases.

The importance of DNA testing in criminal investigations cannot be underestimated. It has helped boost conviction rates across the world and is without doubt one of the greatest investigative tools available to police forces today. When talking about DNA testing, it is important to be clear about the difference between a DNA sample and a DNA profile. A DNA sample is taken from an individual via a mouth swab or a plucked hair, and is then stored in the lab for analysis. A DNA profile is the numerical representation of the DNA sample obtained by analysis. In this Bill, it is proposed to store DNA profiles generated from biological samples in a national database.

Armed with this understanding, let us consider how the DNA database will actually work. It is at the pre-trial stage that the greatest scope exists for the role of a DNA database in the context of the investigation and prosecution of crime. Profiles generated from samples gathered at crime scenes or from volunteers, such as victims of crime, are stored in the database and then compared to profiles already on file. The comparison of unknown crime scene profiles with known reference profiles, such as those of offenders, former offenders or arrestees, will produce hits that help the Garda to generate suspects and also eliminate other known profiles from suspicion. Similarly, matches generated by comparing crime scene profiles may indicate the existence of a serial offender and provide investigative leads.

Given that there has been some debate over whose DNA samples will be taken and how long they will be for kept for, let us consider this question. When this Bill becomes law, samples will be taken from offenders, former offenders and those detained on suspicion of committing a serious offence, as well as volunteers and missing or unknown persons. Prisoners on temporary release, persons who have received suspended sentences for serious crimes and those on the sex offenders' register will be required to provide samples. For the purpose of elimination, some members of the Garda and laboratory staff will also be required to give samples. It originally had been envisaged that all samples and profiles would be kept indefinitely. However, this position was changed following a high profile case at the European Court of Human Rights in 2008. In response to this, the Bill now proposes a range of retention periods.

Samples taken from convicted persons will be destroyed after three years and their profiles will be retained indefinitely. The profiles of child offenders will be destroyed ten years after the end of the sentence. In the case of suspects who have not been charged or have been acquitted, their samples will be destroyed after three years. Profiles may be held for ten years or five years in the case of children. It should be noted that the Bill includes a provision for a

[Deputy Peter Kelly.]

donor to apply to the Commissioner for the destruction of profiles and samples prior to the expiry date. In addition to this, the Bill requires that the Minister review the retention arrangements for samples and profiles within seven years.

In view of these arrangements, I believe the Bill strikes the right balance between the rights of the individual to privacy and the wider interests of society in terms of crime prevention. To best serve the interests of the public and the individual, it is clear that the new DNA database will need to be closely monitored and its functions kept under constant review. I welcome the fact that this Bill provides for the creation of an oversight committee. The task of the committee is to ensure the database is only used for the purposes for which it is originally intended. The committee will be chaired by a former or sitting judge of either the Circuit Court of the High Court.

It is hoped that this new database will emulate some of the success that other jurisdictions have had with similar systems. The UK operates one of the largest national databases in the world, containing profiles for almost 5 million individuals. The British police forces use this to solve thousands of crimes every year. It is clear that the establishment of a new national database has many benefits. Most important, it will provide gardaí with a much-needed, powerful and sophisticated tool to prevent and investigate crime. I commend the Bill to the House.

Deputy Aengus Ó Snodaigh: Fáiltím roimh an deis labhairt i dtaca leis an Bhille seo. Mar atá sé dréachtaithe faoi láthair, ní féidir liom tacaíocht a thabhairt don Bhille. Cosúil le móran rudaí eile i dtaobh ceisteanna dlí agus cirt, caithfear iarracht cothromaíocht a shroicheadh idir cearta acu siúd atá á gciontú agus cearta an sochaí agus an íobarataigh atá tar éis fulaingt de thairbhe cibé coir atá i gceist.

Go minic is deacair an chothromaíocht sin a fháil i gceart agus sin an dúshlán dúinn mar pholaiteoirí ná iarracht i gcónaí a dhéanamh an chothromaíocht sin a fháil agus córas dlí agus ceart foirfe a bheidh cothrom agus a dhéanann i gcónaí iarracht a bheith cothrom a chruthú.

Bíonn sé deacair nuair atáimid ag déileáil leis a leithéid de reachtaíocht nuair atáimid ag déanamh ionsaí de shórt ar chearta íobartaigh nó cearta siúd atá á gcúiseamh againn. Níos luaithe inniu, bhímid ag trácht ar ghné eile den chóras dlí agus cirt agus bhí fadhbanna agam sa mhéid agus a bhí sa Bhille ach d'fháiltigh mé roimhe don chuid is mó.

Tá fadhbanna agam leis an reachtaíocht seo. Ní féidir liom tacaíocht a thabhairt dó mar atá sé dreachtaithe faoi láthair. Tá súil agam go mbeidh an tAire in ann athruithe a chur isteach ar Chéim an Choiste nó ar Chéim na Tuarascála a athróidh an meon atá agam agus atá ag mo pháirtí ina leith.

Sinn Féin believes the lawful and effective collection and use of forensic evidence from crime scenes, victims and suspects is crucial for obtaining sound convictions that are not based on confession or witness evidence alone. Basing a conviction on confessional evidence alone was a practice which was widespread and led to abuse of due process rights in the past in some jurisdictions. It has led to the conviction of many an innocent person in this and our neighbouring jurisdiction.

In some cases forensic evidence can also be crucial to avoiding wrongful conviction where the true culprit evades justice but that said, the potential of forensic evidence and DNA databases should not be presented to the public as anything more than what it is. Forensic evidence and associated databases may assist in the detection and prosecution of some offences but they will not ultimately reduce crime. Crime prevention requires a well resourced and holistic response to its individual and systemic causes, something which this Government has failed to implement, despite all its tough talking.

Even when it comes to the detection of criminals, the potential of a DNA database should not be oversold. It is not the be all and end all and it will not solve everything. The overall "hit" rate of crime scene matches was quoted by the last speaker and others who read from the Oireachtas Library-produced Bill digest in some length.

The hit rate of crime scene matches to suspects on the database in England and Wales for 2008 and 2009 stands at 60%. This sounds fantastic and any crime detection force in the world, including An Garda Síochána, would love that to be true. However, upon further investigation we see that the match rate is only for cases where DNA is actually obtained from a crime scene, the number of which is extremely low. Only 17% of cases ever have a full crime scene investigation and even fewer yield accessible forensic material. The match rate also includes DNA belonging to individuals whose presence can be innocently explained away.

This means the process is not the be all and end all and gardaí and members of other police forces should be aware of that. Ultimately, it is good and strong investigative techniques and proper Garda and police work that often yields better results than dependence on DNA or forensic evidence. It is a useful tool and should be used as such.

It must not be forgotten that forensic evidence is ultimately presented as opinion evidence to the court. Expert opinion, such as that of the scientific community, in this field is often diverse and divided. It is not an exact science, if there is any such thing as an exact science. For example, low copy number DNA is inadmissible in many jurisdictions, yet it has been used as the basis for prosecutions in others. Low copy number DNA was at the centre of controversy in Ireland during the Wayne O'Donoghue trial and in the Omagh bombing case. There are dangers in blindly accepting DNA, as some people would like us to do.

Blind and unthinking enthusiasts of DNA databases will often argue that "if you have nothing to hide then you have nothing to fear", but that simply is not the case. DNA databases can put innocent people at risk. This is particularly so as technology has developed to allow a generation of DNA profiles from the tiniest of DNA samples. In the Omagh bombing case, low copy number DNA evidence produced a partial match to a six year old schoolboy in Nottingham who was on the British database. He was quickly eliminated from the investigation, but what if he had been an innocent man in his twenties living in the Border counties? Would he have been quickly disregarded, or would the police have relentlessly circled in on him? Would he be in the dock by now? We do not know.

The link between the presence of DNA at a crime scene and involvement in that crime is far from straightforward. There is a danger that entirely innocent individuals will find themselves the targets of "eager beaver" prosecutors. For example, the Minister of State here today might shake the hand of the Minister for Justice, Equality and Law Reform, who might then go and commit a crime, leaving his skin cells at the scene. If the Minster of State's DNA was on the database, he might be drawn into a criminal investigation into something about which he knew absolutely nothing. The Garda might be prompted to come kicking his door down instead of the Minister's door. That could be a consequence of total dependence on DNA. It is a developing science and we need to bear that in mind.

Public education is also needed to limit the inflated and false expectations of forensics raised by popular television programmes such as "CSI Miami". The virtually infallible, precise technologies and unlimited resources depicted are generally not available to the Garda, nor to the State Laboratory. I remember asking the then Minister for Justice, Equality and Law Reform, former Deputy Michael McDowell, about the situation with the State Laboratory in 2002. He told me that the money was budgeted for it and that it would be built within four years on the site in the Phoenix Park. There is neither sight nor sound of it at this stage. The sod has not been turned and now it is being located elsewhere. It looks like it will be part-

[Deputy Aengus Ó Snodaigh.]

privatised to allow the private sector to deliver a service that was protected within the public service. We will try to ensure on Committee Stage that there is no privatisation of our justice system. Other jurisdictions have discovered that the influence of programmes such as "CSI Miami" has led to widespread misconceptions and expectations. Programmes such as "CSI Miami" put expectations on gardaí that once they get to a scene, they will be able to find evidence and get a quick conviction. We need education to ensure that not only the public, but jurors and victims question the misconceptions out there. The truth about the ability of forensic laboratories and the lack of resources in a small country like Ireland needs to be explained to the public.

Education and training for investigative and prosecuting authorities is also essential. There is a real danger that a forensic hit on a database will blinker an investigation, causing the Garda to disregard other important but non-forensic leads. Detectives in England used DNA from a hair caught in a rape victim's jewellery in 2007 to charge and prosecute a man for rape. The case fell apart when it came to court. The man in the dock was white, small and slim, but the victim had described her attacker as black, large and tall. That was a basic error, yet the police thought they had the right man based on DNA evidence. Somebody obviously forgot to read the victim's statement. I hope that never happens in Ireland, but it is part of the challenge we face when we produce a database and begin to depend on forensics.

It is also possible for a person's DNA to be placed at a crime scene, either by corrupt gardaí, by rival criminals, or by innocent transfer. False DNA traces can be planted. For example, a cigarette butt can be lifted and left at the scene of a crime. It is a bit more difficult, but Ben Goldacre of *The Guardian* has shown that fingerprints can also be planted at crime scenes.

> Find a fingerprint on glass, paint it with Super Glue to make it more visible, photograph this with a digital camera, print it off on a transparency sheet, etch this with a beginners etching kit, use that as a mould to make a fake finger out of a fruit pastille and hey presto, you can plant someone else's finger print and eat the evidence once you're done!

This sounds far fetched, but is has been done. We can go back to those programmes that show how fingerprints have been used to gain access to computers and the like, and how some of the most expert criminals in the world can reproduce the fingerprints of people who do not know those criminals.

DNA can assist in proving a case either way. It can help to establish innocence as well as guilt. Will the Minister of State confirm whether this Bill establishes a right of access to DNA evidence post-conviction? Can those who have been wrongly convicted appeal based on the availability of DNA? This right was at the centre of a recent legal challenge in the US, where Alaska and six other states did not allow such access. The Innocence Project took a case on behalf of a convicted rapist who was convicted on the basis of DNA testing which showed that semen found at the scene of the crime was consistent with his own, but also consistent with that of 16% of the African-American population. After being convicted, he sought to pay for more exacting DNA testing which could have proved more conclusively whether the semen was his or not, but the Alaskan state refused his request. This was somebody who tried to prove his own innocence by using material held by the state on a database, yet he did not receive that access.

3 o'clock

Having made some general cautionary comments about the use of forensic evidence and DNA databases, I wish to address the precise retention regime contained in the Bill before us.

It is my opinion that the regime is disproportionate and that it appears to have been arrived at arbitrarily. In that context, I remind the House that the European Court of Human Rights,

in its judgment in the case of S. and Marper *v*. the United Kingdom, slammed the retention regime in England and Wales, particularly as it relates to those who have not been convicted of an offence. I am of the view that, if tested, the legislation before the House will also fall foul of that judgment. After the ruling to which I refer, the British Government considered changing its regime from one which principally involves indefinite retention of all profiles to one which retains the profiles of those who have not been convicted for six years. England's Equality and Human Rights Commission evaluated that proposal and indicated that six years did not represent the balance required by the judgment in S. and Marper *v*. the United Kingdom. Such a period is too long.

The Minister for Justice, Equality and Law Reform is proposing in this Bill to retain the DNA profiles of those who have not been convicted for ten years. Some of these people will actually have been acquitted or will even have been proven to be the victims of miscarriages of justice in that time. In addition, he is also seeking to retain the actual DNA samples of those who have not been convicted for three years. Surely the retention times in these cases should be linked in some way to whether they are required for a prosecution.

In S. and Marper *v*. the United Kingdom, European Court of human rights pointed to the Scottish retention regime as being preferable. In Scotland, DNA samples and profiles must be destroyed in cases where a prosecution results in an acquittal or where no prosecution occurs. In the case of sexual or violent crime, DNA may be retained for up to three years and the authorities may then apply for an extension beyond three years on a case-by-case basis. Such requests are subject to judicial oversight.

The relevant offences included in the Bill before the House may be narrower than those that come into play in England and Wales. However, they are not exclusively limited to sexual or violent crimes. At the very minimum, the Bill, and the retention timeframes and relevant offences, should be amended to bring it closer in line with the Scottish regime.

There is an international component to the Bill, which implements the Prüm decision which allows for the automatic searching of the databases of other member states. Article 3 of that decision provides that "Searches may be conducted only in individual cases and in compliance with the requesting Member States national law". However, the relevant laws, particularly those relating to privacy safeguards, are not harmonised across member states. On numerous occasions I have stated that harmonisation of the protections relating to databases and access relating thereto is required. I refer, in particular, to justice databases held by police forces.

The Government's primary responsibility is to the citizens of this country. The Bill should be amended to ensure that the national law of our State should apply to searches on our databases. Is the Minister aware of a note from the Presidency of the European Council to the *ad hoc* group on information exchange last December? This note states that the databases of smaller states are being damaged by overwhelming searches carried out by the authorities of larger states. Germany, Spain and Italy were identified as the culprits in this regard.

The Department of Justice, Equality and Law Reform's regulatory impact assessment predicts this legislation will give rise to €3 million in capital costs and that there will be an annual cost of €1.5 million in respect of its implementation. This is an underestimation, particularly in view of the fact that intensive and refresher training courses will be required for all those involved in administering justice throughout the State. There will also be a financial impact in the future in respect of the construction and fitting out of the State's forensic laboratory. I am not complaining about such expenditure, I am merely stating that the amounts involved have been underestimated.

Whatever amount of money is required should be spent in order to ensure that we have the best possible forensic laboratory in order to properly assist An Garda Síochána in its work.

[Deputy Aengus Ó Snodaigh.]

The State Laboratory cannot keep up with the number of requests for analysis submitted to it at present in respect of drug seizures. The Minister for Justice, Equality and Law Reform will be aware that the State Laboratory cannot analyse quickly enough the drugs which are being found in shipments and confiscated by An Garda Síochána, customs officials, etc. As a result, delays are being experienced in the context of processing cases.

Unless we take a decision to properly fund and resource the existing State Laboratory and the new forensic laboratory, there will be no point in passing the legislation because a disservice will be done to those who believe that the forensic and DNA database will be of benefit. If we do not provide sufficient funding or if we fail to put in place the safeguards to which I refer, we will do a disservice to the cause of justice in the State.

Does the Bill provide protection against the potential damage caused by the authorities in other countries continually requesting searches of our databases? How much time will be set aside in respect of such searches? How much access will be granted? Will the relevant databases have the capacity to accommodate numerous requests from abroad? Will the necessary personnel be available to monitor or assist the searches to which I refer?

The Bill should require that states may not request a search of our database until they have first searched their own databases. We should require that the offence under investigation be serious in nature and that a state should be obliged to demonstrate that an existing line of inquiry points in the direction of our State. It should not be the case that other states be permitted to carry out trawling exercises in respect of our databases.

The Human Rights Commission and the Irish Council for Civil Liberties, ICCL, have put forward a range of recommendations, which I wish to endorse. I urge the Minister to consider these recommendations to discover whether they can be taken on board in order to ensure that when we have completed our deliberations we will be left with legislation which is comprehensive and which will deal with the issues at hand. In other words, we should end up with a DNA database system that will stand the test of time in the context of ensuring that data will be safeguarded, the innocent protected and criminals prosecuted.

In its recommendations, the Human Rights Commission stated:

> The 2010 Bill should provide that except in limited cases, bodily samples and DNA profiles should be destroyed and removed as soon as reasonably possible in circumstances where no proceedings have been instituted against a person, they have been acquitted, the charge has been dismissed or proceedings discontinued.
>
> The power to take intimate and non-intimate bodily samples solely for the purposes of the entry of a DNA profile on the DNA Database System and not in furtherance of a specific criminal investigation should be removed from the 2010 Bill (section 11).
>
> The proposals in the 2010 Bill in relation to negative inferences to be drawn from an accused person's failure to consent to the taking of intimate bodily sample should be removed from the 2010 Bill.
>
> If the above recommendation is not accepted, a person should be entitled to have full access to legal advice as a matter of course before they can be requested to consent to the provision of an intimate bodily sample so that they can fully understand the implications of refusal to consent to the provision of intimate bodily samples where negative inference provisions apply.
>
> Where it is not possible to ensure the presence of a parent or guardian, the "nominated adult" who is present during the taking of a sample from a child or protected person should

be a social worker or other qualified professional who is not a member of the Garda Síochána. (Sections 21 and 22 should be amended accordingly.)

Bodily samples and DNA profiles of children and protected persons should be removed and destroyed as soon as reasonably possible in circumstances where no proceedings have been instituted against a person, they have been acquitted, the charge has been dismissed or proceedings discontinued. In the context of children, bodily samples and DNA profiles should always be removed as quickly as possible.

The parts of the 2010 Bill that allow for the search and comparison of DNA profiles amongst EU Member States should not be brought into force until the Irish Government has implemented the EU Council Framework Decision on the protection of personal data in the field of police and judicial cooperation in criminal matters into its domestic law.

The ICCL recommends that:

Under Part 3 of the Bill, volunteers may be approached by a Garda or authorised person for DNA sampling in relation to the investigation of a particular offence. These samples will not be entered into the DNA Database system unless consent of the volunteer is provided on request. However, the Bill does not incorporate sufficient safeguards in relation to this consent. The person should be told in ordinary words, in a language that he/she understands, of the consequences of agreeing to inclusion of the DNA database system. He or she should also be afforded the opportunity to seek advice on the matter.

The ICCL welcomed the establishment of an independent oversight committee and the inclusion on it of a representative from the Office of the Data Protection Commissioner. The Minister for Justice, Equality and Law Reform will appoint the members having regard to their qualifications and experience, but the ICCL considers that an independent appointment process should be established and that it should be mandatory to include a member with human rights expertise.

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Curran): I thank Deputies who contributed to this debate. Many important and useful points were made and they have all been noted. In particular, Deputies Joe Carey and Ó Snodaigh stated that they intend to use Committee Stage to tease out a number of issues and table a number of amendments. I note that many of the points raised which people want to tease out on Committee State relate to Part 10 of the Bill, which covers the destruction of samples and the removal of DNA profiles and the timescales and categories for this.

I was taken by the point made by Deputy Ó Snodaigh about the Minister, Deputy Dermot Ahern, and I shaking hands.

Deputy Aengus Ó Snodaigh: I did not expect him to commit crimes.

Deputy John Curran: It was the manner in which you said it.

The Bill does not specify test methods. In any event, DNA results can be challenged under normal rules of evidence. Court procedures are not solely about DNA evidence. Normal rules of challenging evidence will apply. Deputy Ó Snodaigh also mentioned the Human Rights Commission and the Minister received its observations on the Bill. It acknowledges that many of the recommendations it made on the general scheme of the Bill have been taken into account. The Minister welcomes the input of the commission and he will ensure that the recommendations it made are carefully examined to determine whether the Bill would benefit from further amendments.

[Deputy John Curran.]

I was encouraged but not surprised to see a significant degree of support on the other side of the House for the Bill. I know all Deputies want our police force to be in a position to take full advantage of technological developments, be it in the field of forensics or elsewhere, in bringing criminals to justice and preventing crime. The Bill contributes significantly to the achievement of that goal.

The Garda Síochána, like the best police forces internationally, is engaged in a continual process of development and improvement. Its major programme of reform in recent years has included greater use of technology. An unprecedented level of investment in IT and technology projects has put the force on a par in many respects with the best equipped police forces in the world. Some of the projects completed or being rolled out include a state-of-the-art automated fingerprint identification system, which has led to a significant increase in the number of hits detected from prints taken at scenes of crime; a new automated ballistics identification system to aid in the fight against gun-crime; an in-car automated number plate recognition system which will help deprive those intent on criminal behaviour of access to our roads; and rollout of the new national digital radio service which has already been implemented in the Dublin metropolitan and eastern regions and is scheduled to be fully operational in all regions by the end of 2011. As the Minister stated, the establishment of a DNA database will be another significant milestone in our efforts to maximise the use of resources and ensure that the Garda Síochána is equipped to a standard to rival any other police force in the world.

While the Garda Síochána will be the main beneficiary of the intelligence produced by the database, the responsibility for the establishment and maintenance of the database will rest with the forensic science laboratory. The 2007 review of the laboratory's resource needs, commissioned by the Minister's predecessor, and carried out by the former head of the Swedish forensic science laboratory, Professor Ingvar Kopp, will assist the laboratory in planning for the implementation of the Bill. The review found that the laboratory compares well in terms of productivity with similar forensic science laboratories and that effective quality control mechanisms are in place. However, Professor Kopp identified specific aspects of the laboratory's activities and structures which needed to be improved.

The review has been of immense value to the laboratory's modernisation process. It has also contributed greatly to the mapping out of the future development of the State's forensic analysis service, especially in the area of DNA analysis. Most notably, following the report the laboratory's staffing cohort was increased substantially. In 2008, an extensive recruitment campaign led to 12 additional forensic scientists and 14 additional laboratory analysts being recruited. Further administrative staff were also provided, bringing current authorised staff numbers for the laboratory to 102.5. This is an increase of more than 30 posts since 2006, which represents a considerable expansion in the laboratory's capacity.

The implementation of the report's recommendations continues, particularly in the context of planning for the establishment of the DNA database. Although the database cannot be established until such time as the legislation is enacted, preparatory work has already commenced, and this year the Minister has secured €4.1 million to facilitate the development of the database.

Work is also under way to provide as a priority a new purpose-built facility for the forensic science laboratory. Deputies will be aware that it will be located at the Backweston complex in Leixlip. The State laboratory and the Department of Agriculture's laboratories are already located there. The new facility will be capable of facilitating the medium to long-term operational requirements of the forensic science laboratory, including the capacity to maintain and operate the DNA database. The Minister is advised that the Office of Public Works, which is

managing the delivery of the project on behalf of the Department of Justice, Equality and Law Reform will be in a position in the coming months to proceed to tender for construction stage with a view to work starting on the site later this year. Taking everything into consideration, the Minister is satisfied that the necessary funding, resources and facilities continue to be provided to the forensic science laboratory, not only to ensure that the laboratory has the capacity to operate the systems being introduced by the Bill, but also to meet future operational forensic analysis demands in general.

The Minister has stressed several times that the purpose of the database is to produce quality intelligence that will be of assistance to the Garda. Its effectiveness in this regard will depend on the population of DNA profiles stored in it. He is satisfied that, with that purpose in mind, the Bill targets the appropriate persons, namely, persons suspected of committing serious offences, offenders convicted of serious offences and all persons subject to the sex offender registration requirements. The Minister is also pleased that the Bill allows unidentified historic crime scene stains to be entered in the database. This may, in time, help to bring long-standing investigations to a successful conclusion and bring some belated comfort to the victims and their families.

In addition to the intelligence capacity of the database, the Bill also provides for the taking of samples from suspects in custody for use in evidence. Bearing in mind the difficulties in some cases, particularly gangland cases, in obtaining evidence from witnesses due to high levels of intimidation, the collection of other types of admissible evidence takes on even greater importance. This was also partly the reason that last year the Minister introduced two other major pieces of legislation in the Criminal Justice (Surveillance) Act and the Criminal Justice (Amendment) Act.

We must remember that samples constitute sensitive personal data. Powers to take and retain samples must, therefore, be carefully circumscribed to safeguard against abuse and disproportionate interference with individual freedoms. The Minister drew attention in his opening remarks to some of the safeguards in the Bill and I emphasise again those provisions. They include safeguards around the taking of samples, with additional safeguards applying to children and other vulnerable persons. For example, samples will be taken by the relevant bodies, whether it be the Garda or the Irish Prison Service in accordance with published codes of practice. Other important safeguards include independent oversight of the management of the database to ensure its integrity and security. Such oversight will ensure that the public can have confidence that it is being operated in accordance with the legislation and in the reliability of the intelligence that it produces. I also emphasise that, apart from the many specific safeguards in the Bill the very fact that the purposes, structure and operation of the database are set out clearly in primary legislation will act as an enduring safeguard against misuse.

A number of Deputies referred to the retention arrangements, particularly those that apply to persons who are not convicted or persons whose convictions are quashed or declared to be a miscarriage of justice. Deputies will have noted that the arrangements in the Bill take account of recent jurisprudence emanating from the European Court of Human Rights. Although that court found a particular retention regime to be in breach of the privacy rights in the convention, it nevertheless indicated that the retention of DNA data relating to such persons pursues the legitimate purpose of the detection and prevention of crime. The judgment also gave some guidance as to what features a proportionate retention regime might include such as an independent review of decisions to retain data, time limits on retention, and different treatment of convicted persons and those who are not convicted, children and adults and samples and profiles. All of these elements have been reflected in the Bill. Deputy Carey referred in particular to the provisions of Part 10. They will be teased out further on Committee Stage.

[Deputy John Curran.]

In providing for a DNA database the Bill breaks new ground in this jurisdiction. The proposals in the Bill will give us a system that is proportionate and balanced and does not interfere with private rights any more than is necessary for the public good. That was the Minister's aim during the drafting of the Bill and he is confident that the end result achieves that balance. I am pleased to commend the Bill to the House.

Question put and declared carried.

Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010: Referral to Select Committee.

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Curran): I move:

That the Bill be referred to the Select Committee on Justice, Equality, Defence and Women's Rights, in accordance with Standing Order 122(1) and paragraph 1(a)(i) of the Order of Reference of that committee.

Question put and agreed to.

Sitting suspended at 3.25 p.m. and resumed at 3.30 p.m.

Ceisteanna — Questions.

Priority Questions.

Education Grades.

1. **Deputy Brian Hayes** asked the Minister for Education and Science if he will give details of the preliminary findings of two separate investigations launched by him into grade inflation in secondary and third level education; and if he will make a statement on the matter. [10994/10]

Minister for Education and Science (Deputy Batt O'Keeffe): I recently asked my officials, in conjunction with the relevant State bodies, to examine available evidence in regard to the question of trend increases in grades awarded at second and third levels. Papers have been prepared for me in respect of the State examinations and the higher education sector.

With regard to the State examinations, while there has been a significant increase in the proportions scoring at grade AB and ABC at higher level in the leaving certificate between 1992 and 2009, most of the increase took place during the 1990s and grades have largely stabilised since the establishment of the State Examinations Commission, SEC, in 2003. The SEC has in place an extensive range of quality assurance measures to ensure the validity and consistency of assessment. A range of issues can impact on grading in the certificate examinations, including curriculum reform, introduction of second assessment components, investment in professional development for teachers, more exam-oriented teaching, and better information for teachers and students through improved Internet access.

