



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**DÁIL ÉIREANN**

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(OFFICIAL REPORT—*Unrevised*)

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# DÁIL ÉIREANN

*Dé hAoine, 7 Márta 2014*

*Friday, 7 March 2014*

Chuaigh an Ceann Comhairle i gceannas ar 10 a.m.

*Paidir.*

*Prayer.*

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## **Criminal Law (Incest) (Amendment) Bill 2012: Second Stage [Private Members]**

**Deputy Denis Naughten:** I move: “That the Bill be now read a Second Time.”

Five years ago, Roscommon Circuit Court heard the shocking details surrounding the sustained abuse and neglect of six children in one family. At the time, the late Judge Miriam Reynolds questioned how the situation could have gone on for so long given that the children were in school and also given the family’s involvement with the health board. After being failed by the State institutions for years, these children were once again failed by both the law and the Oireachtas.

At the sentencing hearing the late Judge Miriam Reynolds stated:

The Punishment of Incest Act 1908 is 100 years old. At the time it was not even contemplated by the legislation and possibly by the society that a woman, a female, could commit incest, as the perpetrator or instigator of the offence. The provision was a person who had carnal knowledge of a female was guilty of a felony and liable to life imprisonment. Section 2 stated that a female person aged 17 or above, who permitted a grandfather, father, brother, or son to have carnal knowledge shall be guilty of a misdemeanour and was liable to a prison sentence of between three and seven years.

In this particular case, rather than the issue being that of whether a female consented, we had a woman who was the perpetrator and the instigator. At the time, the late judge stated: “I believe all persons should be treated equally before the law.” She went on to state:

Had she been male, she would be facing up to life imprisonment. Clearly right-thinking society could not comprehend such a desperate act, hence the lack of regulation.

This lack of regulation could have been addressed in 1993, when the 1908 Act was amended on foot of the sentencing in the Kilkenny incest case or when it was subsequently amended in 1995, by making the offence apply to both sexes. The woman sentenced in the Roscommon Circuit Court case five years ago became the first, and hopefully the only, woman in the history

of the State to be convicted of incest.

On 27 January in that year, Deputy Shatter, who is now Minister, moved a motion in the Dáil following the shocking and disturbing revelations exposed on foot of that case, including the gross failures of the former Western Health Board to appropriately intervene at an early stage. At the commencement of that debate, we all were warned that the motion made specific reference to matters which were the subject of criminal proceedings and in regard to which further proceedings were expected at that time. While the issue of sentencing and the courts was avoided at that stage due to the fact that a male had yet to stand trial, we all were appalled at the sentencing restriction. Commenting on the sentence, family law expert Dr. Geoffrey Shannon stated that the law should be reformed to provide for equal sentencing for men and women convicted of incest. At the time, the then Minister for Justice, Equality and Law Reform, Mr. Dermot Ahern, was reviewing the criminal law governing sexual offences for the purpose of providing greater protection to children and other vulnerable persons against sexual exploitation and abuse, including a review of the need to reform the incest laws. It was subsequently decided that a provision to increase the penalty for incest by a female to life imprisonment in order to bring it in line with that of a male would be incorporated into the reform of the Criminal Justice (Sex Offences) Acts, and five years later we are awaiting action on that.

The general scheme of the sexual offences Bill, including this reform, was approved by Government before Christmas. The Minister of State at the Department of Public Expenditure and Reform, Deputy Brian Hayes, in the House in October last, stated that it would be approved by the end of October by the Government, but it did happen before Christmas. After that Cabinet decision, the Minister, Deputy Shatter, announced, on 17 December last that the general scheme of the Bill would be published by the end of January. We have yet to see the general scheme of that Bill and the fact remains that it will take some time before it becomes the law of this land.

Twenty-one years ago there was public revulsion when a man, a so-called father, was sentenced to a maximum seven years for incest in Kilkenny. The Oireachtas acted quickly and increased the maximum sentence within weeks, and revisited the issue two years later. Before that individual was due to be released from prison the law had been revised twice, yet here we are, five years after the sentencing of a woman, a so-called mother, still awaiting a change to the law.