With regard to higher education, it is the case that the data presented indicate a trend of increasing award levels. The proportion of students gaining first class honours in level 8 degree

programmes increased from 11.2% to 16.6% in the institutes of technology between 1998 and 2008, and from 8.3% to 16.2% in the universities between 1997 and 2008. Several contributory factors must be considered, including deliberate decisions on assessment standards prompted by external examiner findings aimed at aligning Irish standards more closely with international norms. Improved and more explicit assessment methods, with the development of learning outcomes-based approaches, and better prepared students are also arguably important factors.

Gade increases in higher education are, however, also argued by some to be indicative of a relaxation of standards. This is a subject of debate across systems internationally. Notwithstanding the inconclusive nature of that debate, my principal concerns in an Irish context are on two fronts. I want to safeguard and enhance the quality of our graduates and to ensure the robustness of our systems of quality assurance. The question of graduate quality is a complex one of fundamental strategic importance. The higher education strategy group is currently addressing the broader challenges involved.

On the quality assurance front, I am establishing a new qualifications and quality assurance agency. This will bring a unified focus to external quality assurance in higher education and establish a closer link between quality assurance and the standards underpinning awards under the national framework of qualifications.

Deputy Brian Hayes: The information the Minister has given the House is worrying because it confirms the trend identified by many people in the education system in recent years. It seems the Minister has only recently taken action following conversations he has had with senior people in leading multinational companies located in the State. It is right and proper that the views of such persons be heard. However, two years ago, the Minister's Department, through the State Examinations Commission, rubbished data published under the name of the Network for Irish Education Standards which highlighted the problem of grade inflation, particularly in respect of the leaving certificate, over the past two decades. Given its rubbishing of these findings, does the Minister have confidence in the State Examinations Commission? Does he have confidence in the Higher Education Authority and in the universities' quality assurance system? It seems the regulatory system we charge with putting a premium on higher education has been found wanting.

Deputy Batt O'Keeffe: Analysis has shown that there was grade inflation in the leaving certificate at higher level but that it levelled off after the establishment of the State Examinations Commission in 2003. Since then the variation in grade inflation is not significant. This indicates clearly that the State Examinations Commission is functioning as it should and that there are effective controls in place for those setting and examining papers. The conclusive finding in terms of quality control is that only 0.7% of appeals are successful. Students now have access to the marking scheme for every subject and can, on request, scrutinise their completed scripts after the results have issued.

Deputy Brian Hayes: Will the Minister not accept that his Department has been in complete denial about this problem for several years? When it was brought to the attention of the Department by academics at the Institute of Technology, Tralee, their findings were rubbished. The Minister has decided to take action only because the issue has been brought to his attention by United States multinationals. The regulatory system is not working, which has quality assurance implications for graduates and in terms of the reputation of our education system abroad. The Minister's first responsibility is to accept that and to take radical action to ensure we have a regulatory system in which people, including graduates, can have confidence.

[Deputy Brian Hayes.]

I strongly concur, as I suspect the Minister does, with recent comments by Dr. Craig Barrett on our education system. In view of those comments, does the Minister propose to introduce changes to the leaving certificate?

Deputy Batt O'Keeffe: I have dealt with the leaving certificate. As I said, I am satisfied there are proper controls in terms of grading standards. In regard to third level, there is no denying that there has been grade inflation. Dr. Barrett has given exactly the same advice in this regard to the United States Administration. There has been a similar grade inflation in the United Kingdom and other jurisdictions. We have looked at international trends and standards and have introduced a mechanism through the universities' quality control system.

We must not undermine in any way the quality of the degrees awarded by Irish institutions and, therefore, of the graduates they produce. It is because of the flexibility of our graduates and the high quality of the education they have received that multinationals choose to locate here. Continuing announcements of the creation of high-tech jobs indicate that there is confidence in our education system. We must challenge that system into the future. That is why I am putting in place a new qualifications and quality assurance agency which can go into the various institutions and compare one with another.

School Management.

2. **Deputy Ruairí Quinn** asked the Minister for Education and Science the criteria and methodology he used in selecting the location and patronage of the seven new primary schools which he announced on 16 February 2010; whether the commission on school accommodation, the new schools advisory committee or the National Parents Council were consulted in advance of this decision; and if he will make a statement on the matter. [10923/10]

Deputy Batt O'Keeffe: As I previously indicated to the House, the commission on school accommodation is currently reviewing the procedures for the establishment of new primary schools. The term of office of the new schools advisory committee expired in August 2008 and on foot of the issues raised within its reports and in light of changing demographic trends, I announced a review of the committee's procedures. When I announced the commencement of that review, I also stated that no new primary schools would be established pending the completion of the review and the implementation of the revised procedures, except in cases in which new schools were warranted because of increased demographics. The commission is due to report to me soon.

The interim arrangements for the recognition of new primary schools while the review of procedures in this area is under way provide that the chairman of the commission on school accommodation should advise me in cases in which more than one patron expresses an interest in opening new schools in those locations in which they are required to meet demographic increases. The forward planning section of my Department has carried out a study of the country to identify the areas where, due to demographic changes, there may be a requirement for significant additional school provision at both primary and post-primary levels over the coming years. Following on from this detailed analysis, it appeared prudent to plan for the establishment of new schools to commence operation in September 2010 to meet increasing demand in certain identified areas.

Information regarding the areas of most significant demographic change and likely increase in pupil numbers was circulated to all existing patrons during 2009. Details were not circulated to the National Parents Council. As I explained previously, the term of office of the new schools advisory committee had expired in August 2008. As it had not been reconstituted pending the

completion of the review of the procedures for the establishment of new schools, the question of consulting it did not arise. The patrons were invited to bring forward proposals for the expansion of existing schools to cater for the increased pupil numbers or to put themselves forward as patrons for any new primary school, where required. The submissions received from the patrons regarding the proposed new schools for 2010 were assessed by the chairman of the commission on school accommodation.

Additional information not given on the floor of the House.

The factors considered in deciding on the granting of recognition in these cases included the capacity of existing schools, if any, in those areas to expand, with particular emphasis on the capacity to expand at junior infant level; the development already achieved by recently established schools in those areas and the potential of the future growth of those schools; the extent or range of diversity of patronage offered across existing schools in the areas; the proximity of schools of similar ethos to those proposed by applicant patrons; and how the proposed schools under the respective patrons would provide for extending or strengthening diversity of provision in each area. I am satisfied that the decisions resulting from this process strike an appropriate balance between the competing demands of diversity in the relevant areas.

Deputy Ruairí Quinn: While I am tempted to say something, I instead will ask the question.

An Leas-Cheann Comhairle: The Chair is glad to hear that.

Deputy Ruairí Quinn: Why would a patron such as the Roman Catholic Church in Ireland, which controls 92% of national schools, which the Primate and Archbishop of Dublin has acknowledged to be a legacy of the past that does not represent the geography of the present in sociological terms, get two out of the seven new schools in an area in which University College Galway identified the presence of 33 different nationalities and noted that a multicultural approach was required to accommodate that school? Did the Minister made this decision or did he acquiesce to a decision made by Mr. Murray, the chairman of the commission on school accommodation?

Deputy Batt O'Keeffe: First, I made the decision. I certainly consulted Mr. Murray, having received a recommendation from him with regard to this matter, and I thought the decision was appropriate given the circumstances pertaining to the seven schools. If the Deputy wishes, I can give him the circumstances pertaining to Galway.

Deputy Ruairí Quinn: Yes, please.

Deputy Batt O'Keeffe: Doughiska is a new area of population built to the east of Galway city. As has been pointed out, a VEC application had merit and an application was made by Educate Together, which previously had received approval to start a school in the Galway area. However, it did not materialise because the patron body was unable to source a suitable site. In addition, we had regard to the area in question and this is what was important. It was noted that there appears to be a strong position for this school to be established because according to the census of 2006, almost 87% of the population in that area are Catholic adherents. A new school under Catholic patronage therefore would cater for the largest segment of the local population. Consideration could be given at some future date to a school under different patronage to provide diversity of provision in the area. It was recommended on this basis.

Deputy Ruairí Quinn: Does the Minister accept that the distribution of patronage across the country is a distortion from the past that no longer fits the contours of modern sociological Ireland?

Deputy Batt O'Keeffe: I accept that greater diversity has come in and there are areas in which such diversity must be and will be recognised. The case in question has attracted criticism from Educate Together for instance. However, that body was awarded the patronage of two schools out of seven. While Educate Together has been highly critical on this occasion, I refer back to 2008, when patronage was issued in respect of 25 schools. On that occasion Educate Together was awarded the patronage of 12 schools. This time, in the circumstances that presented themselves, Educate Together deservedly was awarded the patronage of two schools. However, I also had made clear, in respect of the pilot VEC national school project, that I sought the rolling out of others in different locations and environments with different school mixes to ascertain how the pilot might work.

Deputy Ruairí Quinn: Can the Minister explain how he allocated three out of the seven schools to a patron body that does not have the legal status to be a patron at primary level?

An Leas-Cheann Comhairle: The Minister, in a final reply.

Deputy Batt O'Keeffe: Some time ago, I indicated that I intended this year to roll out at least two more pilot projects under the VEC. As the Deputy is aware, an interim measure has been put in place. As the Deputy also is aware, I am about to bring the education (patronage) Bill to the Dáil and hopefully it will become law before the end of the year. In the interim period, however, legal arrangements have been put in place in respect of the patronage of the schools.

Deputy Ruairí Quinn: Will the Minister publish those legal arrangements?

Deputy Batt O'Keeffe: Yes.

School Staffing.

3. **Deputy Brian Hayes** asked the Minister for Education and Science the number of assistant principals and special duty teachers who have retired from primary and post-primary teaching since the embargo on filling middle management posts was introduced in 2009; and if he will make a statement on the matter. [10995/10]

Deputy Batt O'Keeffe: Retirements at primary level since the introduction of the moratorium in March 2009 are 309 principals, 258 deputy principals, 141 assistant principals and 214 teachers with special duties posts of responsibility. The equivalent figures for the post-primary sector were approximately 100 principals, 75 deputy principals, 660 assistant principals and 150 teachers with special duties posts of responsibility. This is based on Department-held data with a *pro rata* adjustment to include VEC schools. Vacancies at assistant principal and special duties level arise due to retirements in these specific grades and typically also from the knock-on effects of filling principal and deputy principal posts.

On the introduction of the moratorium, the Government exempted principal and deputy principal appointments in all primary and post-primary schools and these continue to be replaced in the normal manner. The impact of the moratorium therefore is limited to the assistant principal and special duties allowances payable to teachers on promotion. Unlike other areas of the public service, retirement vacancies are being filled and the schools' losses pertain to the capacity to make promotions by awarding the extra pay allowance to other teachers. The position whereby slightly more than 50% of all teachers have promotion allowances is simply not sustainable.

I recognise that the impact of the moratorium is uneven across schools and as I already have acknowledged, the impact is not simply due to the level of retirements but also is a consequence

of promotions that are made to principal and deputy principal posts. Further retirements and promotions later this year will have a further impact on middle management posts. As I indicated earlier this week, I am prepared to consider this issue to ascertain what limited interim alleviation can be given to deal with those cases, while the overall number of promotion positions continues to reduce.

My Department, like others, is in discussions with the Department of Finance in respect of a public sector numbers control framework. It is only in the context of such a framework for the education sector and when an overall long-term reduction in the number of promotion allowances is brought about that the position of some individual schools can be addressed for September next.

Deputy Brian Hayes: The Minister has just informed the Dáil that 810 posts and 355 posts at post-primary level and primary level, respectively, have been lost since the embargo was introduced, which is very serious. This pertains to 810 middle management posts, that is, year heads and teachers with responsibility for timetabling, examinations and programme delivery. A total of 810 of these important posts have been lost. That does not even take into account the number of teachers who will depart between the present and next September, as the Minister admitted in his reply. The Minister and his Department now accept that this is a blunt instrument and it is causing absolute havoc in some schools in which there has been a large number of retirements. I ask the Minister to do two things. First, does he agree that the position of the teaching unions in respect of non-co-operation is unacceptable and wrong? I agree that the Minister should tell the unions that they need to revoke the latest position and directive they have given their members. I accept his comments in this regard, but will he help them? I ask that he consider a proposal made by myself and others whereby there would be a minimum floor of appointments below which schools would not fall. This would help the situation. If the Minister were to tell the House that he was prepared to consider this or other proposals to alleviate the difficult positions of some schools, it might help the unions to consider the directive they have issued in recent weeks.

Deputy Batt O'Keeffe: There are two issues. I thank the Deputy for his support as regards the teacher unions and their directives. Teachers and their unions have always stated that they put children first. Obviously, however, these matters affect children within schools.

I have indicated to the House that there is an unevenness in the number of retirements and promotions. I have also indicated that some schools have been badly hit. Difficulties have arisen and are arising. The Deputy will be pleased to hear that I am in discussions with the Minister for Finance on alleviating some of the serious difficulties facing schools. I hope to conclude my consultation with the Minister in the near future and that we will be in a position to improve on some of the difficulties and unevenness in the system.

Deputy Brian Hayes: Am I right in assuming that the announcement will be made well in advance of September, when the next phase of these retirements kicks in? Some schools might not open next September because of the loss of middle management posts within them. Will the Minister clarify for the Dáil the savings to date that have resulted from the embargo? My understanding is that they amount to €11 million or €12 million. If it is this paltry sum of money in a Department that spends more than €8.5 billion annually, we can make a difference.

Will the Minister conclude his negotiations with the Department of Finance in the next few weeks in order that teacher unions might be in a position to revoke their directive of recent weeks? If fully implemented, that directive would cause havoc in our school system next year.

Deputy Batt O'Keeffe: The cost of posts of responsibility is significant, €236 million per annum.

Deputy Brian Hayes: Of 810 posts.

Deputy Batt O'Keeffe: That in excess of 50% of teachers are post holders in schools is not sustainable and will not be maintained by the Government. We are well down the road in my consultation with the Minister for Finance. We have been consulting for some time and I hope to be in a position to finalise our discussions in the not-too-distant future. I do not want to put an exact date on it and then miss it, but the consultation is well under way.

Special Educational Needs.

4. **Deputy John O'Mahony** asked the Minister for Education and Science the criteria used to review the special needs assistants in a school (details supplied) in County Mayo; and if he will make a statement on the matter. [10996/10]

Deputy Batt O'Keeffe: The Deputy will be aware that the National Council for Special Education, NCSE, is an independent agency with responsibility for determining the appropriate staffing levels in respect of the support of pupils with special educational needs in mainstream and special schools. He will also be aware that the NCSE, through its network of local special educational needs organisers, SENOs, is carrying out a review of special needs assistant, SNA, allocations in all schools. The purpose of this review is to ensure that all SNA posts meet the criteria governing their allocation, as outlined in my Department's circular 07/02, which states: "Applications for a SNA should be considered where, for example, a pupil has a significant medical need for such assistance, a significant impairment of physical or sensory function or where their behaviour is such that they are a danger to themselves or to other pupils."

The criteria being applied in the review are those set out in my Department's circulars. There has been no change in these criteria. As part of the review, the NCSE will identify and suppress any surplus posts that do not meet the scheme's criteria, for example, posts that have been retained when a pupil's care needs have diminished or when the pupil has left.

The allocation for any school and any adjustments to that allocation depend on a number of factors, such as the number of pupils with care-medical needs leaving, the number of new pupils, the changing needs of the pupils and any surplus identified. SENOs are communicating the outcome of the review directly to schools as the review progresses. I understand that the council has informed the school in question of the outcome of its review. It is expected that the NCSE will have completed the review by the end of March 2010.

The Deputy is fully aware that I have prioritised the provision of special education supports to schools. This is a new and key Government policy. However, this does not mean that resources allocated in response to various historical factors are retained in schools *ad infinitum*. At a time of constrained resources, it is essential that we ensure that public resources, both staff and resources, are deployed as effectively as possible. Leaving resources in an area not in accordance with criteria means that public resources are not available for another deserving area.

I am sure the Deputy shares my concern about ensuring a consistent application of policy in the allocation of special needs supports. This is all that is occurring at the moment. There is no question of SNA posts being removed from schools where they continue to meet the scheme's criteria. I can assure the Deputy that supports will continue to be made available to schools that have enrolled pupils who qualify for such support and children with special edu-

cational needs will continue to have access to an appropriate education in line with my Department's policy.

Deputy John O'Mahony: The criteria are the problem. This is the meanest cut of all to St. Anthony's in Castlebar, which is a special school. Is the Minister aware that a SENO is visiting it today to give a final decision? Does he know what the decision will be? He stated that no necessary posts will be removed.

Deputy Batt O'Keeffe: Where the child meets the criteria.

Deputy John O'Mahony: The criteria are the problem. Why is there a need for a Minister for Education and Science if he hides behind the NCSE, which states in its visionary statement that it is "committed to a special education system that is person-centred, family-focused and is responsive to the needs of all"? I would have loved for the Minister to have gone to St. Anthony's Special School last Thursday night to tell parents and staff that the review would fulfil the school's need. If he does not believe me, he should ask the Government Deputies who attended. Will he intervene?

4 o'clock

We are discussing SNAs in special schools, not mainstream schools. This matter is above politics and I appeal to the Minister to examine the criteria. Under the review, the school has lost four SNAs on an average salary of approximately €25,000. Last Thursday, the Minister's supporters told me that the Minister for Defence's handshake would pay those SNAs for one year. I have a final point to make.

An Leas-Cheann Comhairle: I will call the Deputy again. This is Question Time.

Deputy Batt O'Keeffe: This is an emotive issue that should be above politics. Of my budget of €9 billion, €1.2 billion is spent on special needs. The Government takes the matter seriously.

I will elucidate the facts concerning the school in question. It is a special school with 39 pupils on its roll and 24 staff comprising an administrative principal, six teachers, four part-time teachers and 13 SNAs. The NESC has completed its review and will inform the school officially today. From my notes, I understand that the number of SNAs will drop from 13 to ten.

The ratio between the school's staffing levels and its number of children is approximately 6.5:1. St. Anthony's is a mild general learning disability school. It is understood that up to ten of its children have autism. Were a special autism unit established in the school, the staffing level would be one teacher and two SNAs and the pupil-teacher ratio would be 5:1 or 6:1.

Deputy John O'Mahony: That is what it should be.

Deputy Batt O'Keeffe: I advise the school to liaise with the NCSE to ensure that proper designation is included. I am concerned that children are appropriately placed and that children with special needs are differentiated.

Deputy John O'Mahony: I invite the Minister to visit the stated school and tell the staff and pupils what he has told me. He has confirmed the need for everything they have been allocated. The Minister says there is a roll-back on one special needs assistant, SNA. Either the Minister or someone acting on his behalf has looked at the criteria and found there is still a difficulty.

Cutbacks in teaching numbers in a school come into force the following September. The current cutbacks will be rolled out next Easter. The school is expected to cope with this situation in the middle of the school year, when it is already coping with 13 SNAs. That is not acceptable.

[Deputy John O'Mahony.]

Some 20,000 people have joined a Facebook campaign and 5,000 signatures have been collected. I ask the Minister to look at this matter again.

Deputy Batt O'Keeffe: Legislation has given independence to the National Council for Special Education, NCSE. I do not interfere in allocating or removing posts. It would be remiss of me to do so.

The information given to me suggests that one of the SNAs was carrying out secretarial duties in the school and the provision for which that person was employed no longer existed.

Deputy John O'Mahony: I invite the Minister to go and tell the school that.

Deputy Batt O'Keeffe: I am only telling the Deputy what was reported to me. If that is the case, the SNA should not be in the school.

Deputy Ruairí Quinn: Does the Minister have that report in writing?

Deputy John O'Mahony: Does the Minister have confirmation of that?

Deputy Brian Hayes: The Minister should go down and tell them that.

Deputy John O'Mahony: He should go down and tell them that.

Deputy Batt O'Keeffe: That is the report I received from the NCSE.

Teaching Qualifications.

5. **Deputy Brian Hayes** asked the Minister for Education and Science the number of mathematics teachers at post-primary level who do not have mathematics as a subject in their degree; and if he will make a statement on the matter. [10997/10]

Minister of State at the Department of Education and Science (Deputy Conor Lenihan): It is estimated that over 65% of those teaching mathematics have mathematics as a major qualification in their degree. This figure is deduced by applying the number of mathematics teachers registered with the Teaching Council in February 2010, that is, 4,005, to the estimated number of mathematics teachers in second level schools, which is 5,900. Once recruited into a school, the deployment of a teacher to subjects and teaching duties is a matter for decision by the school authorities.

I am aware of the recent report prepared by the University of Limerick on out-of-field teaching in mathematics which showed that in a study of 51 schools, 48% of teachers in the study did not have a major teaching qualification in mathematics. All but one were fully qualified as teachers. Those not qualified in mathematics held science, commerce, business or concurrent teacher education degrees.

The study showed that 30% of students in the 51 schools were taught by a teacher without a major qualification in mathematics. There were no teachers without a mathematics qualification teaching at higher level in the leaving certificate classes, and only 4.5% and 3% respectively taught at higher level in the second and third years of junior cycle. The study did not undertake any analysis of the teaching approaches used by the respondents or associate the data in any way with student performance.

The deployment of teachers to subjects which are not part of their major qualification is also a feature of education systems in other jurisdictions.

Some €5 million is being invested in professional development for mathematics teachers in 2010, building on a €3 million investment in 2009, as part of the implementation of Project Maths in second level schools. The programme of professional development for teachers will continue to at least 2013. Up-skilling teachers through postgraduate programmes will form a major element of the implementation of Project Maths and funds for intensive programmes have been provided in 2010 to begin this process. A particular target for intensive courses will be those teaching mathematics who do not hold a major qualification in the subject.

In addition to this, the Teaching Council will be examining the recent research report on the out-of-field teaching of mathematics and will work with the other educational interest groups in developing appropriate responses to the issues raised.

Deputy Brian Hayes: Whether one accepts the independent survey's figure of 48% or the Teaching Council's figure of 35%, is the Minister of State at all concerned at the fact that such a large cohort of mathematics teachers in secondary schools do not have mathematics as part of their primary degree?

Deputy Conor Lenihan: Of course I am. That is why Project Maths is dedicated to targeting the people who do not have a major qualification in mathematics and to retraining and qualifying them in a more appropriate manner.

Deputy Brian Hayes: Can the Minister of State confirm that the number of continual professional development posts in his Department fell from 250 to 150 this year?

Deputy Conor Lenihan: I am not aware of that.

Deputy Brian Hayes: Is the Minister of State confirming that the 250 places on continual professional development courses will remain next year?

Deputy Conor Lenihan: That will be subject to the Estimates.

Deputy Brian Hayes: Can the Minister of State repeat that?

Deputy Conor Lenihan: It will be a matter for the Estimates.

Deputy Ruairí Quinn: I thought Eugene Lambert was dead.

Deputy Conor Lenihan: Does Deputy Hayes wish to ask a question?

Deputy Brian Hayes: Yes, I do.

An Leas-Cheann Comhairle: Deputies must allow the Chair to call speakers. Otherwise the Chair will have no function. I call Deputy Hayes.

Deputy Brian Hayes: The jobs are either there or they are not. The Minister of State told the House there are no redundancies. Now he says they are subject to the allocation for next year. We have the allocation for this year. Are the teachers to be replaced next September?

Deputy Conor Lenihan: We are adding an extra 350 teachers this year.

Deputy Brian Hayes: Houston, we have a problem here. The argument made by the Minister of State is that, through Project Maths, he will roll out a new scheme. It is, effectively, a curriculum change and does not help teachers who do not have mathematics in their primary degree.

[Deputy Brian Hayes.]

Is the Minister of State confirming that there will be no job losses in the continual professional development unit of his Department this year?

Deputy Conor Lenihan: I repeat that €5 million is being spent on in-service training. Deputy Hayes is wrong in assuming the training will not be targeted at people who do not have a qualification in mathematics. That is the whole purpose of Project Maths.

I come at this from two perspectives. I also have responsibility for science, technology and innovation.

Deputy Brian Hayes: That is the problem.

Deputy Ruairí Quinn: There is not much evidence of that.

Deputy Brian Hayes: There is not much evidence of it.

Deputy Conor Lenihan: The efforts being made in this area are very much welcomed and should be welcomed. Those involved in industry inward investment have expressed concern at the quality of mathematics teaching and have stressed the importance of upgrading teaching skills, in the interest of the smart economy. Money is being allocated for that.

Deputy Brian Hayes: Now I know why the Minister gave the Minister of State, Deputy Lenihan, this question.

Other Questions.

Student Support Schemes.

6. **Deputy James Reilly** asked the Minister for Education and Science the number of post leaving certificate places he envisages that will be provided from September 2010; his views on the removal of the cap on further appointments; and if he will make a statement on the matter. [10829/10]

20. **Deputy Arthur Morgan** asked the Minister for Education and Science his plans to lift the cap on post leaving certificate places to cope with rising demand. [10861/10]

Deputy Seán Haughey: I propose to take Questions Nos. 6 and 20 together.

The post leaving certificate, PLC, provides an integrated general education, vocational training and work experience programme for young people who have completed their leaving certificate and adults returning to education. Its purpose is to enhance their prospects of gaining employment or progressing to further or higher education.

Approval of PLC places involves incurring expenditure on teacher salaries, non-pay funding and means tested student support grants. Teachers are appointed to deliver PLC courses on the basis of a pupil-teacher ratio of 17:1 compared to the 19:1 ratio that applies to second level teaching. In addition, non-pay funding related to student numbers is also provided. Finally, students who satisfy the terms of the student support schemes are eligible to receive maintenance grants. Taking all these factors into account, it is estimated that approval for each additional 1,000 PLC places costs about €8 million.

In the current academic year, the number of PLC places approved for funding by my Department is 31,688. This includes an additional 1,500 places approved in the context of the sup-

plementary budget in April 2009. The 2010 budget for my Department has been framed on the basis that the approved number of PLC places for the next academic year will remain at 31,688. The overall number of approved PLC places is set at its current level because there is a continuing requirement to plan and control public service numbers and to manage expenditure within the context of overall educational policy and provision.

However, it is important to note in that regard that the annual returns from PLC providers indicate that enrolments on PLC courses in the current academic year are in excess of 38,600. This is a commendable achievement by the providers of PLC courses and I would hope that this could be repeated in the next academic year.

It is also important that we do not view PLC provision in isolation from other programmes to provide for re-skilling and up-skilling. It is estimated that over 170,000 learners will avail of part-time and full-time further education programmes in 2010. In addition, the total number of full-time enrolments in universities and institutes of technology is estimated at more than 150,000 for the 2009 to 2010 academic year.

Deputy Brian Hayes: The question was about whether we will have more PLC places next year. It is good that we have managed to effectively increase the number by approximately 8,000 between the 1,500 additional places and the 6,500 places which have come from the sector. The problem is that when unemployment was at 150,000 three years ago, there were 30,000 places. Unemployment is now more than 440,000 and there are only 38,000 places.

Besides the colleges doing their bit, what additional support can the Minister of State offer through his Department to the colleges to get more people on to PLC courses, which are excellent courses, flexible, good value for money and really meet the need of many people who are currently unemployed?

Deputy Seán Haughey: I accept the PLC programme is a very important one, in particular in the current context and having regard to our economic situation. As a result of that, we were able to increase the number of PLC places by 1,500 last year. As I said, the work of the PLC colleges and the additional enrolments are very much appreciated by my Department.

I am not in a position to say what the position will be next year in regard to PLC provision other than to say a Cabinet committee on economic renewal is constantly looking at the issue of employment activation, further education, FÁS provision, higher education provision and so forth. From my point of view, as Minister of State with responsibility for adult education and continuing education, the PLC programme is vitally important at this time of the economic cycle.

Deputy Ruairí Quinn: If he has the information available to him, will the Minister of State indicate the cost of an additional PLC place above and beyond the cap, otherwise he might communicate it to me?

Deputy Seán Haughey: Some 1,000 PLC places cost €8 million. That is taking into account maintenance grants and so on.

Deputy Brian Hayes: The Minister of State and I had the opportunity to attend an Aontas public meeting last week and the key issue brought to our attention was the crisis affecting many older students in terms of the back to education allowance. The Minister of State said he would look into the issue to see if greater flexibility could be shown to those students in the PLC sector. Has he given any consideration to that?

Deputy Seán Haughey: We had a very good exchange of views at the Aontas lobby for learning seminar last Friday on this issue of the payment of the back to education allowance and the maintenance grant. This must be seen as a duplication of income support payments. It must also be seen in the context of the reduction in the rates of social welfare introduced in budget 2010 last December.

I undertook to clarify certain issues in that regard and I know there is a later parliamentary question on this, although I do not know if we will reach it. Some of the students present were not sure whether they would continue on the same course or whether they would go on to a new course. As the Deputy knows, if one continues on the same course, there is no change for existing students. I intend to clarify that, especially in view of the particular circumstances of the students who raised their situations with me.

Teacher Education.

7. **Deputy Seán Sherlock** asked the Minister for Education and Science further to Parliamentary Question No. 181 of 10 December 2009, in regard to each college of education in the State and funded by his Department, if it is possible for a student to undertake and complete the bachelor of education course qualifying them for employment as a primary school teacher without undertaking a module in religious education or being required to teach religion on teaching practice; the provision that is made in each of the colleges of education for students who object on grounds of religious belief or non-belief or other grounds of conscience to participating in faith formation; if there is any recognised and viable education and career path open to a person who is not a member of the Christian faith or is without religious belief to acquire educational qualifications and to achieve employment as a primary school teacher; if he has any proposals to review this situation; and if he will make a statement on the matter. [10698/10]

Deputy Conor Lenihan: Traditionally, primary schools have played a significant role in the faith formation of their pupils and this is still the case. The colleges of education, in recognition of this reality, aim to prepare student teachers to be able to mediate religious education curricula.

The content of the bachelor of education programme is currently a matter for the individual colleges of education. The bachelor of education courses provided by the colleges of education include compulsory modules on religious education. The content of these courses varies between the different institutions and, in general, has a strong focus on methodology. They aim to ensure that student teachers understand the spiritual and religious development of the primary school child in a general sense and that they are aware of the content and methodologies of the programmes developed by the Catholic church, the board of education of the general synod of the Church of Ireland and Educate Together.

They also aim to ensure that the student teachers are enabled to plan a religious education programme which can be applied in schools of varying traditions and ethos. In recent years, my Department has funded a pilot project which involved representatives from Educate Together and the colleges working together to develop material on the ethical education programme Learn Together for inclusion in the colleges' modules. Currently, there is no separate qualification for primary teaching available in the State which does not include religious education.

Teaching practice is also an essential part of the learning and assessment process for bachelor of education students. On teaching practice, students generally teach all primary school subjects which include, for example, in the case of denominational primary schools, religious education, and in Educate Together schools, the ethical education programme Learn Together.

In general, the colleges of education accept students of all faiths and none on the bachelor of education programme and entry is based on points achieved in the leaving certificate examination. On foot of the Deputy's question, my Department asked the colleges of education whether a student has ever objected on grounds of religious belief or non-belief or other grounds of conscience to participating in faith formation and if so, what steps had been, or would be, taken. The responses received from the colleges so far have indicated that this has not arisen to date. In response, some of the colleges pointed out that course content is constantly reviewed and updated to respond to the changing educational landscape and the needs of Irish society generally.

Some of the colleges of education also offer an optional certificate in religion programme which is separate from the bachelor of education and is recognised by the Irish Catholic hierarchy as appropriate preparation for teachers to teach religious education in primary schools in that sector. This is required as a condition of employment in particular schools. The Teaching Council, which is responsible for the maintenance of standards in teaching and registering teachers, does not require a separate qualification in religious studies for registration as a primary school teacher. The situation with the Church of Ireland College of Education is somewhat different as its remit is to provide teachers for the Protestant primary school sector and it may reserve places on the bachelor of education for students from Protestant backgrounds.

The Teaching Council, which has statutory responsibility for the review and accreditation of programmes of initial teacher education, has recently initiated reviews of a range of issues in the area.

Deputy Ruairí Quinn: The reply the Minister of State just gave is contrary to, and in contravention of, the Constitution. Article 44.2.1° states: "Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen." Article 44.2.2° states: "The State guarantees not to endow any religion." Article 44.2.3° states: "The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status."

An Leas-Cheann Comhairle: I do not believe he was referring to——

Deputy Ruairí Quinn: I was drawing the Minister of State's attention to that. He seemed to be mathematically challenged earlier and I wanted to assist him.

Deputy Conor Lenihan: Who is mathematically challenged?

Deputy Ruairí Quinn: I got that impression, perhaps my hearing is poor.

Deputy Conor Lenihan: To whom was the Deputy referring?

Deputy Ruairí Quinn: I was referring to the Minister of State. Will he answer the question?

Does the Minister of State agree that students attending teacher training colleges endowed by the State are required to take religious modules and that it may be in contravention of their constitutional right to freedom of conscience?

Deputy Conor Lenihan: I do not know whether I am mathematically challenged. I am legally challenged because I believe I am the only non-lawyer in my family.

Since the Deputy has raised a very significant constitutional issue, the best thing for me to do is to refer the matter to the Attorney General to see whether he believes the Deputy is correct. Obviously, I cannot answer the question. I do not see how it is in conflict with the Constitution but if the Deputy believes it is, I will have it checked out.

Deputy Ruairí Quinn: Does the Minister of State not agree that by endowing the four teacher training colleges, all of which are of the Christian denomination, that the State is endowing religion? I will give the Minister of State an example of where a person doing a post-graduate course chose to opt out of the religious component of the post-graduate degree. The person was told the college knew he or she did not agree but was asked to go along with it because the college required him or her to do it. Does that position not violate the principles of this republic in the 21st century?

Deputy Conor Lenihan: While the issue the Deputy raises clearly concerns a person's freedom of conscience, the matter would have to be examined. I suspect in the case cited that it would be impossible for a college to force someone to take a subject if a genuine issue of conscience arose. That is my instinctive view of how the Supreme Court would treat a case of this nature, although I cannot be definitive on the matter. If the Deputy provides me with details of the case, I will notify them to the Attorney General for a response.

Deputy Ruairí Quinn: The net point is that if a person who qualifies under the CAO points system to train as a teacher in one of the Roman Catholic teaching colleges, which are entirely endowed by the State through taxpayers' money, requests on freedom of conscience grounds to opt out of the religious modules of a teacher training course, does he or she have a right, in conscience and under the Constitution and regulations governing the Department, to participate in that teacher training course and graduate without being compulsorily required to do the teacher training modules in areas of religion, faith formation and, specifically, to take classes for holy communion and confirmation?

Deputy Conor Lenihan: While this may be a constitutional issue which would require clarification, in terms of a person's ability to teach within our system I suspect that, as 96% of primary schools are religious, it would be a requirement that a teacher be able to teach the subject to which the Deputy refers given that it is part of the curriculum. I do not believe a case has arisen to date of a person in this particular circumstances. The issue is effectively untried and untested in that no one of a strong humanist mind has presented.

Deputy Ruairí Quinn: That is what we used to say about child abuse.

Special Educational Needs.

8. **Deputy Bernard J. Durkan** asked the Minister for Education and Science if his attention has been drawn to the likely consequences of the reduction and or the removal of special needs assistants from the classroom in various schools throughout the country; his views on whether the likely damage to the education structure in schools that are already overburdened with responsibility and high pupil-teacher ratios, the likelihood that this development will permanently scar the education system and lead to a deterioration of the quality of education at a time of greatest requirement; and if he will make a statement on the matter. [10908/10]

Deputy Batt O'Keeffe: The Deputy will be aware special education continues to be a key Government policy. There has been unprecedented investment in providing supports for pupils with special needs in recent years. There are now about 20,000 adults in our schools working solely with pupils with special needs. This figure includes more than 10,000 special needs assistants, SNAs, 8,600 resource and learning support teachers, more than 1,100 special school teachers and hundreds of other teachers in special classes. More than 23,000 teachers availed of training places provided by the Special Education Support Service, SESS, in 2009 which were designed to ensure a quality service that promotes inclusiveness, collaboration and equality of

access to educational opportunities for students with special educational needs. More than €1 billion is being spent in supporting special educational provision this year.

As well as this significant increase in the numbers of additional teachers and special needs assistants providing appropriate education and care supports for children with special educational needs, much investment has taken place in the provision of transport, specialist school accommodation, home tuition, assistive technology and equipment.

My Department is very supportive of the SNA scheme, which has been a key factor in both ensuring the successful integration of children with special educational needs into mainstream education and providing support to pupils enrolled in special schools and special classes.

The Deputy will be aware that the National Council for Special Education, NCSE, through its network of local special educational needs organisers, SENOs, is carrying out a review of SNA allocations in all schools with a view to ensuring that the criteria governing the allocation of such posts are properly met. This exercise may result in the identification of surplus posts which are in the system and do not meet the current criteria, in other words, posts that have been retained when a pupil's care needs have diminished or where the pupil has left. At the same time, the NCSE is allocating additional posts where the criteria are met.

While there is no question of SNA posts being removed from schools where they continue to meet the scheme's criteria, there is also no question of posts being left in schools where they are deemed to be surplus to pupils' care needs. At a time of constrained resources it is essential we ensure public resources, both staff and resources, are deployed as effectively as possible. Resources left in an area that are not in accordance with criteria mean public resources are not available for another deserving area.

I emphasise that children with special educational needs will continue to receive an education appropriate to their needs. The NCSE will continue to support schools, parents, children and teachers and resources will continue to be allocated to schools to meet children's needs in line with my Department's policy.

Deputy Brian Hayes: How many special needs assistants have lost their position in the past six months?

Deputy Batt O'Keeffe: I have made a statement on this matter. As the Deputy will be aware, some special needs assistants have been——

Deputy Brian Hayes: I asked a straight question. Will the Minister answer it?

An Leas-Cheann Comhairle: Please allow the Minister to reply without interruption.

Deputy Brian Hayes: I do not want to hear waffle.

An Leas-Cheann Comhairle: The Minister is entitled to answer in the manner he chooses.

Deputy Batt O'Keeffe: I made and communicated a decision that some posts are being created in schools while others are being removed. I will not set out the factual position until the review, which is due for completion at the end of March, has concluded.

Deputy Brian Hayes: The Minister has stated regularly in the House and elsewhere that in the event of a student with a special needs assistant leaving a school, the SNA post should be removed. I concur with his position on that issue. How many such cases has he encountered?

Deputy Batt O'Keeffe: As the Deputy is aware, the National Council for Special Education is independent of the Minister and I do not interfere in its operations. While I obtain infor-

[Deputy Batt O'Keeffe.]

mation from the council, it would not be appropriate at this point to provide figures on the current position given that the final figure will be different. The NSCE is removing some SNA posts and creating new posts elsewhere.

Deputy Brian Hayes: The Minister should give us the figures.

Deputy Batt O'Keeffe: We do not know what is the position at this point.

Deputy Brian Hayes: I remind the Minister that this is the national Parliament and it, rather than the Minister, established the National Council for Special Education. If this Parliament determines to find out the number of posts lost, it should be given the relevant information. The view abroad is that the NCSE is doing the Minister's dirty work and he is hiding behind a new quango, having instructed it to remove 10% or more than 1,000 of the SNA posts. People believe the council is taking the flak and the Minister is able to hide behind the convenient propaganda that this is a matter for the NCSE. That excuse does not wash.

An Leas-Cheann Comhairle: The Deputy must ask a question.

Deputy Brian Hayes: Is the Minister satisfied with the manner in which the NCSE has consulted the parents of children from whom it is removing SNA posts? Is he satisfied with the alleged appeals system put in place, which involves a senior special educational needs organiser, SENO, coming to a view of a decision taken by an SENO in another county? I have asked two straight questions.

Deputy Batt O'Keeffe: The Deputy indicated I am hiding behind the NCSE. This Parliament established the National Council for Special Education as an independent body. The Minister should not interfere in the operations of the council, which has a job to do. Criteria have been laid down for determining whether a child requires a special needs assistant. The scheme is demand led and if a child meets the criteria, a special needs assistant is provided. If a child with special needs moves on, the SNA post should be vacated. I am glad the Deputy concurs with me in that regard.

In certain circumstances, a child with special needs will no longer require the same level of support. We are trying to train children with special needs to cope with independent living. Thankfully, many hundreds of them now live independently as a result of the support they received. Needs will, therefore, diminish.

The Deputy asked about consultation with parents. I have made clear that the National Council for Special Education is prepared to discuss with schools the set up in a school and the appropriateness of the placement of children with special needs in the school. The council is also prepared to talk to parents. In response to the next question, which has been tabled by the Deputy and relates to a specific school, I will outline in greater detail what is being done in the school in question.

Deputy Brian Hayes: Is the Minister satisfied with the NSCE's consultation with parents?

Deputy Batt O'Keeffe: It is important that a proper appeals system is in place.

Deputy Brian Hayes: Is the Minister satisfied with the current system?

Deputy Batt O'Keeffe: I have piloted 22 schools and I have indicated clearly to the NCSE that where there are difficulties, because this is emotionally charged and parents are genuinely

concerned, to meet through the school with parents whose children would be affected. That is important.

9. **Deputy Ulick Burke** asked the Minister for Education and Science if, in the case of a school (details supplied) in Dublin 24, he will confirm that no further teachers and special needs assistants will be lost at that school; and if he will make a statement on the matter. [10764/10]

Deputy Batt O'Keeffe: The Deputy will be aware that the National Council for Special Education, NCSE, is an independent agency with responsibility for determining the appropriate staffing levels in the support of pupils with special educational needs in mainstream and special schools.

Deputy Ruairí Quinn: That comes as a complete surprise.

Deputy Batt O'Keeffe: The Deputy will also be aware that the NCSE, through its network of local special educational needs organisers, SENOs, is at present carrying out a review on the allocation of SNAs in schools with a view to ensuring the criteria governing the allocation of such posts are properly met. This exercise may result in the identification of surplus posts which are in the system and which do not meet the current criteria, such as posts that have been retained when a pupil's care needs have diminished or where the pupil has left. At the same time the NCSE is allocating additional posts where the criteria are met.

The current review relates to SNA posts. No decision has been taken on teacher posts. Falling enrolments would be one of the factors to be considered in this context. However, any change in the profile of the pupils being enrolled in special schools will also be taken into account.

In the case of the school in question, the NCSE is committed to engaging with the school authorities and all other relevant State agencies to manage the situation in the short term and to ensure a sound basis for staff levels in the interest of pupils. The NCSE is also arranging to meet parents individually in consultation with the school authorities.

This process is ongoing. A meeting took place on Friday last, 26 February, between the NCSE and the school authorities. Without prejudice to the allocation role of the NCSE, officials from my Department also attended this meeting. The NCSE is working constructively with the school authorities to resolve any outstanding matters. It is important that all schools work constructively with the NCSE on any staffing issues. It is not appropriate for my Department to intervene in the allocation process.

The Deputy is fully aware that I have prioritised the provision of special education supports to schools. This is a key Government policy. However, this does not mean that resources, allocated in response to various historical factors, are retained in schools *ad infinitum*. At a time of constrained resources, it is essential we ensure public resources, both staff and other resources, are deployed as effectively as possible. Resources left in an area that are not in accordance with criteria mean public resources are not available for another deserving area.

I am sure the Deputy shares my concern to ensure there is a consistent application of policy in the allocation of special needs supports throughout the country. This is all that is happening at present. I assure the Deputy that supports will continue to be made available to schools which have enrolled pupils who qualify for such support and children with special educational needs will continue to have access to an appropriate education in line with my Department's policy.

Deputy Brian Hayes: I invite the Minister, Deputy Batt O'Keeffe, to visit this school in Balrothery in my constituency, which is also that of the Minister of State, Deputy Conor

[Deputy Brian Hayes.]

Lenihan, to see at first hand that school, those children and the teachers in that school. If those children were not in that school, there would be nowhere else for them because many of them attempted to go to other schools but could not find a place because of the mainstream situation there. These children have nowhere else to go.

The NCSE originally proposed that 60% of the teacher and SNA provision in that school would be lost by September next. I put it to the Minister that that makes that school unviable. I put it him that there is no way the school can function with such a loss of personnel.

The community I represent, which the Minister of State, Deputy Conor Lenihan, represents along with Deputies Rabbitte and O'Connor, wants to know whether the Minister, Deputy Batt O'Keeffe, will intervene directly to stop the loss of four further SNAs on 12 April.

Deputy Batt O'Keeffe: It is important for me to set out the position with the school. It is a special school and it is supposed to be catering for mild general learning disability. There are now 89 pupils enrolled. When the NCSE undertook its review in the school, it discovered that 23 of the pupils did not have a mild general learning disability——

Deputy Brian Hayes: That is countered by the school.

Deputy Batt O'Keeffe: ——that five of the pupils had ASD and seven of the pupils had a moderate general learning disability.

Deputy Brian Hayes: Tell that to the parents.

Deputy Batt O'Keeffe: Some of the other students did not have any assessed special educational need. The school has 89 pupils with a staffing of an administrative principal, 15 teachers, four teachers who provide special subject hours and 17 special needs assistants. In 2002-03, there were 122 pupils and the school had one teacher extra with the same number of SNAs. Even though there has been a drop in the number of pupils, the school has maintained the number of SNAs.

The fall in enrolment together with the large number of children who do not meet the official criteria for the school means that the current staffing of the school is excessive. The NCSE advised the school on 19 February last that four SNA posts would be suppressed. It has alerted the school to the possibility that a further four SNA posts will be suppressed with effect from 2 April.

None the less, it is anxious to work with the school to support the children with ASD and moderate GLD. For example, if the school were to open a class for children with autism, this would need one teacher and two SNAs.

No decision has been taken on teacher posts. Falling enrolments would be one of the factors to be considered in this context. However, any change in the profile of the pupils——

An Leas-Cheann Comhairle: I want to take a supplementary question from Deputy Hayes.

Deputy Batt O'Keeffe: It is important I get the facts on the record.

Deputy Brian Hayes: I am glad the Minister gets the facts because they are changing day in, day out. The initial position of the NCSE was that it had jurisdiction over this school when it came to teaching posts. Now the Minister has changed the story. Now his Department is telling me, through him, that he will decide on teaching posts. This is being made up as the Minister goes along between the NCSE and the Department.

Will the Minister visit the school? He can put any fancy term he wants on an educational disability that the NCSE has told him to tell me in this House today, but he must visit the school and see these children. These are challenging children. In many circumstances, one SNA is needed per child as a means of trying to get the learning opportunity for everyone verified in that school. Mid-year, the Minister and the Government has already taken away four SNA posts from this school and is now proposing to take away another four posts. Is that fair?

Deputy Batt O'Keeffe: It is important that children are placed appropriately.

Deputy Brian Hayes: Yes.

Deputy Brian Hayes: It is important that if——

Deputy Brian Hayes: Where else can they go?

Deputy Batt O'Keeffe: The pupil-teacher ratio for children who have autism is 6:1.

Deputy Brian Hayes: In the units.

Deputy Batt O'Keeffe: The pupil-teacher ratio for children who have moderate general learning disability is 8:1. The pupil-teacher ratio for children who have mild general learning disability is 11:1 and the Department accepts 9:1.

I am equally concerned about those children. I am equally concerned that they get the proper supports in the proper environment and that all necessary support is in place for them. There are 23 children in the school who have not been assessed as having special needs. We have arranged for the National Educational Psychological Service, NEPS, to carry out an analysis of the needs of those children——

Deputy Brian Hayes: Of every one of those 23 children?

Deputy Batt O'Keeffe: ——and that is agreed. We have asked the school to engage with the NCSE. We are prepared to get NEPS to examine and categorise those children properly in order that they are provided with the proper and necessary supports they are due.

Inquiry into Child Abuse.

10. **Deputy Brian O'Shea** asked the Minister for Education and Science if he will publish the findings of the audit into the assets of the 18 religious teaching orders which was ordered in June 2009 when the Taoiseach and he met representatives of the teaching orders in view of the Ryan report; the way the public will be able to assess whether the revised offer is fair and adequate if the audit is not published; and if he will make a statement on the matter. [10715/10]

Deputy Batt O'Keeffe: The Government has been considering the report of the panel appointed to assess the statements of resources submitted by the 18 religious congregations that were party to the 2002 indemnity agreement, together with the offers of contributions from the congregations following the call for them to make further substantial contributions by way of reparation in view of the Ryan report. From the outset, the Government has made clear that these contributions need to be capable of being assessed by the public for their significance by reference to the full resources available to the congregations and in the context of the costs of well in excess of €1 billion incurred by the State. In this context, the panel was appointed to assess the statements of resources submitted by the congregations and report to Government as to the adequacy of these statements as a basis for assessing the congregations' resources. It is expected to publish the panel's report and details of the offers from the congre-

[Deputy Batt O'Keeffe.]

gations before Easter. In advance of publication it is proposed to meet representatives of the former residents and with the congregations.

Deputy Ruairí Quinn: I welcome the Minister's reply. In the probability that there will be a shortfall between what is offered and what is required from the teaching congregations, will the Minister request, as I have asked him to do previously, in addition to what they will offer which would be below what is required, that the congregations transfer the legal ownership of the schools under their control and ownership to the State, on condition and on the understanding that the existing patronage arrangements would continue until such time as the school itself would opt otherwise?

Deputy Batt O'Keeffe: I am very conscious of the recommendations made to me by the Deputy, but unfortunately the issue is still under consideration by the Government. I made it clear previously that we are duty bound to make the congregations aware of the Government's thinking and to communicate our decision to the survivors. We hope to have those meetings shortly. I will take cognisance of the recommendation made by the Deputy.

Deputy Ruairí Quinn: I thank the Minister for his reply. Will he also take cognisance of the response of Irish citizens in the diocese of Ferns to the request by the diocese to contribute towards the costs incurred by the diocese with regard to child abuse? Will he recognise that, politically, it would be in the interest of all parties concerned, the citizens of this republic and the teaching orders, that a due and generous response be made? Teaching orders will continue to teach and schools will remain as they are. The decision to change patronage will rest with the existing patrons, not anybody else. However, the public will see that a generous response has been made in order to meet at least half the cost of the €1.3 billion that taxpayers have paid out in compensation to victims.

Deputy Batt O'Keeffe: At the start of this process it was the view of all Members that the public should be the final arbiter with regard to the offers the congregations would make. In that regard, the Government will, having taken a decision and discussed it with both parties, allow the public to be the arbiter. It would be inappropriate for the Government to interfere with regard to making recommendations as to what should happen in Ferns or to interfere in church matters in general. Therefore, I will refrain from making any such comment. I am conscious the public will decide the adequacy or otherwise of the offer that has been made by the congregations.

Leaving Certificate Gaeilge.

11. **Deputy Aengus Ó Snodaigh** asked the Minister for Education and Science if a decision has been made on the changes to the Leaving Certificate 2012 Gaeilge literature course, exam format and oral exam format subsequent to circular 0042/2007; and if his attention has been drawn to the difficulty this delay is creating for teachers and students. [10864/10]

Deputy Batt O'Keeffe: The need to promote greater proficiency in spoken Irish has been identified in a number of research reports in recent years. My Department has therefore taken a number of initiatives to ensure that students develop greater fluency in oral Irish during the course of their primary and second level education. In order to motivate students to focus on spoken Irish, a more prominent role has been given to oral Irish in the second level syllabuses and examinations. The National Council for Curriculum and Assessment was asked to consider the implications of increased marks for the oral examinations for the allocation of marks for other aspects of the Irish syllabus and examinations.

I have recently received recommendations from the National Council for Curriculum and Assessment with regard to the revised leaving certificate course for Gaeilge. The courses in question, which relate to ordinary level and higher level, will be introduced in schools in September 2010 and will be examined for the first time in the leaving certificate examination 2012.

Recommendations have also been received about changes to the assessment of Gaeilge and adjustments to various components of the examinations, including the oral examination that is common to both higher level and ordinary level courses.

Additional information not given on the floor of the House

The recommendations take account of the changes in the proportion of marks for the leaving certificate oral Irish examination outlined in Circular Letter 0042/2007 and recommend consequential adjustments in the allocation of marks for the written components of the examination. A circular letter providing details of the changes to the Gaeilge leaving certificate syllabuses and assessment will be issued to schools in the next two weeks.

I believe that my approach to promoting spoken Irish is entirely consistent with the Government's statement on the Irish language 2006 where the Government's policy to increase the knowledge and use of the Irish language as a community language was clearly stated. In addition to increasing the proportion of marks for oral assessment in State examinations, my Department has provided seminars and in-school supports to assist teachers of Irish in adopting new methods to support the increased emphasis on the teaching of oral Irish. The support service for Irish began the implementation of this support programme in October 2007 to promote a significant shift in emphasis towards Irish as a spoken language, to enable students to communicate and interact in a spontaneous way and to promote Irish as an everyday spoken language in schools.

Written answers follow Adjournment debate.

Private Members' Business.

The Death of Children in the Care of the State Since 2000: Statements.

Minister of State at the Department of Health and Children (Deputy Barry Andrews): I welcome the opportunity to address the House this evening on this important subject. I apologise to the House that I do not have a written speech to share with Members. I hope they understand this is due to the short period of time I have had to prepare for this debate.

The death of any child in care is a tragedy, particularly when interventions that would be carried out in normal practical have not been carried out. I have said previously that in circumstances such as the one that has been the subject of public debate over the past 24 hours, the State has failed that young person. The State has rightly apologised with regard to clerical sex abuse and to institutional abuse and I certainly deeply regret the circumstances that led to the deaths of people whose deaths could have been avoided. It is a significant part of my work to try to order policy with regard to children in care. I am guided by the principle that the State should act *in loco parentis,* not just in the limited understanding of the Latin phrase in the legalistic context, but to truly take the place of the parent and provide support to the most vulnerable children in the State. This is our guiding principle and is the least we can afford to young people in this situation.

[Deputy Barry Andrews.]

It is important we provide a context in the public domain for this debate. These young people, who display the most chaotic and challenging behaviour come into the care of the State for specific reasons, multiple reasons in some cases. These reasons have to do with traumas they have experienced in their childhood, for example bereavement, addiction problems, family breakdown, abuse etc. We cannot lock up children who present challenging behaviour in these circumstances whenever it suits us. We can only do this in limited circumstances, as outlined in High Court judgments and in practice. We can only do it for a time limited period. Therefore, these young teenagers who present this challenging behaviour and come into the care of the State are a real challenge for the State in providing care.

The assumption has been put forward in the House that reports on some of these individuals who have died in the care of the State have been gathering dust in my office. This is not the case. I remind the House that where reports have been written, they are often case review files and were not intended for publication. They were merely technical internal documents. I will go through the details on these in a moment. I know from comments made by the Opposition this morning that Opposition Members choose to ignore the basis on which these investigations are established. It is a fundamental part of our administrative system that we can carry out non-statutory inquiries from time to time. The basis on which people co-operate with non-statutory inquiries is on an understanding that their right to their good name and their constitutional right to privacy will be protected. We can be sure that if the precedent set yesterday is to continue, nobody will co-operate with a non-statutory inquiry because they can safely assume that some Member of the Houses will publish a report that is not meant for publication, the content of which is overly sensitive for dissemination in the public domain. It is impossible to expect those investigations to occur in the future if we carry on in that fashion.

I will now outline the circumstances, the state of knowledge of my office and the circumstances relating to ongoing reports with regard to cases on which Members of the Opposition have requested information. There have been nine cases, since 2000, of accidental death. Everybody in the House would agree that there are circumstances where pre-existing medical conditions occur. These are cases that are unavoidable and where there is no doubt in terms of intervention or the provision of the necessary supports. I will not go into the details of each case, but such medical conditions include leukemia and brain tumours, and there were other similar tragic medical circumstances. There were nine cases in that category.

There are eight cases in which reviews are continuing, for which I can provide only limited details. There was a suicide in 2006, on which a HSE report is almost complete. An inquest was carried out and the Office of the Ombudsman for Children is also carrying out an investigation arising from a complaint from a family member. The second is a suicide from April 2008; again, a date is awaited for the inquest. In this case, a review is expected in the next six to eight weeks. In the case of a suicide that took place in February 2009, an independent case review is under way. With regard to a death in 2006, a murder trial has recently been completed and an investigation into the input of social services is continuing. I note that the social service input in that case was of the first order. In the fifth case, a death in 2007 from overdose, the review is close to completion, while in a sixth case, a death from overdose in July 2009, a review is continuing.

The circumstances in the cases of DF and TF are well known, having, in the case of TF, been put in the public domain yesterday by Fine Gael. It was our intention, as I outlined yesterday and previously and as I requested of the HSE last Friday, that those two cases would be published in the near future.

There are six cases in which no further action is to be taken. The first is an overdose that occurred in 2000, for which no review was carried out because it was deemed at the time not to be necessary. By way of introduction to these cases, I must point out that it is now very much the practice not to ignore the duty to investigate such cases — they attract a serious case review automatically — but the practice in these earlier cases was quite different.

Deputy Alan Shatter: To which category of cases is the Minister referring?

Deputy Barry Andrews: These are cases in which no further action is expected. The second of these was an overdose in 2000, for which, again, no review was conducted. The third was an overdose in 2005. The details of the latter two cases were sent to HIQA in July 2009 to allow the authority to inform the guidance it has prepared so that both the HSE and the Irish Youth Justice Service can properly carry out reviews of serious incidents and deaths in care. It is also preparing a panel of experts to carry out this work. The fourth case, which took place in 2003, also involved an overdose. A confidential report, whose cover note indicated that it was to remain confidential, was completed and forwarded by the then health board to the Department of Health and Children.

The next case was a death by suicide in 2000. Again, there was no requirement for a review. The individual concerned was seen by a clinical psychologist on the day of his death, and the case was the subject of a response to a parliamentary question from Deputy Neville in 2003. The final case was a hit-and-run accident in 2002; again, no review was contemplated at that time.

These cases are all individual tragedies. It is important that, in bringing attention to them, we stress that there is absolutely no intention to cover them up. I have no agenda to protect any reputations, corporate or otherwise. It is my intention that all these reports be put into the public domain as far as possible, but in doing that we must balance the rights of individuals who co-operate with the inquiry and the family members who will be affected by the dissemination of such information with the public's right to know.

The public do have a right to know. Social workers do this extraordinarily difficult work on the basis of a vocation and morale is important. However, morale can be corroded by the absence of fairness and balance when discussing such cases and a lack of understanding of the context in which some of these challenging children come into the care of the State.

Deputy Alan Shatter: I will start by agreeing with the Minister that not only is it a significant part of his work to ensure the State acts *in loco parentis* to children taken into care, ensuring they are properly protected, but that it is the most significant and important part of his work. If I was Minister of State with responsibility for children and, within a short period of coming into office, learned that more than 20 children in the care of the State had died in a decade, I would want to know the exact circumstances that pertained to each child. I would want to know the care provided to each child and, if something went wrong, exactly what it was. I would wish to ensure that there was accountability and transparency, that investigations were conducted in a thorough manner and that reports were published and recommendations for change made, and their implementation monitored. Unfortunately, that has not been the manner in which this Minister of State has dealt with his child protection duties.

I acknowledge that many children taken into care present real challenges. Nearly all of them have come from troubled backgrounds. They need a great deal of support; different children have different needs and requirements. An alarming number of children, as detailed by the Minister of State, have died in State care as a result of suicide or overdose. Indeed, it is not always possible to distinguish between overdose and suicide, because where a death is labelled as being the result of an overdose, it may well have been suicide. All of this indicates that a significant number of troubled children in State care were not given the protection or provided

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with the services to which they were entitled. As in the case of TF, whose report was published yesterday and — rightly, I believe — laid before this House, it may well be the case with regard to many of these children that psychiatric assessments were not undertaken when they should have been and proper assistance provided, or, where assessments were undertaken, the recommendations and results were ignored.

The problem is that the Minister of State with responsibility for children lacks the authority and the statutory powers to ensure that whatever policy he intends, with good intentions, to implement is actually implemented. He also seems to lack the authority to ensure that where children die in care, information is made available not for some prurient reason or to find a person to hold solely responsible, but to ensure that recommendations are published and implemented and the same mistakes are not repeated.

I wish to give a brief insight into the manner in which some of these issues have been dealt with. The Minister has made reference to a young man whose initials he gives as DF. That young man's name has been mentioned in the media and in this House, but I will not violate his confidentiality. On 25 November 2008, I asked the Minister when the report into the death of this man, who entered our care system at the age of 14 and was dead by the age of 17, would be delivered. The Minister replied:

> A draft report has now been received by the HSE. I am informed that a final report is imminent. . . . I understand that the findings of the inquiry will be forwarded to me once the report is finalised.

That was on 25 November 2008. The Minister is again telling us today that the report is about to be published. In response to a question in this House, he previously indicated that the report was imminent. We were told that in the House on 4 November 2009.

In dealing with these issues at a meeting of the Oireachtas Joint Committee on Health and Children on 6 October 2009, I asked the Minister of State about a number of young people who died in care. I stated:

> We know that at least 20 young people, who were taken into care and for whom either health boards or the HSE had responsibility, have died over the past ten years. It is possible the numbers are greater. We know that at least 11 of them died from a drug overdose.

I went on to refer to some of these children and young people particularly. On that date the Minister of State told me the report on DF would definitely be published on 21 October 2009, although we now know it was not. He indicated the report on TF would be published on 19 October 2009 but that did not happen either.

What the Minister of State did not tell me on that or any other occasion when I and other colleagues queried in this House the number of children who died was that reports were being prepared on a series of other children and which were at various stages. The Minister of State still has not told us in the House how many completed reports have been received. He told us the report on DF is about to be published but I do not know what that means or when it will be published. We do not know how many reports he has received.

Deputy Barry Andrews: There are four reports.

Deputy Alan Shatter: We do not know how many reports are still sitting with the HSE, the contents of which the Minister of State is unaware. That is unclear. I am greatly concerned that if we do not have true transparency and accountability in our child care services, we will never implement properly the required reforms to ensure children are truly protected.

We have paid lip service to child protection. We talk about a child-centred protection and welfare service and we have some amazing dedicated people in the social work and other areas providing that service but who are usually frustrated because they have to offer far too frequently a fire brigade service in protecting children. When they make recommendations on the steps to protect children, the resources and facilities are not there and children remain at risk. There are children walking our streets who continue to be at risk because of the failure of this Minister of State, his predecessors and the Government to ensure that children are properly protected.

5 o'clock

The Minister of State participated in a television programme, "Prime Time", in early September. The mothers of DF and the late TF appeared on the same programme and were identified, and the Minister of State discussed matters relating to child protection. He said that we had a new and exciting period in child protection, and the process was going extremely well. The truth is that a large part of the recommendations contained in the report published yesterday remain to be implemented and the entire plan following the publication of the Ryan commission report has a very long timeframe for implementation. Most seriously, I have been arguing for a decade that we must give statutory force to our child protection guidelines but it took until July 2009 for the Government to acknowledge the necessity to do so.

The truth is there is a difficulty with credibility between what the Minister of State says and what happens on the ground. We have a profound obligation to ensure children are protected and it is entirely wrong to criticise the hierarchy for concealing incidence of sexual abuse while the State conceals incidence of children dying in the care of the State. We should not look for scapegoats and we must acknowledge the work done by social workers but if mistakes are being made how can those who work with children know what needs to be corrected if they are unaware of recommendations for change that are put in place?

I welcome the fact we have had this brief exchange but I want an absolute commitment from the Minister of State that we will put in place a transparent inquiry or investigative system guaranteeing that when a child dies in care or a child reported to be at risk is not given the protection to which the child is entitled and winds up as a victim of abuse again, there will be an independent and speedy inquiry conducted. There should be transparency and the reports and recommendations should be published. There should be a system to monitor the proper implementation of those recommendations. We must ensure, most of all, that no more children in the protection of the State die as a consequence of the State failing him or her.

Deputy Jan O'Sullivan: I wish, by agreement, to share time with Deputy Burton.

An Ceann Comhairle: That is agreed.

Deputy Jan O'Sullivan: I will take six of the ten minutes. This afternoon's debate will only be an hour long and we need much more time in the House to deal with the issue. There is a significant matter relating to the credibility of the State in protecting the most vulnerable of children in the care of the State.

The information which has come into the public arena is that there are 20 cases relating to the deaths of children in the care of the State and about which various inquiries have been made. Essentially, we do not know the circumstances of these cases, despite the limited information given today by the Minister of State with responsibility for children. Having read the case which has been laid the Oireachtas Library and seen some of the detail of what happened in that child's life before she died at an untimely age, there must be significant concern among the public and among us as public representatives as to what exactly is going on in the underbelly of Irish life where children are at such risk. The child in this case had her teeth

[Deputy Jan O'Sullivan.]

knocked out at seven, was twice pregnant, was subject to drug use and was in and out of a variety of residences. She was entirely failed by the State.

This is just one case but there are many others. We know there are thousands of young people at risk who have not even been allocated a social worker. I listened to Ms Laverne McGuinness's comments today at the Committee of Public Accounts and to what has been said publicly. The HSE has indicated the 47 recommendations either have been or are being implemented, with care plans in place for children at risk. If some of them — up to thousands of children — have not been allocated social workers, how can there be care plans?

We must shed more light on this area. I share the concern expressed by Deputy Shatter as to what authority the State and more specifically the Minister has in this regard. We must put this information into the public arena, although there are obvious sensitivities and a need for protection of identities etc. There are also legal concerns.

None of these reports was published until this one was laid in the public arena yesterday. People must have a question of trust and credibility when the reports have not been published. Would the HSE have published this report and the other report if it had not been prompted to do so? The Minister of State made the point that there are no further actions to be taken in respect of children who died of overdoses. We need public information and transparency. If a child in care died of an overdose, surely there has to be further action and more information put into the public arena. We have to know about these things before we can learn from them and ensure we protect children in future.

We will have an opportunity to ask questions, but serious questions need to be asked now about the facilities currently in existence for children in the care of the State, especially for adolescent children. Many of these children lead and have led chaotic lives. We need to know exactly how they are being protected and what kind of staffing is there. I understand that the HSE uses private organisations to look after some of the children. Some of them are obviously in foster care and some of them are cared for directly by the State. There is a unit in my own constituency called Coovagh House with only two or three children in it. Those children have very challenging behaviour problems, but this is an extremely costly unit for such a small number of children, yet there is a large number of children at risk on whose care the State does not spend much money. We have very little information on what is going on with the care of those young people.

This can only be the start of the debate on the issue. Much more light must be shed and there are many vulnerable children in the care of the State about whom we know very little. We now know the sad story of one young person, but there are many others out there and it is our duty as public representatives to ensure that we get the information we need, that the required protection is put in place, and that the Minister of State has the appropriate power to do that. If we do not learn from these tragedies, we will repeat them with these very vulnerable children over and over again.

Deputy Joan Burton: This debate is not about any kind of political point scoring, because there is a genuine concern on all sides of the House about what is happening to children who are often in extreme situations. However, the Minister of State has to be more forthcoming with the details about those children who died in circumstances which in any other jurisdiction would warrant an immediate examination and report. I am not talking about some kind of judicial inquiry, but a report on the facts of a death which would also be subject to an inquest, which would put information into the public domain about the circumstances and causes of the death, and which would in turn cause the HSE to explain publicly the circumstances leading to the death of a young person in custody.

I am very concerned that a culture of secrecy has developed in the HSE which is about secrecy for its own sake, and which seeks to avoid public discussion by concerned citizens about the best thing to do for very troubled children whose families may not be in a position to help them, or whose families may have absolutely failed them. That is the sad truth and that is why the State often has to step in for the parent. The HSE has developed an unnecessary culture of secrecy. It seems to me that there are endless cycles of reporting, but nothing gets published and therefore, the general public does not learn and the general authorities do not learn, including politicians, about what needs to be done to address a very difficult situation.

Why is the report on the DF case not in the public domain? How long is that report? The Minister of State hinted in his comments that in some cases where the facts are self-evident, no further action is taken. That is not good enough, because the death of a child is always important, even if that child has led an unsuccessful and troubled life. I know many staff who work in these situations and it is very difficult, but we are only going to learn if we are not afraid to talk about it in public. We know from other examples that keeping things secret represents the road to ruin.

My other difficulty with HSE policy is that everything in the HSE leads to crisis intervention. The dots are not joined up, so if a teacher becomes aware of a difficult situation, it is passed on like a game of "pass the parcel". As the child gets more difficult, he or she drops out until he or she is in total crisis. We know that some of these children sought crisis intervention themselves, but because it was not available, they could not access it and they later died.

The Minister of State needs to publish the information. He should not hide behind the fact that there are sensitivities. There are ways of getting this information out so that we can learn and try to introduce some kind of support framework over the lifetime of these children. We know that the problems usually start with the family when the child is very young. These things do not just happen overnight.

Deputy Caoimhghín Ó Caoláin: The admission by senior HSE assistant national director for children and families, Mr. Phil Garland, on today's "Morning Ireland", later confirmed by the HSE director of integrated services, Ms Laverne McGuinness, at the Committee of Public Accounts, that there are 20 reports on the deaths of children in State care awaiting publication, can only be described as truly shocking. No valid excuse was offered for the delay in the publication of these reports. They should be issued without further delay. They should also be forwarded to the Ombudsman for Children, the Health Information and Quality Authority and to the Garda Síochána. The identities of the children and their families can be protected if need be. They do not have to be published, because what is most important is that the facts of the cases are known and that the lessons are learned and acted upon.

In a parliamentary question on 7 July 2009, I sought information on the number of unpublished or redacted reports conducted by the HSE or the former health boards. I have never received a comprehensive reply, despite repeated follow-up questions to the Minister and to the HSE. I have been told that the information was proving "difficult to collate", yet this morning a HSE spokesperson was able to go on the air and acknowledge 20 unpublished reports on the deaths of children in State care. Why has this information been withheld over all these months? I hope this question will be answered and we find out why the Department and the HSE have failed to respond to a series of questions by Members on these and other matters.

The report on the tragic life and death of Ms Tracey Fay in State care has caused huge concern about the lack of adequate child protection services in this society. This is not a new concern. It has been repeatedly raised for many years, with thousands of children who are vulnerable and at risk still being denied access to initial assessments of their plight.

[Deputy Caoimhghín Ó Caoláin.]

The Ryan report on the abuse of children in institutions and the report on abuse in the Catholic archdiocese of Dublin exposed the widespread and systematic abuse of children up to approximately the end of the 1980s. We must to focus on neglect and abuse in more recent times and, above all, address the systematic failures that allow children to be victimised or neglected in 2010. That abuse and neglect has proved fatal in a number of cases, which was confirmed by the Minister of State in his opening remarks. That is why we are engaging in this debate.

In 1990, the Comptroller and Auditor General carried out a review of the then Department of Education's special schools. The review in question found that the children in those schools were not being accommodated in the particular institutions appropriate to their needs — which continues to be the case — that the facilities were not being managed properly and that the Department was not carrying out its overseeing role in a satisfactory manner. In 1992, the Committee of Public Accounts, having considered the Comptroller and Auditor General's report, recommended that the then Departments of Justice, Health and Education and the then health boards jointly address the problem of these special schools and the problems of all children in residential care.

The position is that these recommendations were never acted upon. The schools in question represented the end of the line for troubled children who ended up in court because behavioural, social and family problems were not properly addressed at an early stage. That is still happening. The scandal is that it is happening along the pathway of so-called care provided by the State. The reports to which I refer were compiled in the early 1990s and sounded early alarm bells. Alarm bells have rung periodically in the interim, but precious little has been done.

Last year, the Ballydowd centre in west Dublin was closed following a damning report from HIQA. That closure raised major concern in respect of child services in this State. The centre, which cost €13 million to put in place, was only in existence for nine years but had to be closed as a result of its unsuitability for the troubled children held there. The HSE has presided over a facility in which, as HIQA stated, there were "not enough staff to run the unit consistently and safely". How could this have been allowed to happen? I refer here to contemporary events; I am not engaging in a historical reassessment.

HIQA's national children in care inspection report, which included the report on Ballydowd, is a severe indictment of the State's failure to protect children. It highlights "serious deficits in standards aimed at safeguarding vulnerable children, including lapses in vetting procedures for staff and foster carers working with children". These are issues that I and others have repeatedly raised in the form of parliamentary questions to the Minister for Health and Children and at the Oireachtas Committee on the Constitutional Amendment on Children, the meetings of which the Minister of State, Deputy Barry Andrews, attended on a regular basis.

The woefully inadequate state of our child protection services has again been exposed in recent days. There are insufficient social workers and other front line staff and support systems in place. Children are in grave danger but the necessary services are not in place to facilitate the interventions required. The nightmare is, therefore, happening every day. Evidence suggests that, as a previous speaker indicated, most of this abuse takes place in the family home. If the services are not put in place, then the State will be just as culpable as it was in the past when it conspired with the church to cover up the abuse of children.

The Minister for Health and Children, Deputy Mary Harney, who has ultimate responsibility, and the Minister of State, Deputy Barry Andrews, who has direct responsibility, must explain in detail how children have been let down so often. They must also indicate why these children continue to be let down by the State. They must act with urgency to bring the care of vulnerable

children up to standard or else we will be presented with more Ryan reports in the years to come. The only difference will be that such reports will refer to what is happening in 2010. This problem is not confined to the past; it is current in nature.

The child protection crisis in this State requires a far more concerted and high-level approach than that taken by the Government at present. The essential steps that must now be taken should include the provision and resourcing of a full range of child protection services. The referendum on the constitutional amendment relating to children's rights, the wording of which has been agreed by the relevant committee, should be held as early as possible in the current year. This amendment is necessary in order to enshrine children's rights and protections in the Constitution.

Deputy Shatter referred to the Minister of State's position. I do not question the Minister of State's sincerity or good intent with regard to protections relating to children. I am also of the view, however, that while we have what can only be described as a secondary acceptance of the importance of child care as a result of the fact that only a Minister of State has responsibility for children, these matters will never be addressed in the serious manner that is required. I call on the Taoiseach, in the forthcoming reshuffle, to create a full Cabinet position of "Minister for Children". Such a development is vital. All of the reports that have been produced during this long, sad and sorry period in our history point to the need for such a Minister to be appointed. The children of this State, both current and future, deserve no less.

An Ceann Comhairle: That completes the statements. We will now have a question and answer session. I will be calling on the Minister of State to reply at 5.40 p.m. I ask Members to be concise in the questions they pose.

Deputy Alan Shatter: I have a major difficulty with the Minister of State's contribution. Perhaps he might clarify the position. Mr. Philip Garland stated on radio this morning that there are 20 reports relating to children who died in care which have either been completed or are pending. Based on what the Minister of State indicated, the number in this regard is entirely different. He outlined a list of 22 children, nine of whom died of natural causes, 13 of whom were children in care who — save for one tragic case in which the child was murdered — he referred to as having died as a result of suicide or overdoses. In addition, the Minister of State that some form of review is only taking place in respect of eight of these cases.

Unless I misunderstand the position, Mr. Garland has indicated that there are 20 reports that are either completed and awaiting publication or that are in preparation, but the Minister of State indicated that there are only eight such reports. Is he in a position to reconcile the figures? If I misinterpreted what the Minister of State said, I apologise. However, this is an important matter. Will the Minister of State also clarify the number of these reports that have been received within the Department? When the report into the death of DF be published?

An Ceann Comhairle: Questions will be grouped by agreement of the House.

Deputy Fergus O'Dowd: Is the Minister of State aware of the number of children or minors who have absconded from care or foster care? Were they included in the facts he put before us? It is a very serious issue. Does the Minister of State have statistics on children who have died and whose deaths have not been investigated but who were children of mothers who were under 18 years of age? Without going into detail, at least one case has been brought to my attention where a mother was under 18 and a health board was engaged in her care. Her baby died outside of a proper place of safety for that child. Does the Minister of State have a statutory duty of care to have available accommodation for children of parents who are under 18?

Deputy James Reilly: This morning on the Order of Business, the Minister for Transport mentioned that ten children had died from natural causes but this afternoon, the Minister of State told us there were nine. I find it difficult to accept the Minister of State could not provide us with a statement, given all the back-up he has in the Department. It would only have been a matter of photocopying his notes.

A number of other issues must be considered. Surely the lack of psychiatric services for children has an important bearing on what is happening as must the lack of social workers, which was alluded to this morning. We do not have the number of them recommended in some of the reports. Ballydowd was referred to and it is an interesting case as of the ten issues raised about the facility nine related to management yet the solution was to move the children and the management to a new location. Will the Minister of State comment on this?

How long does the Minister of State believe is reasonable to allow for due process? A child died in 2002 and eight years later we are still waiting for a report. By anyone's measurement that is totally unacceptable. Will the Minister of State put in place a timeline for all future reports to be delivered to the House? We cannot have these interminable delays; they give the impression of a cover-up, like it or not. I accept that nobody in the House would wilfully cause harm to children or want to see negligence causing harm to children. Of the nine cases we are told died from medical causes, brain tumours and other conditions were mentioned. Were any deaths caused by septicemia, pneumonia or complications in pregnancy?

Deputy Barry Andrews: To answer Deputy Shatter's question on the numbers, DF and TF were counted as one case; I consider them to be two cases. I am aware of two additional cases which were not in the original 20 cases mentioned by Mr. Garland this morning and which are due to be published. They were the 5th and 6th ongoing cases to which I referred today. One of these was a death in 2007 from an overdose on which the review is near completion. The other was a death in July 2009 of an overdose and as this is more recent a date for completion is not to hand.

The Department has four reported cases including the DF and TF cases. With regard to cases where no further action was deemed necessary I referred to one involving a death in 2003 of an overdose where the report was completed. At that time, the individual was in the care of the north-eastern health board and the covering letter which accompanied the HSE report stated a copy was being provided under confidential cover and that the contents of the report included reference of a sensitive nature to the deceased, his extended family and in particular his younger sister who was a minor in care. It advised that the report and the information contained in it were privileged. In the current dispensation that would not be allowed to be the end of the matter. I might clarify that later. The last of the four I have in my possession relates to a death in 2000. I pointed out it had been the subject of a parliamentary question tabled by Deputy Dan Neville in 2003. The individual had been seen on the tragic day of death by a clinical psychologist.

On the question of how many minors have absconded from foster care——

Deputy Alan Shatter: Is there a timeline for publication of DF?

Deputy Barry Andrews: I will finish answering these questions as some of the points are worth going through.

To answer Deputy O'Dowd, I do not have figures for minors who have absconded from foster care and nor do I have figures for children of minor parents where the parents are in care. I will investigate that matter and undertake to come back to the Deputy without delay.

Deputy Fergus O'Dowd: The person in question was under the care of a social worker. She may have been living with——

Deputy Barry Andrews: Does Deputy O'Dowd want to know about cases both where someone is known to a social worker or in care?

Deputy Fergus O'Dowd: The person's mother kicked her out of home. She was homeless.

Deputy Barry Andrews: If the person was homeless she should have been in the care of the State if she was a minor.

Deputy Fergus O'Dowd: The person had nowhere to go and her baby died as a result of a lack of action from the health services. There was no place of safety for the child.

Deputy Barry Andrews: I will undertake to provide that——

Deputy Fergus O'Dowd: I brought it to the attention of the health board.

Deputy Barry Andrews: If Deputy O'Dowd provides me with the facts of the case I will undertake——

Deputy Fergus O'Dowd: I asked a parliamentary question on it last year.

Deputy Barry Andrews: I will try to get the information for the Deputy as soon as possible.

Deputy Fergus O'Dowd: That is what happened.

Deputy Barry Andrews: The Minister for Transport did refer to ten cases of death by natural causes. I examined the details of those cases and one of them was a suicide from 2000. I am not comfortable with describing that as natural causes although it was furnished to me in that fashion. It dates back to 2000 so it would not be appropriate.

There is a lack of therapeutic interventions. I did not set child protection as a priority in my ministry for nothing; I did it because there are gaps and, in some cases, duplication. To characterise the response of the Government today as inertia is very unfair. No comment was made about the implementation plan on the Ryan report except to criticise it because the timelines were not ambitious enough. Every child protection agency in the State welcomed the implementation plan and welcomed the very ambitious timelines contained in it. They welcomed the fact that we are committed to providing extra therapeutic interventions and that we are going to deal with multi-disciplinary assessment of people in special care, high support and residential care. They welcome that fact that in the budget for 2010 — and let us be honest it was against the head in terms of existing resources — €15 million was provided by the Minister for Finance to ensure that the implementation plan would be enacted.

Deputy Reilly asked about Ballydowd. The new assistant national director, who was on the radio this morning, has a very clear view of what he wants to do with special care and high support, which is about co-location. I agree with Deputy Jan O'Sullivan that we need a fuller debate on these issues. They are worth that and certainly worth as much time as the House can afford to give this important subject in the future.

I cannot anticipate a timeline for publication. I must reiterate that these are delicate issues. I had a discussion with Lord Laming in the UK following the Baby P and the Victoria Climbie cases and the same problem arises there with regard to putting reports in the public domain because of the difficult exercise of balancing the absolute right of the public to know and have

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a window into our child welfare and protection service and the interests of health professionals who co-operate with inquiries and the families of the unfortunate victims.

Deputy James Reilly: I asked about septicemia, pneumonia and childbirth.

An Ceann Comhairle: I have serious time constraints.

Deputy Barry Andrews: At the outset I indicated that nine children had died from accidents or complications arising from existing medical conditions. They included a child with heart problems associated with Down's syndrome, a child with cancer, a child who had a brain seizure, leukemia, a child with a brain tumour, a child who died of an asthma attack while asleep, a child who died of natural causes during a surgical procedure and a child who died in a road traffic accident.

Deputy Jan O'Sullivan: Will the Minister of State clarify what he meant — if I understood him properly — by stating that the DF and TF cases were being treated as one case? They are two very different cases.

Other countries are much quicker at completing these investigations and publishing reports. The cases referred to by the Minister of State date from 2000, 2002 and 2003. Will the Minister give us an undertaking that he will ensure information is put into the public arena as soon as possible where that can be done? Specifically on the reports the Minister described as being completed or where no further action is required, are there recommendations in those that can be put into the public arena? I accept that it might not be possible to put facts on specific cases into the public domain but there must be recommendations on some cases that could be put into the public arena. Is there a procedure in place for children who are at risk of death or serious harm within the child protection service and the service for children in care so that a mechanism can be put in place wherever there are signs that a child is at serious risk? Are there procedures in place in order to prevent the deaths of such children?

Deputy Joan Burton: How extensive is the report on the DF case? Is it true that in some cases those reports are a mere couple of pages? That is important because the Minister is giving the impression that some of the reports are so extensive and involve significant numbers of people and that is a reason for not publishing them, but I understand that some of the reports are extremely brief and may only run to, at most, a couple of pages, which may be recommendations. Why should those kinds of reports not be issued?

If a child dies in the unfortunate circumstances we are describing, is there a protocol in the Department that the HSE has to notify the Minister and that the timeline that has been referred to by others then commences? The Minister said he spoke with his British counterpart about two cases in the UK, including Baby P, but the hallmarks of most of the UK cases — even though the inquiries have caused convulsions in UK social services — have been that they have all taken place within a fairly rapid timeframe. Does the Minister have a timeframe for cases when a child dies in the care of the State involving some kind of reporting mechanism to the Minister, and that if the circumstances are not natural then an inquiry takes place and there is a procedure whereby within a three month or six month timeframe a preliminary report is made and then a public report? What is happening is that we in this House are relying on the work of journalists in particular to highlight most of those cases.

Deputy Seán Ardagh: I believe the Members of the House and the public generally are very concerned about the timeliness of this report and others. Is an initiative now being taken with

the HSE to ensure the timeliness of reports and also that some person might be made responsible for such reports and all of the guidelines to be set down by HIQA on reports?

Recommendations arise from the reports. A total of 47 recommendations arise from the TF report. Deputy O'Sullivan indicated that currently there are a number of reports in an embryonic state where there might be recommendations already in place which perhaps should be acted upon. The Minister outlined that the recommendations "are being implemented". Will he explain how the recommendations are being implemented and whether he has confidence that they will be implemented in full?

Deputy Caoimhghín Ó Caoláin: Does the Minister accept that the Deputies who are participating in the debate this evening are not pressing for the exposure of the names or any other means of identification of the children or families concerned? Will he indicate therefore his agreement to publish all of the reports, given that they must contain the outline of the tragic circumstances that applied in each of these cases of children in State care, recommendations as to how to better address the care needs of those children and others in similar circumstances and to allow us the opportunity to debate how to ensure the implementation of those recommendations?

There is some doubt as to the exact number of reports but reference has been made to 20. How many of the reports, if any, were referred to the Ombudsman for Children, the Health Information and Quality Authority and the Garda Síochána? Those three bodies would and should all have an interest in those reports, especially where there are tragic circumstances involved and questions as to the care regime that was in place.

The report from HIQA on Ballydowd was presented in the course of the tenure of the Minister, Deputy Barry Andrews. That report stated that there were serious deficits in standards aimed at safeguarding vulnerable children, including lapses in vetting procedures for staff and foster carers working with children. What has the Minister done to ensure that situation no longer applies in any other care setting today or into the future?

Minister of State at the Department of Health and Children (Deputy Barry Andrews): I wish to deal with the questions as quickly as I can in the limited time available. I am not entirely sure why the DF and TF cases were treated as one because they are not related to each other.

Deputy Alan Shatter: They are not related at all.

Deputy Barry Andrews: There are very few similarities but they were to be published at the same time. The TF case report has been published. I have been informed that the family of DF is not entirely comfortable with the publication of the report in full.

In reply to Deputy Burton's question, the report is 65 pages long. It is reasonable to expect we will do a review of the older cases where no action was proposed. We could do that and examine the recommendations and make a report to the House on that.

A special care order should have been recommended for TF. That is what is recommended for children displaying the most challenging and at-risk type of behaviour. A special care order would be appropriate to try to stabilise the situation and then a step-down to high support and residential care and foster care. That is the correct approach rather than placement in a bed and breakfast which is completely inappropriate.

It is worth pointing out that the kind of recommendations that emerged from the TF case have been acted on. Reference is made in the Ryan implementation report to multidisciplinary assessment teams for special care and high support. We have gotten rid of bed and breakfast accommodation for children in care. We have introduced transfer protocols to address a very

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serious problem. We have ensured that care plans are not only prepared but they are also updated regularly.

The Baby P case report was never published. They have that problem in the UK as well. It might never be published. An executive summary was published and that was the extent of it.

Deputy Joan Burton: But that might be adequate.

Deputy Barry Andrews: That is the fact of the case. I accept there have been failings in the past. I do not hesitate to say that. I accept the genuinely motivated points that were made by Deputies opposite. I am not being party political in saying that it is not appropriate to publish reports such as this on the Internet without proper consideration of the consequences for family members. We have to protect the constitutional rights of individuals. We must also protect the ability of the State to carry out non-statutory inquiries so that we can elicit information in a timely way in the future.

Deputy James Reilly: Is that not the problem; timely can mean eight years?

Deputy Barry Andrews: It would be an unfortunate precedent if that were to continue. We do not pay lip service to child protection. We have tried to set out a very ambitious timeline on the implementation of the Ryan report recommendations and we have backed it up with a financial commitment. Far from being a lengthy timeframe, it is very ambitious.

Deputy Joan Burton: Is the Minister of State informed when the death of a child in care occurs? Is there a process for initiating an inquiry and setting a timeframe for it?

Deputy Barry Andrews: I intend to come to that but I would first like to finish the point I am making.

Deputy Caoimhghín Ó Caoláin: Will the Minister of State also answer my questions?

Deputy Barry Andrews: I will try to do so.

An Ceann Comhairle: If Members would allow the Minister of State to reply, they might get the answers they require.

Deputy Barry Andrews: The Health Service Executive established a review group in May 2009 to review reports issued pursuant to the deaths of children in the care of the State since 2000. Its terms of reference were to identify key themes and issues common to the reports. Its recommendations included that a review template be developed to ensure reviews follow a standardised format and that a case review panel be established. The working group was established by the HSE to develop the child death and significant case review protocol. In our implementation plan we recommended that the Health Information and Quality Authority develop guidance — which it has almost completed — for the HSE in respect of the review of serious incidents. Such reviews will be reported to HIQA, the Department of Health and Children and the youth justice service.

Deputy Alan Shatter: HIQA should work alone in these matters. The HSE should not be allowed to investigate itself.

Deputy Barry Andrews: We will also develop a panel, both internal and external, with appropriately skilled professionals to undertake investigations. In all cases of serious incidents or deaths of children in care or in detention, HIQA will review the initial circumstances of the

case and how the HSE set about its investigation. That is the correct response to any such tragic cases in the future.

Deputy James Reilly: The HSE cannot be allowed to investigate itself. Those days are over.

Deputy Joan Burton: Will the Minister of State be informed if a child dies while in care?

Deputy Caoimhghín Ó Caoláin: Before the Minister of State takes supplementary questions, will he be so good as to answer the questions already asked by me, namely——

An Ceann Comhairle: There will be no supplementary questions, the time for the debate has expired.

Deputy Caoimhghín Ó Caoláin: ——whether any of the reports about which we have spoken was referred either to the Ombudsman for Children, HIQA or the Garda Síochána, and what action the Minister of State has taken in regard to HIQA's report on Ballydowd?

Deputy Joan Burton: Is the Minister of State informed if a child in care dies?

Deputy Barry Andrews: No, HIQA is informed.

Deputy Joan Burton: Is the Minister of State informed?

Deputy Barry Andrews: I have answered the Deputy.

Deputy Joan Burton: The Minister of State has said he is not informed.

Deputy Barry Andrews: That is correct.

Deputy Joan Burton: That is outrageous.

Deputy Alan Shatter: He should be informed.

Deputy Barry Andrews: This is not a party political issue. The Deputy has said so herself, yet she is descending into that type of play. Let us be constructive about this.

Deputy Joan Burton: I am not being party political. It is outrageous that the Minister of State would not be informed.

An Ceann Comhairle: The time for statements has expired.

Deputy Barry Andrews: I am prepared to take on board constructive recommendations from the Opposition, but there is no point in being party political.

Deputy James Reilly: With respect, regardless of who is on that side of the House, the point is that the Minister of State should be informed.

Deputy Barry Andrews: Deputies opposite are being overly party political.

An Ceann Comhairle: We are way over time on this matter. I ask the Minister of State to conclude.

Deputy Barry Andrews: With respect to Members, I am trying to answer the question put to me by Deputy Ó Caoláin on whether there has been involvement by the Garda Síochána and the Ombudsman for Children. The latter is involved in only one case, where a complaint was made in regard to an individual by a family member of the person who died. In regard to the

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Garda Síochána, the Children First guidelines, which were introduced in 1999, set out the proper protocols in terms of reporting and notifying the Garda. I understand five cases were reported to HIQA, which formed part of its preparation of the guidance it has now furnished in draft form to the HSE and the youth justice service.

Deputy Joan Burton: Will the Minister of State clarify whether he will seek to be informed of any deaths of children in care?

An Ceann Comhairle: That concludes statements. We are way over time.

Deputy Joan Burton: Informing the Minister of State of any such case is fundamental.

Deputy Jan O'Sullivan: Will the Minister of State seek to be informed in the future?

An Ceann Comhairle: The statements have concluded.

Adjournment Debate Matters.

An Ceann 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 Jack Wall — the need to implement section 34 of the Housing (Miscellaneous Provisions) Act 2009 for local authorities to deal with housing loans; (2) Deputy Joan Burton — the implications for service delivery of non-pay budget cuts in 2010 at Connolly Hospital, Blanchardstown, Dublin 15; (3) Deputy Pat Breen — the non-filling of a special educational needs organiser position in County Clare and the implications for applications for resource teachers and special needs assistants; (4) Deputy Terence Flanagan — the need to open the Knockamann residential development at St. Ita's Hospital, County Dublin; (5) Deputy Noel Ahern — the non-operation of the Building Control (Amendment) Regulations 2009; and (6) Deputy John Perry — the need to settle the Byrne case under the Lost at Sea compensation scheme in line with the recommendations of the Ombudsman.

6 o'clock

The matters raised by Deputies Terence Flanagan, Jack Wall, Noel Ahern and Pat Breen have been selected for discussion.

Adjournment Debate.

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Services for People with Disabilities.

Deputy Terence Flanagan: I propose to share time with Deputy Reilly.

Acting Chairman (Deputy Charlie O'Connor): Is that agreed? Agreed.

Deputy Terence Flanagan: I thank the Office of the Ceann Comhairle for the opportunity to raise this extremely important issue on behalf of the residents of the St. Joseph's Association intellectual disability service at St. Ita's Hospital in Portrane, County Dublin, and their families. It is a scandalous situation that Knockamann, the new residential development at the hospital comprising ten residential bungalows and a day centre, is still not open even though it was completed 14 months ago and handed over to the HSE eight months ago. It is very disappointing and demoralising that the 60 patients due to move there must instead remain in St. Ita's, a Victorian hospital in a poor state of disrepair which the Inspector of Mental Health Services has indicated repeatedly is in urgent need of refurbishment.

The transfer of 60 residents to Knockamann was to allow for the refurbishment of the existing service for the remaining patients and to close unsuitable areas of the hospital. That is on hold because of the farcical situation in which we now find ourselves. The Government's public service embargo is having a tangible effect on the service. Of the 40 new staff who were to be recruited, only 27 have thus far been appointed. St. Joseph's Association was never informed that this would be an obstacle to progress but instead was consistently reassured that the move would take place on schedule.

This delay is an injustice to the inpatients in St. Ita's Hospital who can only look at the new facility while they remain trapped in the same situation in which they have been for 11 years, waiting to be moved. It would take a relatively small sum of money, less than €1 million, to resolve the situation. The overall budget for the health service is €11 billion, while €4 billion has been put into the zombie Anglo Irish Bank and with another €4 billion to €6 billion of taxpayers' money to follow. I ask the Minister of State to give the matter careful consideration. People's lives are at stake and they and their families have been waiting long enough for what they were promised. The Minister of State must take action to correct this difficult situation.

Deputy James Reilly: I thank my colleague, Deputy Terence Flanagan, for sharing time. For inpatients with intellectual disabilities, St. Ita's is their home. Intellectual disability is disability for life. Yet these people are asked to live in surroundings that have been described by the Inspector for Mental Health Services in stark terms, with paint peeling off walls, dirt in corners and patients wandering aimlessly in the Victorian, Dickensian conditions. Every society is judged by how it treats its most vulnerable members.

There was cause for great hope — if not quite celebration — when Knockamann was built, a gleaming new unit on the grounds of St. Ita's Hospital, within view of the clients it is supposed to serve. They find it difficult to understand why it lies idle, guarded by a security man, instead of used for the purpose for which it was built. If the unit were functional, 60 patients could be moved from their current inadequate accommodations to modern facilities that would afford them much greater dignity. The additional staff would be able to provide a proper day service, more occupational therapy and so on, and a greater sense of normality. Instead these people have been left in the conditions I have described.

I understand it cost €14 million to build the facility that has been left idle. That is a penny wise and pound foolish approach. Even after the 60 patients are moved to Knockamann, some 100 others with intellectual disabilities will remain in the main block of St. Ita's Hospital. There must be an effort to alleviate the stifling conditions in which these people live. They are not there because they are ill; this is their home. I conclude by complimenting the staff who do such excellent work. Equally, however, I wish to refer to the stupidity of this public embargo, which has resulted in such a penny wise and pound foolish approach. Furthermore, it has resulted in the loss abroad of well-trained nurses, on whom much money has been spent for training. When this recruitment ban madness ends, we will find ourselves short of nurses.

Minister of State at the Department of Health and Children (Deputy Barry Andrews): I will be taking this Adjournment matter on behalf of my colleague, the Minister for Health and Children. I thank Deputies Terence Flanagan and Reilly for raising this matter and am pleased to take this opportunity to outline the position in respect of St. Joseph's Intellectual Disability Services, which are located on the campus of St. Ita's Hospital, Portrane, County Dublin.

As the Deputies are aware, the construction and equipping of a new 60-bed residential development, comprising ten bungalows and a day resource centre for clients of St. Joseph's Intellectual Disabilities Services, is complete. This development, Knockamann, was handed over to the HSE in July 2009. It forms a crucial part in progressing national policy in effecting

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the transfer of clients with intellectual disabilities who currently are in psychiatric hospitals to more appropriate accommodation. It is the intention of the HSE to commission the entire development, that is, the residential bungalows and the day resource centre, as soon as possible. However, additional staff of various grades would be required to do so. This must be achieved in line with the HSE's national service plan for 2010 and with the various Government directives on recruitment and promotion within the public service.

In order to implement savings measures on public service numbers, the Government decided that with effect from 27 March 2009 to the end of 2010, no post in the public sector, however arising, may be filled by recruitment, promotion or payment of an allowance for the performance of duties at a higher grade. The decision applies to all grades of permanent and temporary staff, including nursing, notwithstanding a number of specific exemptions. The Government decision was modulated to ensure that key services are maintained in so far as possible in health services, particularly in respect of children at risk, older people and persons with a disability. A business case was submitted by the HSE to the Department of Health and Children in November 2009 on the staffing of the Knockamann development. As nursing staff are not a derogated grade under the current moratorium on recruitment and the public services, specific sanction is required to fill the posts needed to open the development. Having considered the business case, the Department of Health and Children requested some supplementary information, particularly on the skill mix of the posts that were required. It is anticipated that this will be forwarded to the Department shortly.

Any resolution of this matter must be achieved in the context of vacancies arising elsewhere in the health services and within the overall context of the employment control framework of the HSE. I wish to assure the Deputies that the Department is working closely with the HSE to endeavour to resolve the matter within the resources available at this time.

Deputy Terence Flanagan: That is a disgraceful response. Less than €1 million is required.

Message from Select Committee.

Acting Chairman: The Select Committee on Transport has completed its consideration of the Merchant Shipping Bill 2009, and has made amendments thereto.

Adjournment Debate (Resumed).

Local Authority Housing.

Deputy Jack Wall: I raise this issue in the knowledge that practically on a daily basis, Members on all sides of the House raise matters from their own constituencies in respect of housing loans. Usually, the banking sector receives the brunt of the complaints in this regard, to the effect that it is not dealing with those who are unfortunate enough to be in such a position. However, it has recently come to my attention that in addition to such problems, local authorities also have particular problems regarding housing loans they allocated to people in their communities. In this regard, I asked the Oireachtas Library to carry out a survey on shared ownerships by local authorities to ascertain the position in respect of payments being in arrears. Amazingly, 43% of the loans nationwide were in severe financial difficulty. For example, 42.8% of the loans in the Minister of State's own constituency of Dún Laoghaire were in arrears, while 36% of the loans in my constituency in County Kildare are in arrears. I raised this matter with Kildare County Council's housing section and the main problem identified by the officials there, who are ever-helpful to those who are unfortunate enough to be in

such difficulties, was that it was not within their remit to do anything regarding the arrangements with which the person concerned drew down the loan. When I questioned the official further in this regard, she replied that she had investigated the matter and had found that section 34 of the Housing (Miscellaneous Provisions) 2009 had not had a ministerial order applied to it. This section bears reading and should be read into the record of the House. Section 34(2) states:

> Where there are moneys due and owing by a household to a housing authority under any of the provisions to which this section applies and the housing authority is satisfied that the household would otherwise suffer undue hardship, the housing authority may enter into arrangements with the household for the payment of those moneys (together with any interest that may have accrued under *section 33(2)*) by such instalments and at such times as the housing authority considers reasonable in all the circumstances in addition to any rent, charges, fees or loan repayments that the household is paying to the authority.

Although both Government and Opposition Members criticise the banks, the Government itself probably is a greater problem to many people in this respect, in that it has failed to implement its own legislation. The Government has not enabled local authorities to deal with those who are unfortunate enough to be in financial difficulties. Having spoken to my local authority, this is what it wishes to do. The person at the desk of the local authority does not wish to state consistently to those concerned that the council has no means available to it to deal in any way with a person's case, other than to demand that all the payments be made that are required by legislation or under the guidelines regarding the loan and that the authority is obliged to adopt such strict criteria.

The Minister for the Environment, Heritage and Local Government talks the world over about all the wonderful things he is doing. However, when it comes to the basic function of protecting the family homes of these people, he will not apply this provision. While he applied section 35 in respect of antisocial behaviour, he has refused to implement the necessary provision to protect the family home. This is a joke. As I noted, the percentage of loans in arrears in Dún Laoghaire is 42%. In the Minister's own region of Dublin city, out of 1,652 loans, 719, or 43%, are in trouble. He has the capacity to do something about which Members argue daily in respect of what the banks are not doing but he will not do so. This is a disgrace and given the numbers I have provided to him in respect of his own constituency, I ask the Minister of State to bring this matter to the attention of the relevant Minister, be it Deputy Gormley or the Minister of State, Deputy Finneran. They should ensure the application of a ministerial order as soon as possible to allow the officials of local authorities to deal humanely with those who are in financial difficulties with regard to housing loans they have obtained from the local authorities.

Deputy Barry Andrews: I thank Deputy Wall for raising this important matter. First, it is important to put on record once more that the Government is extremely conscious of the high value Irish people place on home ownership. The Government has brought forward a range of measures to support and protect families having difficulties with their home mortgage payments. The single most important advice for any borrower facing difficulties in meeting repayments, whether his or her mortgage is with a local authority or otherwise, is to engage early, proactively and constructively with his or her lender to seek to achieve an agreed solution. To date there is no evidence to suggest that wider economic circumstances are creating problems specifically for local authority borrowers in meeting mortgage repayments. The local authority service indicators for 2008, published in June 2009, show local authority mortgage arrears levels running at 11.7%, a marginal increase on the level in 2007, which stood at 11.6%.

Deputy Jack Wall: In that case, the Oireachtas Library must be telling lies.

Acting Chairman: The Deputy knows he is not allowed to use that word.

Deputy Jack Wall: The Minister of State should check the Oireachtas Library.

Deputy Barry Andrews: Similarly, despite worsening economic conditions generally, repossession remains extremely rare for local authority borrowers, with only three repossessions carried out by local authorities last year.

Local authority borrowers have received considerable protection from the worst effects of the downturn in terms of their borrowing costs. The effective rate for borrowers has come down by 3% since October 2008 and now stands at just 2.25%. These rates represent exceptional value by comparison to rates charged by commercial lenders and at present, the local authority rate is more than 0.9% lower than the average market variable rate.

Section 34 of the Housing (Miscellaneous Provisions) Act 2009 enables a housing authority to enter into an arrangement with a household for the rescheduling of payments of accumulated arrears, including interest, due to it in respect of specified rents, equity charges and loans, where the authority is satisfied that the household would otherwise suffer undue hardship. While work is continuing on the preparation of the regulations, directions and guidance necessary to enable the remaining provisions of the 2009 Act to be commenced over the coming months, this section has not yet been commenced. However, even without the provisions of section 34, local authorities have extensive powers under legislation already in place to deal flexibly with borrowers facing difficulty in meeting mortgage repayments.

Provisions on lending by local authorities for the purposes of house purchases are set out in section 11 of the Housing (Miscellaneous Provisions) Act 1992. Where a loan stands in default, section 11(10) provides that a local authority may make such monetary arrangements with a borrower as it considers equitable to take account of the particular circumstances of the borrower. Local authorities can and do exercise the powers available to them under this section and endeavour to engage proactively and constructively with a distressed borrower with the aim of enabling a household to remain in that home. The available data strongly bear this out and suggest that repossession, where it does occur, is always a last resort.

Nevertheless, the Minister of State with responsibility for housing and local services, Deputy Finneran, is committed to supporting consistency of approach and ensuring best practice across all local authority areas. He is developing guidance based on the regulator's code of conduct to ensure that cases of local authority mortgage arrears are handled in a manner that is sympathetic to the needs of the particular household, while also protecting the position of the local authority concerned. He intends to issue this guidance in the coming weeks.

Planning Issues.

Deputy Noel Ahern: A retail unit in my constituency is built, fitted out, stocked and ready to open, serve the community and provide employment. The problem is that it cannot open because of a national disagreement on interpretation between the Department of the Environment, Heritage and Local Government and local authorities, in this instance Dublin City Council. My constituent, the owner of the premises, wants but cannot get a fire regularisation certificate. Under the Building Control Act 2007, the Department issued SI 351, Building Control (Amendment) Regulations 2009. I am told there is a dispute between all local authorities and the Minister's office regarding the interpretation of the statutory instrument. As a result, no fire regularisation certificates have been issued anywhere this year. If so, it is a disgrace that needs early attention. Will the Minister of State, who is standing in for the Minister, Deputy

Gormley, sort out the overall issue and the case I am raising, the details of which have been given?

It has been suggested that a line in the regulations asks the fire officer to certify that the works, as constructed, comply with the regulations. Were "as" changed to "if", all would be well, everyone would be happy and the certificates could flow nationally. Will the Department issue an amended statutory instrument or some other solution that would lead to the opening of my constituent's shop being approved, pending clarification of the national dispute? The owner has made a considerable investment and the building, which is three or four storeys high, was built two or three years ago. Apartments are overhead and the retail unit was recently outfitted at an approximate cost of €250,000. Will the Department take some action to allow this shop to be opened, even on a temporary basis? The interpretation of the statutory instrument could be sorted out afterwards.

For five years, I was a Minister of State at the Department of the Environment, Heritage and Local Government. I will not say that I know where some of the bodies are, but I have a slight knowledge of the Department and I can read between the lines to some extent. There seems to be confusion and non-co-operation between two sections of the Department, namely, the building control and fire sections. If so, it is a disgrace and the issue should be sorted out. It has been suggested that there will be an informal meeting in the Department tomorrow, but we are not even sure whether senior officials from the two sections will be present in the same room. Some people seem to believe that there is no problem and that, if they ignore it, it will go away.

Deputy Pat Breen: They are all greens now.

Deputy Noel Ahern: I did not say that. Will the Minister of State, Deputy Barry Andrews, contact the Minister, Deputy Gormley, and raise the status of tomorrow's meeting? He should instruct that the relevant officials from both sections attend and that it be turned into a decision making meeting. Let us have action on the national issue and my constituent's problem.

Deputy Barry Andrews: I thank Deputy Noel Ahern for raising the matter of regularisation certificates and reassure him that there is no dispute between the Department of the Environment, Heritage and Local Government and local authorities in this regard.

In terms of the construction of new buildings, including apartment blocks and dwellings, and extensions to, material alterations of and certain changes of use of existing buildings, the legal requirements are set out in the building control code. The Building Control Regulations 1997 set out the requirements for fire safety. A comprehensive suite of related technical guidance documents provides detailed guidance on how to comply with the regulations. Part III of the 1997 regulations provides for the issuing of a fire safety certificate, FSC, by a building control authority. The FSC certifies that the work or building, if constructed in accordance with the plans, documents and information submitted, complies with the fire safety requirements of the regulations. A certificate is required for building work in categories specified in the regulations, including the construction or material alteration of commercial premises, places of work and assembly, institutional buildings and apartment blocks.

The Building Control (Amendment) Regulations 2009 provided, *inter alia*, for the introduction on 1 October 2009 of new measures to improve the fire safety certification regime. Article 20C of the regulations provides for the issuing of a regularisation certificate by a building control authority in respect of buildings commenced or completed without a FSC where such a certificate is required. This measure was introduced to assist building owners who wished to bring their buildings into compliance with the building code.

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The regularisation certificate may be granted by the building control authority with or without conditions or refused. An application for a certificate must include a statutory declaration from the applicant that the works carried out are in compliance with the fire safety requirements of the regulations. The authority is empowered to specify that the certificate will not have effect unless any conditions or additional works required by the authority are carried out within a period of four months after it is granted. Responsibility for compliance with the regulations rests with the builder and the owner of a building. Enforcement of the regulations is a matter for the local building control authority, which is empowered to carry out inspections and initiate enforcement proceedings if necessary.

The issue of a regularisation certificate in respect of the development to which the Deputy refers is the responsibility of Dublin City Council. The Minister understands that an application for a certificate was received on 8 February 2010 for the proposed fit-out of a retail unit located in an existing sheltered housing development at 105 Marewood Crescent, Ballymun, Dublin 11. This may be the development the Deputy has in mind.

On 15 February, the fire officer contacted the fire safety consultant dealing with the application with regard to incomplete documentation submitted, namely, the statutory declaration and the application form. On 17 February, additional information was received and is being assessed. The application is due for decision on or before 7 April. There is a statutory period of up to two months, which may be extended by agreement, for assessment of an application for a regularisation certificate. The council timescale is in accordance with the building code.

Deputy Noel Ahern: That reply was written by one section and the other section has not been consulted. They are in denial.

Deputy Barry Andrews: The Deputy should have carried out reforms while he was there.

Acting Chairman: As he stated, he knows where the bodies are. He should not rise to my comment.

Special Educational Needs.

Deputy Pat Breen: I am the last man standing this evening. I take this opportunity to thank the Ceann Comhairle for facilitating me in raising in an Adjournment debate what is an important matter for parents in east County Clare. The position of a special educational needs organiser, SENO, has been vacant in that area since September 2009 and the non-filling of the vacancy is having a significant impact on the area's most vulnerable children. The National Council for Special Education, NCSE, employs SENOs to be responsible for allocating additional teaching and other resource to support children with special needs at local level. The failure, for the past six months, to appoint a special educational needs organiser, SENO, for the east Clare area, which includes all the secondary schools in Ennis, means that applications for children who have been identified, assessed and recommended for resource teaching support or special needs assistance are not being processed since the school year began last September.

Heretofore there were three SENOs employed in County Clare. One dealt with east Clare, including parts of north Tipperary, one with the west Clare area and the third with cases in the south west and south east areas of the county, including parts of west Limerick. Since the vacancy for a SENO in east Clare arose, the area has been left without service. The two existing SENOs support schools in their own areas and are already overloaded with cases. In the past six months they were expected to deal with an additional workload from east Clare. As result,

envelopes containing applications for help for children in the east Clare area have not been opened and files are piling up.

The provision of special needs assistants, SNAs, and resource teachers has proved a lifeline for many children. A mother of a special needs child from Mount Shannon in east Clare recently spoke on the local radio station, Clare FM, about her experience and how her daughter had benefited from the SNA scheme. She said: "It has made such a difference to my daughter's life. She is now accepted by other children in the school and she is reaching her full potential." These are very touching words.

Early education is a key step in a child's development and early intervention is vital. These children in east Clare desperately require assistance and are being discriminated against on the basis of the geographical location of their schools. They have been left sitting in their classrooms without the additional support they require since last September. The situation is deplorable and cannot be allowed to continue. The provision of resource teacher supports and special needs assistants has played a pivotal role in the integration of children with special needs in mainstream classrooms and is helping to break the cycle of stigma.

Parents of special needs children must battle against many obstacles in the fight to get a fair deal for their children. The father of a child from east Clare expressed his frustration at the current situation when I met him last week. He said: "I have no one to talk to about my daughter's case. When I rang Limerick I was told it was not in my area."

As Henry Van Dyke said: "Teach your students to use what talents they have. The woods would be very silent if no birds sang except those who sing best." Thankfully, parents and teachers are breaking the silence to speak up for these children. They are extremely concerned that these children will never reach their potential and will be left behind to spend their lives trying to catch up. A threat is already hanging over many of these parents with the uncertainty regarding the number of special needs assistants who may receive P45s shortly.

The National Council for Special Education is currently reviewing the allocation of these posts, on foot of a request from the Department. The criteria for this review is too restrictive. It does not take into consideration the child's needs to access the curriculum and there is no appeals mechanism for schools and parents. If these SNAs are lost to our schools, it will be a backward step in the education of our children with special needs.

I appeal to the Minister of State to bring this matter to the attention of the Minister and ask him to reconsider his position on this matter. I want a commitment that the vacant position for a special educational needs organiser will be filled immediately. I understand the position has been advertised. I want priority given to the special needs of these children. I want to see the backlog of cases in east Clare dealt with and I do not want to see more delays. Further delays in appointing an organiser will be a further disadvantage to these children. I hope the Minister of State will have good news this evening.

Deputy Barry Andrews: I am replying to this Adjournment matter on behalf of my colleague, the Minister for Education and Science, Deputy Batt O'Keeffe.

I thank the Deputy for raising this issue as it gives me an opportunity to clarify the position in relation to the matter raised by him. An important feature of the Education for Persons with Special Educational Needs Act 2004 was the setting up of the National Council for Special Education, NCSE. The council was formally established on 1 October 2005 and was set up to improve the delivery of education services to persons with special educational needs arising from disabilities, with particular emphasis on children.

The council's remit includes the provision of a range of educational services at local and national level for students with special educational needs. In particular, its network of 89 special

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education needs organisers, SENOs, including 12 senior SENO positions based in over 40 NCSE offices throughout the State, co-ordinates special needs education provision at local level and arranges for the delivery of special educational services. They act as single points of contact for parents of students with special educational needs, schools and the health sector where appropriate. The responsibility for the deployment of the SENOs rests with the council. The NCSE is responsible, through its SENOs, for allocating special education supports, including resource teachers and SNAs to schools to support children with special educational needs. The council operates within the Department's criteria in allocating such support. It has advised the Department that a SENO post in the council's Ennis office, covering east County Clare and north County Tipperary became vacant unexpectedly during the current academic year.

Having regard to the priority importance of front line SENO services, the council sought derogation from the moratorium on the filling of posts in the public service. I am pleased to advise the Deputy that this has been approved by the Departments of Education and Science and Finance. I understand that arrangements are now being made by the council to fill the post in question through the Public Appointments Service. It is expected that the appointment will be made shortly.

I assure the House that when temporary SENO vacancies arise from time to time, for a variety of reasons, the council seeks to provide such cover from within existing resources. The council has advised the Department that temporary SENO cover is being provided in relation to the district to which he refers.

I am also pleased to advise the House that in the context of enhancing the capacity of the council to co-ordinate the provision of services to children with special needs, approval has been given to the council for a further two new SENO posts. The council is also making arrangements for the deployment and filling of these posts. I thank the Deputy for raising the matter.

Deputy Pat Breen: I thank the Minister of State for that reply.

The Dáil adjourned at 6.30 p.m. until 2.30 p.m. on Tuesday, 9 March 2010.

Written Answers.

The following are questions tabled by Members for written response and the ministerial replies as received on the day from the Departments [unrevised].

Questions Nos. 1 to 11, inclusive, answered orally.

Higher Education Grants.

12. **Deputy Joan Burton** asked the Minister for Education and Science if he will reverse the recent changes made to the higher education maintenance grant for a person in receipt of back to education allowance in the Budget 2010; the estimated savings of this cutback; and if he will make a statement on the matter. [10719/10]

Minister for Education and Science (Deputy Batt O'Keeffe): The Deputy will be aware that the current difficult economic circumstances have necessitated tough choices to control public expenditure and to ensure sustainability in the long run. In these circumstances, from September 2010, as announced in the Budget, all new applicants who are in receipt of the Back to Education Allowance (BTEA) and the VTOS allowances for those pursuing PLC courses will be ineligible for student maintenance grants. The cost of the student services charge and any fees payable to colleges will continue to be met for eligible students by the Exchequer on their behalf.

Students currently in receipt of the BTEA or VTOS allowances and the maintenance grant will continue to be eligible for both payments for the duration of their current course provided they continue to meet the terms and conditions of the relevant grant schemes. Students progressing to a new course with effect from 2010/11 will no longer be eligible for student maintenance grants but can apply for assistance towards the cost of the student services charge and any fees payable.

It was decided to discontinue the practice of allowing students to hold both the BTEA or VTOS allowance and a student maintenance grant simultaneously as this represents a duplication of income support payments.

This measure was recommended in the Report of the Special Group on Public Service Numbers and Expenditure Programmes. The estimated saving for the 2010 financial year was €4m with a full financial year saving of some €35m in 2012.

Further Education.

13. **Deputy Seán Barrett** asked the Minister for Education and Science if his attention has been drawn to the problems for a college (details supplied) in County Dublin as a result of a decision by the Higher Education Authority to reduce the number of apprentice blocks by 50%, thus reducing the number of teachers by 6.4; if his further attention has been drawn to the fact that the teachers in question are all permanent members of staff and that this problem could be solved by allowing the college an increase in capped numbers of 112 students over a period of years and by offering courses in the following areas, furniture design, furniture and antique and restoration, renewable construction technology, insulation building technology, renewable energy technology, boatbuilding for the leisure industry and craft in musical instrument making, courses for which demand exists; and if he will make a statement on the matter. [10655/10]

Minister for Education and Science (Deputy Batt O'Keeffe): As the Deputy is aware, the downturn in the construction sector has resulted in a significant fall off in the numbers of apprentices being recruited nationally. The number of FÁS registered apprentices requiring education and training has dropped from 8,300 in 2006 to 1,535 in 2009, a reduction of more than 80%.

Construction related trades have been particularly affected. The Higher Education Authority has consulted widely with individual institutions on the impact of the reduction in these numbers on the level of apprenticeship provision in the education sector. Having regard to the inputs received, and to enable the necessary reductions in education provision for the construction and related trades to be implemented on an objective basis across the country, an independent evaluation panel was established to advise the HEA in relation to the appropriate levels of provision which should be maintained within the education sector having regard to likely future demand to 2014.

Following completion of this process each educational institution was informed of the proposed allocations of apprentice provision as recommended by the evaluation panel. These reductions are due to be implemented on a phased basis over the period to 2014. With regard to the Post Leaving Certificate (PLC) Programme, there are 31,688 places available nationwide, including an additional 1,500 places made available in April 2009 as part of the Supplementary budget. Most of these places are allocated to Vocational Education Committees (VECs) on an annual basis following an application process. It is then a matter for VECs to allocate those places to their colleges and institutions.

Each application for an increase in capped numbers is examined by my Department on its merits, taking into account current and previous allocations, current and previous demand and uptake, the overall places available and the overall demand from VECs generally. The application process for the 2010/2011 academic year is ongoing. Any application from a VEC for additional places will be considered on its own merits, taking into account all relevant circumstances.

The overall number of approved Post Leaving Certificate (PLC) places is set at its current level because there is a continuing requirement to plan and control numbers and to manage expenditure within the context of overall educational policy and provision. For the academic year 2008/2009, the VEC concerned had 2,048 approved PLC places. In the initial allocation for 2009/2010, the VEC received an additional 28 places and then of the additional 1,500 announced in April 2009, the VEC received an additional 75 places, bringing their total allocation for 2009/2010 to 2,151.

School Accommodation.

14. **Deputy Ciarán Lynch** asked the Minister for Education and Science the reason 790 schools rented prefabs in 2009; the amount that each school spent on the rental of prefabs; the number of these that are currently awaiting approval for some form of school building project; and if he will make a statement on the matter. [10725/10]

Minister for Education and Science (Deputy Batt O'Keeffe): The overall policy goal of my Department is to ensure the highest standard of permanent accommodation for all schools. However, in the context of a rapidly increasing school population and competing pressure on the capital budget available to my Department, it is necessary to make use of temporary accommodation in order to meet the accommodation needs of schools.

The policy of my Department on renting prefabricated accommodation in individual cases depends on a number of factors including:

— Whether the school has permanent recognition or is provisionally recognised. Many schools when first established are given provisional recognition and only obtain permanent recognition when they have proved that they are viable.

— If the need is deemed short term, the policy is generally to approve temporary rental of accommodation. For example, a school may require a temporary building while it is awaiting the completion of construction of a permanent building.

— Immediacy of requirement. In some cases, a school needs accommodation at very short notice and this can only be provided through temporary accommodation. In the past, that was provided by means of either rental or purchase of prefabricated buildings or the rental of other temporary accommodation such as local halls. Following an analysis of the break-even point, at which purchase of prefabs becomes a more economical option, the Department now operates a policy of providing schools with the option of purchasing prefabs outright or providing a new build with the funding available where it is expected that the school will require the extra accommodation for more than three years.

During 2009, 222 schools have been approved funding for the purchase of prefabricated classrooms, with the option of building a permanent rooms. 68 of the approved schools have indicated to my Department that they intend purchasing prefabs and 94 intend to use the grant-aid to build a permanent room. The remaining schools have not yet indicated their preference.

These policies will reduce the usage of temporary accommodation and, particularly, the incidence of long term rental of prefabs.

In 2009, expenditure on the rental of temporary accommodation fell significantly to €39m, a saving of €14m over 2008. This is a clear indication of my success in tackling this area of expenditure. Only 20 new rental contracts started in 2009 compared to over 288 in 2008. Furthermore, the number of schools who are renting temporary accommodation has reduced by almost 10% in 2009 and I intend to make further reductions in 2010.

I will forward to the Deputy for his information a list of the 790 schools in question, with details of annual rental costs for temporary prefabricated accommodation.

Most of these schools would have applications for either minor or major capital works. Information on individual school projects on the Capital Building Programme is available on my Department's website at www.education.gov.ie.

Educational Disadvantage.

15. **Deputy Denis Naughten** asked the Minister for Education and Science the steps he is taking to support disadvantaged children in the classroom; and if he will make a statement on the matter. [10653/10]

Minister of State at the Department of Education and Science (Deputy Seán Haughey): The majority of schools include among their pupils, children with disadvantaged backgrounds. In general most schools address the individual needs of these children without recourse to additional targeted resources.

Evidence has shown that disadvantage associated with poverty and social exclusion assumes a multiplier effect where the levels are highly concentrated in schools.

DEIS (Delivering Equality of Opportunity in Schools), the action plan for educational inclusion, provides for a standardised system for identifying levels of disadvantage and an integrated School Support Programme (SSP). As a result of the identification and review processes, 881 schools have been included in the School Support Programme (SSP) under DEIS. These comprise 679 primary schools (urban and rural) and 202 second-level schools.

The plan commenced in 2006 and is being rolled out on a phased basis over the period to 2010.

DEIS provides various supports for both primary and post primary schools. These include:

— reduced pupil teacher ratio in primary schools in urban areas with most disadvantage.

— allocation of administrative principal on lower figures than generally apply in primary schools in urban areas.

— additional capitation funding based on level of disadvantage.

— additional funding for schools books.

— access to the School Meals Programme

— access to numeracy/literacy supports and measures at primary level.

— access to Home School Community Liaison services.

— access to the School Completion Programme.

— enhanced guidance counselling provision at post primary level.

— access to planning supports.

— provision for school library and librarian support in post primary schools with most disadvantage

— access to the Junior Certificate School Programme and Leaving Certificate Applied

— access to a range of professional development supports.

The renewed programme for Government reinforces my commitment to support children in DEIS schools. In particular the renewed commitment, the Junior Certificate Schools programme and the Leaving Certificate Applied will ensure that children attending the most disadvantaged Post Primary schools will continue to benefit from enhanced curricular relevance and choice as well as access to specific literacy and numeracy measures.

Replies to Questions Nos. 16 to 34, inclusive, not received from the Department.

Work Permits.

35. **Deputy Martin Ferris** asked the Tánaiste and Minister for Enterprise, Trade and Employment the requirements an employer has to meet to apply for work permits in respect of non-EU citizens; the criteria that needs to be met when applying to renew these work permits; and if she will make a statement on the matter. [10946/10]

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Dara Calleary): The Employment Permits Acts 2003 and 2006 allow for the issuing of a Work Permit for those occupations with a salary of €30,000 or more and, in exceptional cases, in the salary range below €30,000. A vacancy, in respect of which an application for a work permit is being made, must be advertised with the FÁS/EURES employment network for at least 8 weeks and additionally in local and national newspapers for six days. There is a fee for new applications of €500 where the application for the work permit is for six months or less and €1,000 for a permit up to 24 months. The fee for renewal applications is €750 for up to six months, €1,500 up to 24 months and €2,250 up to 36 months. An economic needs test is not necessary in respect of Renewal applications. These are typically renewed if employment conditions have not substantially changed from the previous permit application. Full details of the applications procedures are contained on the Department's website at *www.entemp.ie*.

Redundancy Payments.

36. **Deputy Deirdre Clune** asked the Tánaiste and Minister for Enterprise, Trade and Employment if she will review an application for redundancy in respect of a person (details supplied) in County Cork; and if she will make a statement on the matter. [10909/10]

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Dara Calleary): My Department administers the Social Insurance Fund (SIF) in relation to redundancy matters on behalf of the Department of Social and Family Affairs. There are two types of redundancy payment made from the SIF — rebates to those employers who have paid statutory redundancy to eligible employees, and statutory lump sums to employees whose employers are insolvent and/or in receivership/liquidation. As I informed the Deputy in my previous reply, I can confirm that my Department received a statutory lump sum claim for the individual concerned on 4 September, 2009 claiming inability to pay on behalf of the employer.

In this case, as in all cases where the employer claims inability to pay the employee(s) statutory redundancy, the Department requires the employer to provide sufficient proof to substantiate the claim. This includes providing the latest set of audited accounts for the company as well as certification from the company's Accountant or Solicitor attesting to the fact that the employer has insufficient assets to pay the redundancy entitlements. Providing this documentation is submitted and is in order, the Department pays the employee(s) directly from the Social Insurance Fund. In this case, adequate supporting documentation from the employer was not submitted and has been requested by my Department. In the absence of the necessary documentation being submitted, the employee will be advised by my Department to take a case to the Employment Appeals Tribunal (EAT) against the employer to seek a determination establishing the employee's right and entitlement to redundancy. Once such a determination is available, this allows the Department to make payment to the employee concerned. Should the outstanding documentation be provided by the employer during the period while the case is pending a hearing before the EAT, this would allow the claim to be processed by my Department in the usual way.

37. **Deputy Deirdre Clune** asked the Tánaiste and Minister for Enterprise, Trade and Employment if there has been a change in policy regarding the payment of redundancy to employees when their former employer is not co-operating with the redundancy section of her Department; and if she will make a statement on the matter. [10910/10]

38. **Deputy Deirdre Clune** asked the Tánaiste and Minister for Enterprise, Trade and Employment if the redundancy Section of her Department now refuses to pay redundancy to employees when they encounter problems with dealing with their former employers; if they now require these employees who cannot get redundancy from their former employers to take a case to the Employment Appeals Tribunal; if so, when this policy was changed; and if she will make a statement on the matter. [10911/10]

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Dara Calleary): I propose to take Questions Nos. 37 and 38 together.

There has been no change in policy in respect of the handling of redundancy claims. My Department administers the Social Insurance Fund (SIF) in relation to redundancy matters on behalf of the Department of Social and Family Affairs. There are two types of payment made from the SIF — rebates to those employers who have paid statutory redundancy to eligible employees, and statutory lump sums to employees whose employers are insolvent and/or in receivership/liquidation.

Under the relevant Acts the objective is to ensure that statutory redundancy payments due to eligible employees on being made redundant are made in accordance with the legislative provisions. The legislation places the onus, in the first instance, on the employer to discharge the obligation to pay redundancy entitlement to employees. On so doing, the employer is entitled, by virtue of the pay related social contributions made to the State, to recover 60% of the lump sum redundancy payments paid out to employees.

In instances where the employer does not formally wind the company up but goes into informal insolvency and is unable to pay the statutory redundancy entitlements, the Department seeks from the employer evidence of inability to pay the entitlements to the employees. This involves requesting a statement from the company's Accountant or Solicitor attesting to the inadequacy of assets to make the redundancy payments and the latest set of financial accounts for the company. The employer is also asked to admit liability for the 40% liability attaching to the company arising from the redundancy payments. If this information is provided to the Department, the employees are paid their redundancy entitlement from the Social Insurance Fund. Upon payment, the Department pursues the company for the 40% share, which the company would ordinarily have been expected to pay to the employees.

If supporting information required from the employer is not provided to my Department the employee will be advised by my Department to take a case to the Employment Appeals Tribunal (EAT) against the employer to seek a determination establishing the employee's right and entitlement to redundancy. Once such a determination is available, the Department is then in a position to make the payment to the employee concerned. Should the outstanding documentation be provided by the employer during the period while the case is pending a hearing before the EAT, this would allow the claim to be processed by my Department in the usual way.

Employment Support Services.

39. **Deputy Simon Coveney** asked the Tánaiste and Minister for Enterprise, Trade and Employment the number of work places in placement schemes that were made available in

Cork vity and county in 2005, 2006, 2007, 2008, 2009 on monthly basis in tabular form; the number of places that are available for 2010. [10914/10]

40. **Deputy Simon Coveney** asked the Tánaiste and Minister for Enterprise, Trade and Employment the number of community employment scheme places that were made available in Cork city and county in 2005, 2006, 2007, 2008, 2009 on a monthly basis in tabular form; the number of places that are available for 2010. [10915/10]

41. **Deputy Simon Coveney** asked the Tánaiste and Minister for Enterprise, Trade and Employment the number of FÁS places that are available on courses in Cork city and county; the number of course places that were available on FÁS courses in 2005, 2006, 2007, 2008, 2009; the waiting time for each course available in Cork city and county; the number of persons on the live register that were offered a placement on a FÁS scheme in January 2010 and February 2010. [10916/10]

42. **Deputy Simon Coveney** asked the Tánaiste and Minister for Enterprise, Trade and Employment the specific training courses and course placements that were available for persons under the age of 30 years in Cork city and county during 2005, 2006, 2007, 2008 and 2009; and the specific training courses and course placements that are available for 2010. [10917/10]

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Dara Calleary): I propose to take Questions Nos. 39 to 42, inclusive, together.

The information is being collated and will be passed to the Deputy as soon as possible.

FÁS Training Programmes.

43. **Deputy David Stanton** asked the Tánaiste and Minister for Enterprise, Trade and Employment the action that she is taking to ensure that apprentices who have lost their jobs can finish their apprenticeship; and if she will make a statement on the matter. [10930/10]

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Dara Calleary): FÁS has already put in place the following measures in place to assist redundant apprentices who have to complete both on and off -the-job work training with assessments in order to complete their apprenticeships:

1. FÁS has put in place an interim measure whereby redundant apprentices may progress to the next off-the-job training phase of their apprenticeship, in line with current scheduling criteria. In 2009, over 2,000 redundant apprentices were provided with off-the-job training. To date in 2010, 1,041 redundant apprentices commenced off-the-job training in January 2010, and 1,008 redundant apprentices are currently being scheduled to commence Phase 4 and Phase 6 off-the-job training in the Institutes of Technology and Colleges of Further Education on 6 April 2010.

2. In 2009, FÁS introduced a temporary *Employer Based Redundant Apprentice Rotation Scheme* for apprentices made redundant in the Construction Industry. Over 460 redundant apprentices completed Phase 3, 5 and 7 on-the-job training and assessments with employers under this Scheme in 2009. A new *Redundant Apprentice Placement Scheme* which will replace the Rotation Scheme in 2010, is under development and this will with the support of employers provide to assist redundant apprentices to complete the on-the-job training of their apprenticeship with a FÁS approved employer.

3. An on-the-job training programme with ESB Networks for eligible redundant apprentices at Phases 5 and 7 of their apprenticeship was agreed with FAS and commenced in March

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2009. The programme will provide up to 400 places over a period of 18 months and is funded by ESB Networks. To date, 184 redundant apprentices have completed training, 106 are currently in training, and further placements will take place during 2010.

4. FÁS and the Institutes of Technology have agreed the *PP5 programme* for redundant apprentices who have successfully completed Phases 1 — 4 of their apprenticeship and where an on or off-the-job training opportunity is not currently available. The programme has both a Construction Stream and an Engineering Stream, with a number of core skills modules related to apprenticeship and a number of electives in specific skills. The programme provides apprentices with a Level 5 FETAC award and allows for access and transfer of credits to other post-apprenticeship programmes. The Institutes of Technology are currently providing training to eligible redundant apprentices who responded to invitations issued in January 2010.

5. FÁS has also developed Phase 7-equivalent assessments for redundant apprentices at the final phase of their apprenticeship in the trades of Carpentry & Joinery, Electrical, Plumbing, Brick & Stonelaying and Plastering. Some assessments commenced on 24 February 2010 and others are being arranged in accordance with the scheduling calendar.

6. Redundant apprentices registered for 4 years who have successfully completed all Phases 1-7 of their apprenticeship, but have not yet completed the required 4 years in employment as an apprentice in the specified trade, will be contacted by FÁS to submit a portfolio of evidence under Recognition of Prior Learning for consideration by the National Apprenticeship Advisory Sub-committee for the award of the Advanced Craft Certificate.

7. Redundant apprentices may also avail of existing trade-related specific skills training courses to enhance their employable skills. They may also avail of the range of trade-related evening courses available in FÁS Training Centres.

8. Léargas is providing funding under the *EU Lifelong Learning Programme, Leonardo Da Vinci Mobility Programme* to support the placement of almost 100 redundant apprentices with overseas employers to complete their phase 7 on-the-job training with assessments.

All of these various measures will support around 4,000 redundant apprentices.

FÁS continues to closely monitor the situation in relation to redundant apprentices and newly qualified craft persons. It is important to point out in this regard that the onus is on redundant apprentices themselves to inform FÁS Services to Business immediately of his/her redundant status and register with their local FÁS Employment Services Office. Otherwise, the redundant apprentice may lose out on invaluable assistance in securing new employment which would enable him/her to continue their apprenticeship training.

Departmental Agencies.

44. **Deputy Finian McGrath** asked the Tánaiste and Minister for Enterprise, Trade and Employment if she will support a matter (details supplied). [10948/10]

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Dara Calleary): I have repeatedly acknowledged the ongoing commitment of the staff of FÁS in meeting the employment and training challenges that currently face the country. I am confident that the enhanced internal financial controls now in place within FÁS, which are underpinned by the recently enacted Labour Services (Amendment) Act, together with the appointment of

a new Board and Director General, will enable FÁS to pursue its core mission with renewed vigour.

Employment Support Services.

45. **Deputy Joe Carey** asked the Tánaiste and Minister for Enterprise, Trade and Employment the employment incentives available from her Department for young persons subsequent to their release from St. Patrick's Institution; and if she will make a statement on the matter. [10956/10]

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Dara Calleary): FÁS Employment Services (ES) provides priority access to young persons subsequent to their release from detention. In this regard, FÁS works in close collaboration with the Probation Service, through an agreed Protocol between FÁS, the Probation Service, the Irish Prison Service and the Linkage Programme — a joint project between Business in the Community and the Probation and Welfare Service. The purpose of the Protocol is to provide a seamless referral process to FÁS for ex-offenders by the Probation Service and the Irish Prison Service through the Linkage Programme, taking into consideration the development and training needs of the client group and thereby supporting their desistance efforts as well as safe-guarding the work of service provider staff.

Young persons, subsequent to their release from St. Patrick's Institution, may be eligible for programmes for early school leavers including Community Training Centres (CTCs) and Justice Workshops. Early school leavers, defined as young people aged 16-21 who left school with no or low qualifications and who face difficulties accessing the labour market, are a priority client group for FÁS. FÁS Community Services works in partnership with 39 Community Training Centres, in the provision of training and related services to early school leavers. Delivery of training and related services focuses on supporting the learner to achieve a major award on the national framework of qualifications as a route to sustainable employment.

Departmental Correspondence.

46. **Deputy Mary Upton** asked the Tánaiste and Minister for Enterprise, Trade and Employment if she will respond to a query (details attached). [10979/10]

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Dara Calleary): The subject raised in the Deputy's question is a matter for my colleague the Minister for Education and Science. The Deputy may therefore wish to direct her enquiry to that Department.

Professional Standards.

47. **Deputy Paul Kehoe** asked the Tánaiste and Minister for Enterprise, Trade and Employment the options available to a person who wishes to seek redress for poor delivery of professional services from an architect; and if she will make a statement on the matter. [10998/10]

Tánaiste and Minister for Enterprise, Trade and Employment (Deputy Mary Coughlan): The obligations of those operating under the title of architect are governed by the provisions of the Building Control Act 2007, which is the policy responsibility of my colleague the Minister for Environment, Heritage and Local Government. The Building Control Act 2007 requires those who use the title architect when providing services to be registered. The Royal Institute of Architects of Ireland is the body designated under the Act as the national registration body. Persons seeking redress in relation to poor delivery of services by a registered architect may

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wish to pursue their complaint through the Institute's independent consumer complaints procedure.

The Supply of Goods and Services Act 1980 requires those supplying services, including architectural services, to have the necessary skill to render the service and to supply the service with due skill, care and diligence. Persons who believe that the service they received did not accord with the aforementioned requirements may wish to seek legal advice on the options available to recover any loss that they may suffered as a result.

Public Procurement.

48. **Deputy Frank Feighan** asked the Tánaiste and Minister for Enterprise, Trade and Employment the way in which a company (details supplied), which tendered for State jobs, was successful up to December 2009 when this company went into receivership; the checks carried out before awarding contracts. [11062/10]

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Dara Calleary): As the Deputy has provided no details to enable the company and the public contracting authority involved to be identified, it is not possible to ascertain the area of responsibility into which this matter falls. It may be helpful to note that issues relating to public procurement are matters in the first instance for the public contracting authority involved and that policy issues and guidelines for procurement are generally matters for the Department of Finance.

Grocery Industry.

49. **Deputy Michael McGrath** asked the Tánaiste and Minister for Enterprise, Trade and Employment the value of products being sold at below cost in the grocery trade at the present time; and if she has an estimate of the amount of VAT lost to the Exchequer arising from the below cost selling. [11063/10]

Tánaiste and Minister for Enterprise, Trade and Employment (Deputy Mary Coughlan): The compilation of statistics in relation to the value of retail sales, including sales of grocery goods, is the responsibility of the Central Statistics Office, which operates under the remit of the Department of the Taoiseach.

Insofar as matters relating to VAT and VAT returns to the Exchequer are concerned, these are the policy responsibility of the Minister for Finance and I have no direct function in relation to such matters.

Replies to Questions Nos. 50 to 54, inclusive, not received from the Department.

Departmental Properties.

55. **Deputy Joan Burton** asked the Minister for Finance if, in view of reports that at the Office of Public Works has acquired a property at Swords, County Dublin for the purpose of expanding the facilities of the National Museum, that the property has been acquired on a 20 year lease at €1 million per annum; if, in view of the depressed property market, an outright purchase of the property was considered; the purchase value of the property; when the acquisition of the property was arranged; the tender process that was established for the acquisition of such a property; the number and the persons who were invited to apply to supply a property through this tender process; if there is an outstanding loan on the property which is likely to be transferred to the National Asset Management Agency; if this loan, and the underlying collateral, is transferred to NAMA, could income derived from the OPW lease accrue to

NAMA and contribute to the service of interest on NAMA bonds; and if he will make a statement on the matter. [11065/10]

Minister of State at the Department of Finance (Deputy Martin Mansergh): The Department of Arts Sports and Tourism requested the Commissioners of Public Works to identify a suitable storage facility for the National Museum's collections. In accordance with procedures, eight potential buildings were identified and the National Museum deemed the premises selected as the best fit for their requirements.

As funding for the acquisition of such a facility was limited, and the owner was not amenable to disposing of his interest in the property, the purchase value of the property did not arise. The landlord demonstrated good title to the property to the satisfaction of the Commissioners' Solicitors and the National Museum's Solicitors. In addition the landlord produced a valid Tax Clearance Certificate prior to the Agreement for Lease being signed. This accords with the Commissioners' normal practice in any such agreement to acquire property. The Agreement for Lease was signed in December 2009. Any matters that may arise between the owner of the property and the National Asset Management Agency are outside the remit of the Commissioners of Public Works.

Architectural Heritage.

56. **Deputy Seán Sherlock** asked the Minister for Finance the position regarding the proposed upgrades and restoration to Doneraile Court in County Cork by the Office of Public Works; and if he will make a statement on the matter. [11069/10]

Minister of State at the Department of Finance (Deputy Martin Mansergh): A programme of conservation works is under way at Doneraile Court including repairs to the staircase in the Main House. Works are also progressing to the Coach House and the walled garden. Other ongoing works include landscaping, improvements to public lighting and resurfacing of the main avenue and car-park.

Medical Cards.

57. **Deputy Billy Timmins** asked the Minister for Health and Children the position regarding an application in respect of persons (details supplied) in County Carlow; if this will be examined and amended; and if she will make a statement on the matter. [10936/10]

Minister for Health and Children (Deputy Mary Harney): As this is a service matter it has been referred to the Health Service Executive for direct reply to the Deputy. I wish to advise the Deputy that, due to an intensification of industrial action in the public service by members of IMPACT, the HSE may not be in a position to provide a response to this Parliamentary Question within the normal timeframe.

Accident and Emergency Services.

58. **Deputy Jack Wall** asked the Minister for Health and Children the number of persons on trolleys in the accident and emergency department over the past three years in Naas General Hospital, County Kildare; how this compares to other hospitals; and if she will make a statement on the matter. [10920/10]

59. **Deputy Jack Wall** asked the Minister for Health and Children the procedures in place to deal with overcrowding in the accident and emergency department of Naas General Hospital, County Kildare; if such procedures take account of the privacy of the patient; and if she will make a statement on the matter. [10925/10]

60. **Deputy Jack Wall** asked the Minister for Health and Children the procedures in place at the accident and emergency department of Naas General Hospital, County Kildare for families who suffer a bereavement there; if the procedures take into account the need for privacy at such a difficult time; and if she will make a statement on the matter. [10926/10]

Minister for Health and Children (Deputy Mary Harney): I propose to take Questions Nos. 58 to 60, inclusive, together.

As these are service matters, they have been referred to the Health Service Executive for direct reply. I wish to advise the Deputy that, due to an intensification of industrial action in the public service by members of IMPACT, the HSE may not be in a position to provide a response to this Parliamentary Question within the normal timeframe.

Nursing Homes Repayment Scheme.

61. **Deputy Denis Naughten** asked the Minister for Health and Children when a person (details supplied) in County Roscommon will receive a decision on their application; the reason for the delay; and if she will make a statement on the matter. [10929/10]

Minister for Health and Children (Deputy Mary Harney): As this is a service matter it has been referred to the HSE for direct reply. I wish to advise the Deputy that, due to an intensification of industrial action in the public service by members of IMPACT, the HSE may not be in a position to provide a response to this Parliamentary Question within the normal timeframe.

Medical Council Inquiries.

62. **Deputy Richard Bruton** asked the Minister for Health and Children her views on requesting the Medical Council to undertake an inquiry into the practice in which women had their pelvis broken during childbirth; and if she will make a statement on the matter. [10934/10]

Minister for Health and Children (Deputy Mary Harney): I wish to advise the Deputy that due to industrial action it is not possible to supply the information requested.

Health Service Staff.

63. **Deputy Martin Ferris** asked the Minister for Health and Children the number of non-EU staff employed by the Health Service Executive; if the HSE is required to apply for work permits for such workers; and if she will make a statement on the matter. [10943/10]

Minister for Health and Children (Deputy Mary Harney): Previous data from 2007 provided by the Health Service Executive to my Department indicated that 90.19% of staff were from Ireland, with a further 2.47% from the rest of the European Union (EU) and the European Economic Area (EEA) combined. Further data, including the number of staff of non-EU staff, i.e. excluding the European Economic Area, may be available from the HSE. However, due to industrial action by the Civil & Public Services Union (CPSU) and the Public Service Executive Union (PSEU), my Department is not in a position to refer this Dáil question to the HSE.

In relation to work permits, it is a matter for the HSE to comply with relevant legislation in each particular case.

Services for People with Disabilities.

64. **Deputy Finian McGrath** asked the Minister for Health and Children if she will support the case of a person (details supplied). [10950/10]

Minister of State at the Department of Health and Children (Deputy John Moloney): As the Deputy's question relates to service matters, I have arranged for the question to be referred to the Health Service Executive for direct reply.

Medical Cards.

65. **Deputy Eamon Gilmore** asked the Minister for Health and Children if her attention has been drawn to the fact that medical card holders are being charged for medical reports which are sometimes required by applicants for driving licences or for renewal of driving licences in the case of older drivers; if such reports should be awarded free to medical card holders; her views on same; and if she will make a statement on the matter. [10973/10]

Minister for Health and Children (Deputy Mary Harney): The contract between the HSE and General Practitioners for the General Medical Services (GMS) Scheme stipulates that fees are not paid to GPs by the HSE in respect of certain medical certificates which may be required, for example, "under the Social Welfare Acts or for the purposes of insurance or assurance policies or for the issue of driving licences". There are no proposals to alter this provision.

Nursing Homes Support Scheme.

66. **Deputy Paul Connaughton** asked the Minister for Health and Children the number of applications received under the fair deal; the number of fully processed applications that have been paid; and the amount of money paid to date in 2010. [10975/10]

Minister of State at the Department of the Health and Children (Deputy Áine Brady): I wish to advise the Deputy that due to industrial action it is not possible to supply the information requested.

Health Service Staff.

67. **Deputy Paul Kehoe** asked the Minister for Health and Children the position regarding an agency nurse in a whistleblower situation; if the legal position is different for an agency nurse to that of a nurse working in a hospital; and if she will make a statement on the matter. [10999/10]

Minister for Health and Children (Deputy Mary Harney): I would like to draw the Deputy's attention to the Health Act 2004 as amended by Section 103 of the Health Act 2007 which provides for Protected Disclosures of Information and sets out the protection of persons disclosing information.

Preschool Services.

68. **Deputy Róisín Shortall** asked the Minister for Health and Children the number of pre-school places funded by her Department in Dublin 9 and Dublin 11; the number of pre-school providers receiving funding in these areas; and the level of spare capacity among these providers as reported to him. [11003/10]

Minister of State at the Department of Health and Children (Deputy Barry Andrews): I have responsibility for implementation of the free Pre-School Year in Early Childhood Care and Education (ECCE) scheme which was introduced in January of this year.

Pre-school services participating in the ECCE scheme were required to make a return to my Office by the end of January 2010, giving details of qualifying children attending. When processing of these returns is finalised, details of the number of pre-school services participating in the scheme and the number of children availing of the free Pre-School Year, will be available

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by reference to the areas covered by the City and County Childcare Committees (CCCs). In the meantime, I am able to advise the Deputy that approximately 4,000 pre-school services across the country are participating in the scheme and that some 3,500 children are enrolled in the Dublin City area.

Medical Cards.

69. **Deputy Bernard J. Durkan** asked the Minister for Health and Children when a medical card will issue to a person (details supplied) in County Kildare; and if she will make a statement on the matter. [11012/10]

Minister for Health and Children (Deputy Mary Harney): As this is a service matter it has been referred to the Health Service Executive for direct reply to the Deputy.

I wish to advise the Deputy that, due to an intensification of industrial action in the public service by members of IMPACT, the HSE may not be in a position to provide a response to this Parliamentary Question within the normal timeframe.

Hospital Accommodation.

70. **Deputy Michael Ring** asked the Minister for Health and Children if a decision has been made in respect of cutbacks at a hospital (details supplied) in County Mayo regarding the reduction in beds. [11066/10]

Minister of State at the Department of the Health and Children (Deputy Áine Brady): I wish to advise the Deputy that due to industrial action it is not possible to supply the information requested.

Medical Cards.

71. **Deputy John McGuinness** asked the Minister for Health and Children if a medical card application will be expedited and granted on medical grounds in the case of a person (details supplied) in County Kilkenny. [11071/10]

Minister for Health and Children (Deputy Mary Harney): As this is a service matter it has been referred to the Health Service Executive for direct reply to the Deputy.

I wish to advise the Deputy that, due to an intensification of industrial action in the public service by members of IMPACT, the HSE may not be in a position to provide a response to this Parliamentary Question within the normal timeframe.

72. **Deputy John McGuinness** asked the Minister for Health and Children if she will expedite an appeal for a full medical card in the case of a person (details supplied) in County Kilkenny; if a full medical card will be issued based on the medical circumstances of the applicant. [11072/10]

Minister for Health and Children (Deputy Mary Harney): As this is a service matter it has been referred to the Health Service Executive for direct reply to the Deputy.

I wish to advise the Deputy that, due to an intensification of industrial action in the public service by members of IMPACT, the HSE may not be in a position to provide a response to this Parliamentary Question within the normal timeframe.

Regional Airports.

73. **Deputy Brian O'Shea** asked the Minister for Transport the proposals he has to provide

capital funding for a runway extension at Waterford Airport; and if he will make a statement on the matter. [10988/10]

Minister for Transport (Deputy Noel Dempsey): Because of the difficulties with the public finances, I decided in July 2008 that insofar as development projects are concerned, expenditure under the regional airports grant scheme should be focused on project elements where the airports have already entered into contractual commitments.

The provision in my Department's Vote to fund the capital expenditure grant scheme for all the Regional Airports in 2010 is €3 million. My Department is currently aiming to establish priorities for grant aid from the funds available having regard to those remaining contractual commitments and an assessment of requirements for safety and security-related projects likely to arise during the year.

Projects identified for funding at Waterford included a proposed runway extension. There are no existing contractual commitments in respect of this project and in the current financial climate my priority will be safety or security related projects.

I expect that a Value for Money review of regional airports being carried out within my Department will assist me in evaluating the appropriate scale of a regional airports programme in future years, bearing in mind my aviation policy objectives, the improved surface transport links provided under Transport 21 and the need to continue to address the difficulties with our public finances.

Commercial Rents.

74. **Deputy Ciarán Lynch** asked the Minister for Justice, Equality and Law Reform if, in view of the fact that legislation in the public interest has been passed overriding the provisions of Acts, orders, circulars and contractual agreements in order to reduce pay in the public sector, he has sought legal advice as to whether the same overriding provisions are available when it comes to addressing contracts in the private sector including, in particular, contracts for upwards only rent reviews; if so, if he will outline the advice; the reason it is considered possible to breach contracts of employment in the public sector in the public interest but it is not as yet considered possible to breach rental agreements in the private sector in the same public interest; and if he will make a statement on the matter. [10985/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): The provisions in section 132 of the Land and Conveyancing Law Reform Act 2009 now prohibit "upwards only" rent reviews in respect of new commercial leases. However, it should be noted that there is nothing to stop the parties to an existing commercial lease, to which section 132 does not apply, from varying the terms of the contract and from agreeing to reduce the applicable rent, having regard to individual circumstances and the realities of the market.

The rationale and justification for the Financial Measures in the Public Interest Acts 2009 (the FEMPI Acts) include the overriding public interest in controlling public spending, reducing the shortfall between expenditure and revenue and reducing the unsustainable levels of public borrowings. These imperatives do not apply in the case of commercial leases entered into between private parties.

During the course of the debate in the House on section 132 of the Land and Conveyancing Law Reform Act 2009 I identified some of the legal and Constitutional difficulties which could arise if legislation retrospectively amended the provisions of existing commercial leases entered into between private parties. The Deputy will appreciate that the Government is at all times obliged to operate within the appropriate legal and Constitutional framework. However, I can

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assure him that my Department will, in consultation with the Office of the Attorney General, continue to assess the issues that are involved in this complex matter.

Against that background, I would draw the attention of the Deputy to the fact that I have established a Working Group to look at the issue of commercial rent reviews in the context of the arbitration system which operates at present and the adequacy of the information available to all parties during the rent review process.

Criminal Prosecutions.

75. **Deputy Charles Flanagan** asked the Minister for Justice, Equality and Law Reform the number of convictions secured to date for gun murders in 2005, 2006, 2007,2008, 2009 and to date in 2010; and if he will make a statement on the matter. [10952/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I am not in a position to respond to the Deputy at this time, but will do so as soon as the relevant information is available.

Proposed Legislation.

76. **Deputy Joanna Tuffy** asked the Minister for Justice, Equality and Law Reform the position regarding legislation in respect of maintenance enforcement; the reason section 8 of the Enforcement of Courts Act 1940 was not amended by the Enforcement of Courts Act 2009; and if he will make a statement on the matter. [10955/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): There are several provisions in the law for ensuring that payments continue to be made by spouses in support of their dependent spouses and children. They include enabling powers for the courts to order attachment of the earnings of a debtor spouse, to order the securing of payments to the maintenance creditor, to order the payment of lump sums and to order arrears of maintenance to be paid by instalments.

While the law generally operates effectively in this area I am aware of difficulties in some cases because of the effect of a judgment of the High Court last year. The High Court judgment in that particular case had implications for sections 6 (imprisonment in the case of non-payment of debt) and 8 (imprisonment relating to non-payment of maintenance) of the Enforcement of Court Orders Act 1940. Contrary to the Deputy's assertion, the Enforcement of Court Orders (Amendment) Act 2009 made changes to both provisions consequent on that judgment in accordance with legal advice.

I am in consultation with the Attorney General with a view to developing early proposals for further amendments in respect of maintenance enforcement.

Deportation Orders.

77. **Deputy Maureen O'Sullivan** asked the Minister for Justice, Equality and Law Reform the circumstances surrounding the deportation order in respect of a person (details supplied); and if he will rescinding same in view of their personal circumstances. [10966/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret to advise the Deputy that it is not possible to provide a response to his Question at this time. The information sought by the Deputy will be provided at a later date.

Citizenship Applications.

78. **Deputy Phil Hogan** asked the Minister for Justice, Equality and Law Reform when a decision on an appeal for naturalisation will be decided in respect of a person (details supplied) in County Carlow; and if he will make a statement on the matter. [10971/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): There is no appeals process provided under the Irish Nationality and Citizenship Act, 1956, as amended. An application for a certificate of naturalisation may be lodged with the Citizenship Division of my Department at any time.

I am advised by the Irish Naturalisation & Immigration Service that there is no record of an application for a certificate of naturalisation from the person referred to in the Deputy's question.

Garda Deployment.

79. **Deputy Enda Kenny** asked the Minister for Justice, Equality and Law Reform the position regarding the retirement of personnel (details supplied) from a Garda station in County Mayo; if and when replacement personnel will be provided to satisfy the concerns of local residents; and if he will make a statement on the matter. [10972/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): Responsibility for the allocation of all personnel within the Force rests with the Garda Commissioner, in consultation with his senior management team. In this regard, the Deputy should be aware that over 200 students are due to be attested as Gardaí during 2010. Resource levels are constantly monitored, in conjunction with crime trends and other demands made on An Garda Síochána and the situation is kept under continuing review.

Garda Vetting Services.

80. **Deputy Pat Breen** asked the Minister for Justice, Equality and Law Reform if he will report on the Garda vetting unit; the length of time to process applications; the number of applications which the unit has dealt with in the past three years; if he is satisfied that the unit is adequately resourced; and if he will make a statement on the matter. [10984/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): The Garda Central Vetting Unit (GCVU) provides employment vetting for a large number of organisations in Ireland registered with the Gardaí for this purpose and which employ persons in a full-time, part-time, voluntary or training capacity to positions where they would have substantial, unsupervised access to children and/or vulnerable adults.

The GCVU has managed a substantial increase over recent years in the numbers of vetting applications it receives — 187,864 in 2007; 218,404 in 2008 and 246,194 in 2009.

The processing time for vetting applications fluctuates during the year due to seasonal demands when the volume of applications received from certain sectors can increase, for training placements for example. Additional time may be required to process an individual vetting application in cases where clarification is required as to the details provided or where other enquiries need to be made, for example, when the person in question has lived and worked abroad. There will always be a reasonably significant time period required to process a vetting application. However, the Gardaí make every effort to reduce this to the minimum possible consistent with carrying out the necessary checks. I am informed by the Garda Authorities that the average processing time for valid vetting applications received at the GCVU may vary from four to five weeks in quieter periods to eight to ten weeks at times of peak demand.

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The allocation of Garda resources, including personnel, is a matter for the Garda Commissioner. There is currently a total of 78 personnel assigned to the vetting unit, including six Gardaí and 72 Garda civilian personnel. This represents a very significant increase in the level of personnel assigned to the unit, which stood at only 13 before the current process of development in Garda vetting began in 2005.

Private Security Regulation.

81. **Deputy Arthur Morgan** asked the Minister for Justice, Equality and Law Reform further to Parliamentary Question No. 302 of 24 November 2009, if he has made representations to an authority (details supplied) to review the fee structure for a contractor licence in the context of its strategic plan for 2010 to 2012; and if he will make a statement on the matter. [10986/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): As the Deputy will be aware, the Private Security Authority, established under the Private Security Services Act 2004, is the regulatory body with responsibility for regulating and licensing the private security industry. The Authority is an independent body under the aegis of my Department.

I can, however, confirm that the fee structure, as referenced by the Deputy, is currently being reviewed by the Authority.

Garda Recruitment.

82. **Deputy Fergus O'Dowd** asked the Minister for Justice, Equality and Law Reform the position regarding the moratorium on public service recruitment; when this may might be lifted; the position regarding exemptions from the moratorium on recruitment to the Garda Síochána. [10990/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): My Department is in the process of finalising an Employment Control Framework for the Justice Sector under the terms of which it is envisaged that the moratorium on recruitment and promotion will be lifted in due course.

In the meantime, exemptions from the moratorium may be sought in exceptional circumstances. The Deputy should be aware that I recently secured sanction from the Minister for Finance for a significant derogation from the moratorium, as a result of which some 170 positions will be filled in An Garda Síochána in the very near future. The Commissioner is in the process of organising competitions from which successful candidates will be promoted to fill vacancies throughout the force and it is expected that this process will be completed as soon as is practicable.

Work Permits.

83. **Deputy Denis Naughten** asked the Minister for Justice, Equality and Law Reform the number of applications received under the administrative scheme for undocumented migrant workers formerly holding employment permits and who have since become undocumented through no fault of their own; the number granted to date; the number refused to date; the number still awaiting a decision; the length of time it will take to process applications awaiting a decision, broken down by nationality and gender; and if he will make a statement on the matter. [11000/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I am informed that 185 applications were received under the administrative scheme referred to in the Deputy's

question. These applications are currently being processed and I understand that decision letters will issue to the applicants in the near future. At that point a statistical breakdown will be compiled.

It should also be noted that a significant number of cases involving migrant workers who would have been eligible to apply for the scheme had already been dealt with in the months preceding it.

Citizenship Applications.

84. **Deputy Willie Penrose** asked the Minister for Justice, Equality and Law Reform the steps he will take to have an application for naturalisation in respect of a person (details supplied) in County Westmeath expedited, since the application was made in November 2007; and if he will make a statement on the matter. [11005/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): All valid applications are dealt with in chronological order as this is deemed to be the fairest to all applicants. The average processing time from application to decision is now at 26 months. More complicated cases can at times take more than the current average, while an element of straight forward cases can be dealt with in less than that timescale.

The length of time taken to process each application should not be classified as a delay, as the length of time taken for any application to be decided is purely a function of the time taken to carry out necessary checks.

There is a limit to the reduction in the processing time that can be achieved as applications for naturalisation must be processed in a way which preserves the necessary checks and balances to ensure that it is not undervalued and is only given to persons who genuinely satisfy the necessary qualifying criteria.

Information in relation to the application from the person referred to in the Deputy's question is not readily to hand. I will write to the Deputy as soon as it is available.

Private Security Regulation.

85. **Deputy Róisín Shortall** asked the Minister for Justice, Equality and Law Reform the circumstances under which a licence fee for installing burglar alarms may be waived, such as, if a new post is created.. [11009/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): As the Deputy will be aware, the Private Security Authority, established under the Private Security Services Act 2004, is the regulatory body with responsibility for regulating and licensing the private security industry. The Authority is an independent body under the aegis of my Department.

With regard to the fee charged for an installer (intruder alarm) licence, I have been informed by the Authority that there are no circumstances contemplated where this fee would be waived.

Residency Permits.

86. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding the matter of application for residency in the case of a person (details supplied) in County Westmeath; and if he will make a statement on the matter. [11013/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret to advise the Deputy that it is not possible to provide a response to his Question at this time. The information sought by the Deputy will be provided at a later date.

87. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding the matter of application for residency in the case of a person (details supplied) in County Waterford; and if he will make a statement on the matter. [11014/10]

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Curran): I regret to advise the Deputy that it is not possible to provide a response to his Question at this time. The information sought by the Deputy will be provided at a later date.

88. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding the matter of an application for residency in the case of a person (details supplied) in County Mayo; and if he will make a statement on the matter. [11015/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret to advise the Deputy that it is not possible to provide a response to his Question at this time. The information sought by the Deputy will be provided at a later date.

89. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding the matter of an application for residency in the case of a person (details supplied) in County Mayo; and if he will make a statement on the matter. [11016/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret to advise the Deputy that it is not possible to provide a response to his Question at this time. The information sought by the Deputy will be provided at a later date.

90. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding the matter of application for residency in the case of a person (details supplied) in County Mayo; and if he will make a statement on the matter. [11017/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret to advise the Deputy that it is not possible to provide a response to his Question at this time. The information sought by the Deputy will be provided at a later date.

Citizenship Applications.

91. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding the matter of application for naturalisation in the case of a person (details supplied) in County Kildare; and if he will make a statement on the matter. [11018/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret that the information requested by the Deputy is not readily to hand. I will write to the Deputy as soon as it is available.

92. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding an application for citizenship in the case of a person (details supplied) in Dublin 24; and if he will make a statement on the matter. [11019/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret that the information requested by the Deputy is not readily to hand. I will write to the Deputy as soon as it is available.

93. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding an application for citizenship in the case of a person (details supplied) in Dublin 24; and if he will make a statement on the matter. [11020/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret that the information requested by the Deputy is not readily to hand. I will write to the Deputy as soon as it is available.

Residency Permits.

94. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding an application for residency in the case of a person (details supplied) in County Meath; and if he will make a statement on the matter. [11021/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret to advise the Deputy that it is not possible to provide a response to his Question at this time. The information sought by the Deputy will be provided at a later date.

95. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding an application for residency in the case of a person (details supplied) in County Meath; and if he will make a statement on the matter. [11022/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret to advise the Deputy that it is not possible to provide a response to his Question at this time. The information sought by the Deputy will be provided at a later date.

96. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding an application for residency in the case of a person (details supplied) in County Kildare; and if he will make a statement on the matter. [11023/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret to advise the Deputy that it is not possible to provide a response to his Question at this time. The information sought by the Deputy will be provided at a later date.

97. **Deputy Bernard J. Durkan** asked the Minister for Justice, Equality and Law Reform the position regarding an application for residency in the case of a person (details supplied) in County Waterford; and if he will make a statement on the matter. [11024/10]

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I regret to advise the Deputy that it is not possible to provide a response to his Question at this time. The information sought by the Deputy will be provided at a later date.

Departmental Funding.

98. **Deputy Fergus O'Dowd** asked the Minister for Community, Rural and Gaeltacht Affairs if he will provide grant aid to an organisation (details supplied) in County Louth; and if he will make a statement on the matter. [10913/10]

Minister for Community, Rural and Gaeltacht Affairs (Deputy Éamon Ó Cuív): I am advised that my Department has not received any application for funding from the organisation referred to by the Deputy. Foras na Gaeilge has a function of promoting the Irish language and, in that context, of undertaking supportive projects and grant-aiding bodies and groups as considered necessary. Information in this regard is available on its website at *www.forasna-gaeilge.ie*

In a wider context, my Department also provides certain funding to community and voluntary organisations under a range of grant/support schemes, which may also be of interest to the

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organisation. Details of such schemes and of the ways to apply for funding are available on my Department's website at *www.pobail.ie.*

Departmental Programmes.

99. **Deputy Martin Ferris** asked the Minister for Community, Rural and Gaeltacht Affairs the reason he has taken the decision to abolish the overheads grant to a company (details supplied); if he will reverse this cut in view of the fact that it has the potential to result in the closure of information and communication technology centres in the area and the loss of more than 100 jobs; and if he will make a statement on the matter. [10924/10]

Minister for Community, Rural and Gaeltacht Affairs (Deputy Éamon Ó Cuív): Under the Community Service Programme (CSP), the organisation referred to by the Deputy receives some €185,000 in funding towards the cost of employing a manager and eight full-time equivalents posts. The organisation has recently had its contract with the CSP extended to the end of 2010.

Given the current economic difficulties, my priority has been to protect the jobs of the estimated 2,700 people employed in the 450 community-based organisations approved for support under the CSP. In order to do this, it has been necessary to reduce the level of non-wage grants paid, as well as cutting technical assistance and administrative costs. The Deputy should note that some 90 additional organisations, employing an estimated 300 people, were approved for funding under the CSP in 2009 and these are currently operational.

Organisations providing services under the CSP are required and encouraged to develop additional non-public sources of income which will further enhance and sustain the long-term viability of their projects. Where an organisation is facing difficulties in managing the reduction in grant support, a review process has been provided to allow for an immediate examination of the impacts. The organisation referred to by the Deputy had requested such a review and the outcome will be notified to it in the coming weeks.

Rural Social Scheme.

100. **Deputy Jimmy Deenihan** asked the Minister for Community, Rural and Gaeltacht Affairs if participants on rural social schemes who retire will be replaced; and if he will make a statement on the matter. [10991/10]

Minister for Community, Rural and Gaeltacht Affairs (Deputy Éamon Ó Cuív): There is currently provision for 2,600 participants and 130 supervisors on the Rural Social Scheme and my aim is to operate the Scheme at the fullest level of participation possible within the available resources.

Accordingly, the filling of vacancies is kept under ongoing review by my Department so that any that arise through, for example, retirements are filled as quickly as possible.

Social Welfare Benefits.

101. **Deputy Bernard Allen** asked the Minister for Social and Family Affairs the reason payment has been ceased in respect of a person (details supplied) in County Cork. [10918/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

Social Welfare Appeals.

102. **Deputy Michael D. Higgins** asked the Minister for Social and Family Affairs the position regarding an appeal for domiciliary benefit in respect of persons (details supplied). [10919/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

Social Welfare Code.

103. **Deputy Leo Varadkar** asked the Minister for Social and Family Affairs the social welfare rights of redundant persons to contributory benefits such as jobseeker's benefit where their employer did not pass on the PRSI payments to the Revenue Commissioners; and if she will make a statement on the matter. [10931/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Any jobseeker who has paid PRSI contributions while working will be not disadvantaged where an employer has failed to collect or make a return of PRSI contributions to Revenue. In such cases the matter will be investigated by a Social Welfare Inspector and the employer will be required to comply with the PRSI regulations. In the event that compliance cannot be obtained, the jobseeker's record will be credited with the number of PRSI contributions due in respect of the period of employment with that employer.

While investigations are being carried out, it may be possible for the person to receive jobseeker's allowance — a means-tested payment — until the entitlement to jobseeker's benefit has been established.

Social Welfare Appeals.

104. **Deputy Dan Neville** asked the Minister for Social and Family Affairs the position regarding the case of a person (details supplied) in County Limerick. [10933/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

Social Welfare Benefits.

105. **Deputy Caoimhghín Ó Caoláin** asked the Minister for Social and Family Affairs the number of Irish citizens refused payment due to failure to satisfy the habitual residency condition in each local social welfare office for each year since 2004. [10935/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

106. **Deputy Michael Creed** asked the Minister for Social and Family Affairs the position regarding social welfare entitlements of Irish citizens who have been out of the country for the past two years who are now returning and for whom there is no employment available; and if she will make a statement on the matter. [10938/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

107. **Deputy Michael Creed** asked the Minister for Social and Family Affairs the position regarding an application for carer's allowance in respect of a person (details supplied) in County Cork; and if she will make a statement on the matter. [10939/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

108. **Deputy Michael Creed** asked the Minister for Social and Family Affairs the position regarding a claim for jobseeker's allowance in respect of a person (details supplied) in County Cork; and if she will make a statement on the matter. [10940/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken. I regret that I am unable to provide the information sought by the Deputy.

109. **Deputy Paul Kehoe** asked the Minister for Social and Family Affairs the reason a person (details supplied) is only receiving €45 mortgage interest relief; and if she will make a statement on the matter. [10942/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

110. **Deputy Finian McGrath** asked the Minister for Social and Family Affairs if she will support the case of a person (details supplied). [10945/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

111. **Deputy Dan Neville** asked the Minister for Social and Family Affairs the position regarding an application for jobseeker's benefit in respect of persons (details supplied) in County Limerick; and if she will make a statement on the matter. [10954/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken. I regret that I am unable to provide the information sought by the Deputy.

112. **Deputy Michael Creed** asked the Minister for Social and Family Affairs if she will instruct her Department to issue a replacement social service card to a person (details supplied) in County Cork; and if she will make a statement on the matter. [10957/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to action currently being taken by staff, I regret that I am unable to provide the information sought by the Deputy.

Pension Provisions.

113. **Deputy Billy Timmins** asked the Minister for Social and Family Affairs the position regarding the case of a person (details supplied) in County Wicklow; if she will expedite the matter; and if she will make a statement on the matter. [10974/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

Social Welfare Benefits.

114. **Deputy Mary Upton** asked the Minister for Social and Family Affairs if she will respond to a query (details attached). [10978/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): My colleague, the Minister for Education and Science, deals with the student maintenance grant schemes.

This Department continues to provide financial support for jobseekers to return to work through the Back to Education Allowance which is a second chance educational opportunities scheme for people on welfare payments who wish to participate in full-time education and who would not otherwise be able to do so. Participation is open to recipients of a range of welfare payments, including Jobseeker's, One Parent Family, Disability, Illness and Caring schemes.

The allowance is paid at a standard weekly rate equivalent to the maximum rate of the social welfare payment that qualifies the applicant for the scheme. It is not means-tested and income from part-time work while on the back to education allowance does not affect the basic payment. In addition, an annual cost of education allowance of €500 is payable.

The back to education allowance has an important role to play in enhancing the employability skills of jobseekers. The nature and structure of the scheme will continue to be monitored in the context of the objectives of the scheme and changes in the economic climate.

Social Welfare Appeals.

115. **Deputy Kathleen Lynch** asked the Minister for Social and Family Affairs when a person (details supplied) will receive their arrears which was awarded on appeal from the 30 July 2009; and if she will make a statement on the matter. [10983/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

116. **Deputy Willie Penrose** asked the Minister for Social and Family Affairs when a social welfare appeal in respect of a person (details supplied) in County Westmeath will be heard; and if she will make a statement on the matter. [11006/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

Pension Provisions.

117. **Deputy Willie Penrose** asked the Minister for Social and Family Affairs the reason the qualified adult portion of a contributory State pension in respect of a person (details supplied) in County Westmeath has been suspended since the 4 December 2009, when this person qualifies in respect of eligibility criteria for same; and if she will make a statement on the matter. [11008/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

Social Welfare Benefits.

118. **Deputy Bernard J. Durkan** asked the Minister for Social and Family Affairs when social welfare payment will issue to a person (details supplied) in County Westmeath; and if she will make a statement on the matter. [11011/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

119. **Deputy Frank Feighan** asked the Minister for Social and Family Affairs the reason social welfare payment has been reduced in respect of a person (details supplied). [11059/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

120. **Deputy Frank Feighan** asked the Minister for Social and Family Affairs when a decision will issue on an application for social welfare payment in respect of a person (details supplied). [11060/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

121. **Deputy Frank Feighan** asked the Minister for Social and Family Affairs when a decision will issue on an application for jobseekers in respect of a person (details supplied). [11061/10]

Minister for Social and Family Affairs (Deputy Mary Hanafin): Due to staff action currently being taken, I regret that I am unable to provide the information sought by the Deputy.

Departmental Records.

122. **Deputy Jimmy Deenihan** asked the Minister for Defence his views on digitising the aerial photographic archives of the Defence Forces for publication on the Internet in view of the educational and heritage value of these archives and the popularity of free modern aerial imagery technologies (details supplied); and if he will make a statement on the matter. [10965/10]

Taoiseach and Minister for Defence (Deputy Brian Cowen): The Air Corps provides an aerial photographic service for the Defence Forces. Photographs produced at the request of the military authorities were done so for security or Air Corps operational reasons. They were never produced or categorised with a view to making them available to the public. In the past, the Air Corps provided an aerial photographic service to Ordnance Survey Ireland. This arrangement is now discontinued but Ordnance Survey Ireland may be able to provide information on the photographs retained by it.

There are no plans in place to commence a project to publish the aerial photographs held by the Defence Forces. Aside from security issues involved, it would require significant expenditure of manpower and resources which could not be justified in the current circumstances.

Departmental Expenditure.

123. **Deputy Jimmy Deenihan** asked the Minister for Defence the estimated cost of sending the *LE Niamh* to South America for 12 weeks between May and July 2010 coinciding with the 200th anniversary of South American independence; and if he will make a statement on the matter. [10992/10]

Taoiseach and Minister for Defence (Deputy Brian Cowen): Foreign deployments are decided by the Minister for Defence in consultation with the Department of Foreign Affairs. Each year, the Naval Service commits approximately 85-90 of its annual patrol days to foreign deployments. Locations are considered on the basis of the optimum yield that can be derived for Ireland. This year Mexico, Argentina, Colombia and Chile all celebrate their bicentenary of independence and a visit to these locations has been agreed. This visit will replace a number of shorter foreign deployments that had originally been proposed.

The unique status of Naval vessels under the United Nations Convention on the Law of the Sea (UNCLOS) affords the State an ideal opportunity to give Ireland a distinctive presence

overseas. An Irish naval vessel is considered sovereign Irish territory regardless of its location, and therefore a ship affords rare promotional opportunities for state agencies such as Enterprise Ireland, An Bord Bia and the IDA to support Irish industry and services. In the current economic climate, promoting Ireland to business communities abroad has assumed added importance.

It is anticipated that the South American deployment will provide a unique opportunity to highlight the fact that Ireland is open for business. Over many years there have been strong cultural and heritage links between Ireland and South America. Mexico is Ireland's twentieth largest trading partner and a number of major Irish companies provide employment to thousands of Mexicans. Since the middle of the last century there has been political cooperation between Mexico and Ireland in relation to the international issue of non-proliferation of nuclear weapons. There are well documented military links between the independence movement in South America and Irish born people. In Argentina, the eighth largest country in the world, half a million people claim Irish descent. This is the largest such group outside of the English speaking world. Argentine national hero, Admiral William Brown, founder of the Argentine Navy, was born in Foxford, Co. Mayo.

My Department and the Naval Service are working closely with the Department of Foreign Affairs, Enterprise Ireland and other State authorities to ensure that maximum economic benefit is derived from this visit. The itinerary has not yet been finalised and therefore it is not possible to inform the Deputy of the total costs to be incurred. When final costings are available I will forward them to the Deputy.

As already stated, the patrol days included in this visit will be drawn from the existing patrol day allocation for overseas visits. As such, there should be no diminution of service with regard to effective patrolling activity. The Naval Service will continue to meet all taskings assigned to them.

Mortgage Lending.

124. **Deputy Phil Hogan** asked the Minister for the Environment, Heritage and Local Government the proportion of new residential mortgage loans here in 2008 and 2009 that were in the high loan to value category; and the percentage in each year that were in the category of each of above 70% LTV, above 80% LTV, above 90% LTV and at 100% LTV in respect of such loans; and if he will make a statement on the matter. [11068/10]

Minister of State at the Department of the Environment, Heritage and Local Government (Deputy Michael Finneran): The data requested in respect of mortgage lending for 2008 can be viewed on my Department's website, www.environ.ie. Data in respect of 2009 lending have not yet been finalised.

Departmental Expenditure.

125. **Deputy John O'Mahony** asked the Minister for the Environment, Heritage and Local Government when a person (details supplied) in County Mayo will receive compensation from his Department; and if he will make a statement on the matter. [10928/10]

Minister for the Environment, Heritage and Local Government (Deputy John Gormley): A claim for compensation has been made in this case. The Department has recently received legal advice on the matter and will be communicating with the applicant's solicitors shortly.

Tax Code.

126. **Deputy Róisín Shortall** asked the Minister for the Environment, Heritage and Local Government if an Irish citizen who is renting our their property here but who resides outside the EU is liable for the non-principal private residence charge; and if he will make a statement on the matter. [10953/10]

Minister for the Environment, Heritage and Local Government (Deputy John Gormley): The €200 charge on non-principal private residences, which was introduced in the Local Government (Charges) Act 2009, is payable in respect of any residential property in the State in which the owner does not live as his or her sole or main residence. The country of residence of the owner is irrelevant for the purposes of the Act.

Regulation of Professional Bodies.

127. **Deputy Maureen O'Sullivan** asked the Minister for the Environment, Heritage and Local Government further to Parliamentary Question No. 281 of 17 December 2009, if his attention has been drawn to the fact that persons working in the field of architecture in France who are properly established and ensured taxes were paid for the five years before their cut off date were placed on the register of architects without hindrance; his views regarding the situation here; and if he will make a statement on the matter. [10967/10]

Minister for the Environment, Heritage and Local Government (Deputy John Gormley): The regulation of the architectural profession in France is a matter for the competent authorities in that country. In Ireland, the eligibility criteria for registration of the title of "Architect" are set out in Section 14 of the Building Control Act 2007. Section 21 of the Act provides for the appointment of a Technical Assessment Board to consider applications for registration from persons who are not eligible for registration under paragraphs (a) to (g) and (i) of Section 14 (2) of the Act. Section 22 sets out the Technical Assessment Board procedure.

Under Section 25 of the Act a person who is adversely affected by a decision of the Technical Assessment Board may appeal to the Appeals Board against the decision. The appeals procedure is set out in Section 25. A person adversely affected by a decision of the Appeals Board may appeal to the High Court under Section 26 of the Act.

Planning Issues.

128. **Deputy Joanna Tuffy** asked the Minister for the Environment, Heritage and Local Government his plans to introduce regulations to control high trees in gardens; if his attention has been drawn to the fact that persons are having problems with very high trees in their neighbours' gardens, and in some cases, the height of these trees exceed the height of the roofline of their neighbours' houses; and if he will make a statement on the matter. [10980/10]

Minister for the Environment, Heritage and Local Government (Deputy John Gormley): Planning legislation does not place restrictions on the height of hedges or trees nor does it make any particular provision for recognition of a right to light or remedy from any other nuisance which may be caused by trees in an urban residential area. Complaints relating to matters such as trees or shrubs overhanging a property are normally addressed, where necessary, under civil law between the parties concerned.

Local Government Structures.

129. **Deputy Charlie O'Connor** asked the Minister for the Environment, Heritage and Local

Government if his attention has been drawn to the strong community campaign to have Tallaght, Dublin, designated as a city; his views on the importance of such designation for the third largest population centre in this State; the process to be followed in this matter; and if he will make a statement on the matter. [11001/10]

Minister for the Environment, Heritage and Local Government (Deputy John Gormley): Under the Local Government Act 2001 there are 29 county councils, including South Dublin County Council, and 5 city councils, each of which is responsible for the full range of local authority functions in their respective areas.

The general issue of local government structures will be addressed in the White Paper on Local Government. The approach to the White Paper is currently under consideration by Government; however I have no plans to re-designate South Dublin County Council as a city council, or to establish Tallaght as a separate city authority.

Special Areas of Conservation.

130. **Deputy Willie Penrose** asked the Minister for the Environment, Heritage and Local Government if an extension will be afforded to persons who are cutting bogs for their own domestic consumption and which bogs were designated to close in 2011 and 2012 under the special area of conversion and natural heritage area; his plans, in respect of a bog (details supplied) which is listed to be officially closed, as the said bog is used by a considerable number of personnel, to produce turf for domestic consumption; and if he will make a statement on the matter. [11010/10]

Minister for the Environment, Heritage and Local Government (Deputy John Gormley): Turf cutting on the bog in question, which is a designated raised bog Natural Heritage Area, is due to cease by end 2013, on the expiry of the 10 year period of grace that was allowed following its designation in 2004. Turf cutting can continue on the 96% of bogs that are not designated raised bogs.

In the light of the damage caused by turf cutting and associated drainage to the small number of designated raised bogs, which contain priority habitats under the Habitats Directive, there are no plans to extend the period during which cutting can continue on these bogs.

Last year I established an Inter-Departmental Working Group on the Cessation of Turf Cutting in Designated Raised Bogs. The Group is nearing completion of its deliberations and I expect to receive its report very shortly. I will conclude my consideration of the report and any recommendations it contains as rapidly as possible, and will then be in touch with affected individuals and representative groups in regard to the position.

Alternative Energy Projects.

131. **Deputy John Deasy** asked the Minister for Communications, Energy and Natural Resources the incentives in place to promote the development of commercial wind farms for the generation of electricity; and if he will make a statement on the matter. [10941/10]

Minister for Communications, Energy and Natural Resources (Deputy Eamon Ryan): Capital grant aid is not provided to wind farm developers. The Renewable Energy Feed in Tariff (REFIT) scheme, which is administered by my Department, supports commercial wind farm projects through provision of a floor price. REFIT is a fixed feed in tariff system, designed to provide developers with certainty as to the price they will receive for the electricity generated. As such, it functions by guaranteeing a certain price to generators per unit of energy generated,

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and steps in to make up the difference between the REFIT price and the market price, in circumstances where this arises. REFIT is paid for from the Public Service Obligation. More information on the terms and conditions of the scheme including the rates that are payable for the electricity produced is available on my Department's website.

Animal Welfare.

132. **Deputy Finian McGrath** asked the Minister for Agriculture, Fisheries and Food the position regarding a matter (details supplied). [10927/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): Matters relating to the Wildlife Act are within the remit of my colleague, the Minister for Environment, Heritage and Local Government.

With regard to the Animal Health and Welfare Bill, the position is that an Animal Health and Welfare Bill which will give effect to commitments in the Programme for Government and the Renewed Programme for Government on issues relating to animal health and welfare is being prepared in my Department. The new legislation will amend and consolidate legislation in the area of animal health, particularly to reflect the changed disease status of our animals. Existing legislation will also be updated to ensure that the welfare of all animals, including non-farm animals is properly protected and that the penalties for offenders are increased significantly. The Bill also provides for the consolidation of responsibility for the welfare of all animals (including non-farm animals) within my Department. I intend to submit the proposed heads of this Bill to the Government at an early date this year.

Food Safety Standards.

133. **Deputy Michael Creed** asked the Minister for Agriculture, Fisheries and Food the various EU Directives and regulations with which agri-food businesses must comply with; and if he will make a statement on the matter. [10958/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): Due to industrial action in my Department, I am not in a position to provide a reply to this question.

134. **Deputy Michael Creed** asked the Minister for Agriculture, Fisheries and Food the number of State bodies or Departments involved in inspecting agri-food businesses in terms of food safety and compliance with other regulations; the specific responsibility of each body involved; the frequency of inspection; and if he will make a statement on the matter. [10959/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): Overall responsibility for the enforcement of food safety legislation rests with the Food Safety Authority of Ireland (F.S.A.I.). The FSAI implement this through service contracts with my Department and other relevant agencies, including the Health Service Executive and the Local Authority Veterinary Services. The number of contracts could be obtained from the FSAI.

Legislation covered by the contract between my Department and the FSAI is set out in Schedule 1 of the contract. A copy of the contract can be found on my Department's web site. The frequency of inspections can vary from 100% presence of inspectors in premises such as meat factories to periodic inspection visits in other premises

Seafood Sector.

135. **Deputy Michael Creed** asked the Minister for Agriculture, Fisheries and Food the

number of recommendations outlined in the Cawley Report on the seafood sector which have been implemented to date; and if he will make a statement on the matter. [10960/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): Due to Industrial Action by staff in my Department, I am not in a position to provide a reply to this question.

Farmers' Markets.

136. **Deputy Michael Creed** asked the Minister for Agriculture, Fisheries and Food the initiatives that have been put in place to encourage the establishment of farmers' markets; and if he will make a statement on the matter. [10961/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): A Farmers Markets' Code of Good Practice has been drawn up by a group representative of stakeholders and chaired by my Department and followed a public consultation. The voluntary Code was launched by Minister Sargent at Bloom 2009. The Code signifies that Farmers Markets displaying the banner have undertaken to hold markets regularly; to source a substantial proportion, ideally 50%, of local produce from the county or neighbouring counties; to accommodate seasonal and local garden/allotment produce and to comply with food safety/labelling rules and criteria on good governance. Following assessment of applications by an evaluation group the Good Practice Banner was awarded to 34 markets by the end of 2009. Each of these markets was issued with a personalized banner, which they can use to advertise their achievement. A list of the successful markets is posted on the Bord Bia website www.bordbia.ie. A further invitation issued on 1 March to markets to apply for the Good Practice Banner as some markets had expressed an interest but were not ready to apply in 2009. The closing date for this, the third such call, is 31 March 2010.

Departmental Expenditure.

137. **Deputy Michael Creed** asked the Minister for Agriculture, Fisheries and Food the level of expenditure on agrifood research; the bodies that are in receipt of such expenditure; and if he will make a statement on the matter. [10962/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): Research institutions that can demonstrate the necessary research capabilities, including Universities, Institutes of Technology, Teagasc and DAFF laboratories are eligible to submit proposals for funding through the competitive public good research programmes operated by my Department i.e. the Food Institutional Research Measure (FIRM), the Research Stimulus Fund and the COFORD forestry research programme.

In 2009, expenditure of €15.260 million was incurred through the FIRM and €5.487 million through the Research Stimulus Fund. €4.289 million was provided through COFORD to cover costs associated with forestry research and promotion. A sum of €8.820 million was provided to the Marine Institute under the Marine Research Measure. As regards Teagasc, the total figure for agriculture, forestry and food research expenditure in 2009 was €54.836m. This includes some funding provided under the competitive schemes referred to above.

Departmental Agencies.

138. **Deputy Michael Creed** asked the Minister for Agriculture, Fisheries and Food the number of businesses that have benefited from the Bord Iascaigh Mhara seafood development centre; the level of investment which has been required to facilitate this incubation centre for

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new businesses; if there is a similar facility available for the broader agrifood industry; and if he will make a statement on the matter. [10963/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): The Seafood Development Centre (SDC), which delivers on a key recommendation of the Government strategy 'Steering a New Course' seafood strategy 2007-2013, will support and provide industry with a commercially focused innovation and new product development capability. The SDC is managed by Bord Iascaigh Mhara, which has advised that 60 seafood companies have used or are using the innovation facility since its launch in October last year.

BIM's integrated business development and innovation programme which includes the SDC can assist industry to achieve a shift to value-added and over a five year period, aims to achieve €100 million in additional value-added seafood sales. BIM see significant potential for value-added produce in terms of seafood health and wellness benefits, consumer friendly packaging and convenient ready meals, organic seafood and optimising by-products from fish processing.

The SDC is a bespoke facility which was provided by the Office of Public Works as an integrated part of the decentralised complex of co — located offices for BIM the Sea Fisheries Protection Authority and the fisheries divisions of the Department of Agriculture , Fisheries and Food in Clonakilty and the costs are the responsibility of that Office. The SDC is particular to the seafood sector and other developments and facilities are available to the broader agri-food industry.

Food Industry.

139. **Deputy Michael Creed** asked the Minister for Agriculture, Fisheries and Food the number of agrifood businesses that are in operation; the number of seafood business that are in operation; the level of employment involved in each sector; and if he will make a statement on the matter. [10964/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): The Department of Agriculture, Fisheries and Food publishes detailed data on the structure of and employment within the agrifood sector based on two sources, the Census of Industrial Production (CIP) and the Quarterly National Household Survey (QNHS), which are both published by the Central Statistics Office on an annual and quarterly basis respectively. This data is published and analysed in Department publications such as the Annual Review and Outlook and the Compendium of Agriculture Statistics. These are available under the Publications section of the Department of Agriculture, Fisheries and Food's website at www.agriculture.gov.ie.

The most recent CIP that provides the requested breakdowns (2007) indicates that there were a total of 630 enterprises in the agrifood sector with a total of 43,179 people engaged in these enterprises. Of these 67 enterprises were involved in the processing and preserving of fish and fish products with 2,089 persons engaged.

Because of methodological differences the CIP data on persons engaged will not be identical to employment data in the QNHS. One key difference is that the CIP excludes data on enterprises with less than 2 persons engaged. QNHS data indicated that in 2007 (same year for most recent CIP data), there were approximately 54,000 persons employed in the agrifood sector (average of 4 Quarters). The most recent quarter available from the QNHS (Quarter 3; 2009) indicated there were an estimated 45,700 employed in the sector. The QNHS does not give a breakdown that would allow estimates of employment in sub-sectors such as the sea-food industry.

Common Agricultural Policy.

140. **Deputy Michael Ring** asked the Minister for Agriculture, Fisheries and Food the changes he will make regarding decoupling; his views on the system in France (details supplied); and if he will make a statement on the matter. [10968/10]

141. **Deputy Michael Ring** asked the Minister for Agriculture, Fisheries and Food the discussions he has had with his EU counterparts or the EU Agricultural Commissioner regarding decoupling; and if he will make a statement on the matter. [10969/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): I propose to take Questions Nos. 140 and 141 together.

In the mid term review of the CAP conducted in 2003, Ireland opted for full decoupling of payments from production. This has proved to be a success for Ireland and I am committed to this approach for the foreseeable future. My view is that decoupled payments remain the best way of underpinning the incomes of small family farms, while allowing them to respond to market opportunities. In subsequent discussions on the CAP Health Check in 2008, I repeated my views and I am satisfied that one of the outcomes of the Health Check was a movement towards further decoupling in all Member States.

Article 68 of the Single Payment Regulation provides that a proportion of Single Payment funds may be top-sliced from the overall national envelope for the single Farm Payment and targeted towards specific objectives and sectors. This option has been used in France but not in Ireland. However, I am currently using the provisions of Article 68 to target previously inaccessible "unspent" funds to the sheep and dairy sectors and for agri-environmental purposes.

As to future policy, the policy debates on the future of the Common Agricultural Policy held by successive Presidencies in recent years have focused heavily on the issue of decoupled payments and whether and in what format they should continue. The future of such payments has also been a primary feature in the bilateral discussions I have had with other Member States and the Commission on the future of the CAP. At all times in these debates and discussions and, most recently last week at my meeting with Agriculture Commissioner, Dacian Ciolos, I have highlighted my support for continuation of decoupling. There is good support for this position in the Council.

Grant Payments.

142. **Deputy Michael Ring** asked the Minister for Agriculture, Fisheries and Food when a person (details supplied) in County Mayo will be awarded their REP scheme 4 payment. [10970/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): Due to Industrial Action by staff in my Department, I am not in a position to provide a reply to this question.

Registration of Title.

143. **Deputy Willie Penrose** asked the Minister for Agriculture, Fisheries and Food the steps he will take to ensure that the deeds in respect of a Land Commission holding which a person (details supplied) in County Westmeath has purchased outright will be furnished; and if he will make a statement on the matter. [11007/10]

Minister for Agriculture, Fisheries and Food (Deputy Brendan Smith): The documentation necessary to effect registration has been lodged by my Department in the Property Registration Authority under the two Schedule numbers mentioned in the details.