I do not question the bona fides of the Minister, Deputy Shatter, or his commitment to reform this law, but it is taking far too long. That is why, two years ago, I published this legislation, the Criminal Law (Incest) (Amendment) Bill 2012, which addresses the 21-year legal loophole that sees men liable for life imprisonment if convicted of incest while a woman faces a much shorter maximum sentence. In order to address this anomaly and ensure equality of treatment of sentencing in incest cases, the Bill proposes to increase the maximum sentence available to judges in respect of females to life imprisonment so that the law no longer makes an irrational distinction between male and female perpetrators of such horrific offences. The Bill proposes to amend section 2 of the Punishment of Incest Act 1908 by substituting the word “felony” for “misdemeanour” and substituting the words “to be imprisoned for a maximum term of life” for “to be kept in penal servitude for any term not less than three years, and not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years”. All I am seeking is ten words to ensure the option of life imprisonment is open to judges upon conviction of either a male or female for the inhumane act of incest.

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This change in the law is needed now, not some time in the future. That is what the family at the centre of the case to which I referred has requested. While the law has been changed twice since the Kilkenny incest case, both changes happening in advance of that offender's release from prison, the perpetrator in the Roscommon case will be released in advance of any new change in the law. While my proposal would have no bearing on the sentences served by those already convicted, it would at least help the victims, who will see that their tragedy is being taken seriously by the Legislature and that no other offender will receive such a light sentence in future. As I said, all I am seeking is the insertion of ten words in the legislation. The legal loophole in regard to incest has existed for 21 years. Let us ensure it does not run to 22 years.

I accept the commitment of the Minister to reforming this particular aspect of the legislation and the law in regard to sexual offenders in general. The current law in this area was enacted by the Oireachtas in 2001. A review took place in 2009, on foot of which we were promised new legislation. In fairness to the Minister, he has made progress in this regard since his appointment. However, it is vital that we address not only this particular issue but other gaping loopholes within the sexual offences legislation.

One of those loopholes relates to the sex offenders register. In issuing her sentencing in the Roscommon case, Judge Reynolds ordered that the defendant be placed on the register. Under the Sex Offenders Act 2001, the Garda domestic violence and sexual assault investigation unit monitors and manages notification provisions and maintains all information relating to persons who have obligations under that Act. More than 1,300 persons are monitored by An Garda Síochána on an ongoing basis. A nominated Garda inspector in each division has responsibility for monitoring of persons subject to the requirements under the Act within his or her division. All sex offenders are required to notify An Garda Síochána within seven days of their release from prison that they have been convicted of a sexual offence and must provide their name and address. They are also obliged to notify the Garda of any change in their name or address and give notice of their intention to leave the State.

The duration of the post-release notification requirements varies according to the sentence received, ranging from a five-year period for non-custodial sentences to an indefinite period for sentences of more than two years. Failure to notify is an offence punishable by up to five years' imprisonment and triggers Garda powers of arrest without warrant. Unfortunately, the current system of monitoring sex offenders simply is not working. Central Statistics Office data show that 24 breaches were recorded in 2009, 50 in 2010, 59 in 2011, and a similar figure in 2012. In a scenario where some 100 sex offenders are discharged from prison on an annual basis, we have six prison staff with responsibility for performing risk assessments for the entire prison population - not just sex offenders - in respect of transfers, temporary releases and early releases. There is one recorded breach for every five people on the sex offenders register. In other words, one fifth of those on the register have been in breach of the conditions at one stage. A breach occurs where there is a failure on the part of an offender to notify any Garda station of where he or she is living, or where an offender fails to reside at his or her designated address one out of every seven nights. The requirements are quite simple, yet one in five offenders breaches them. The reason for the high incidence of breaches is that the system is hugely lax. There are major loopholes in the legislation, some of which I have raised in the past. In 2009, for example, I raised the issue of the seven-day notification period with the Minister's predecessor, Dermot Ahern. The situation in the United Kingdom is that once a sex offender is released from prison, he or she must notify the authorities of that release within three days, with the same notification period applying where offenders change address. Here, the notice period is

seven days. The former Minister told the House in 2009 that unless this particular loophole was closed off, Ireland could become a safe haven for convicted sex offenders. Fifty months later, convicted high-risk paedophiles can visit Ireland from Britain or Northern Ireland, unknown to the authorities, and roam around the country legally for seven days. It is not good enough that this particular anomaly remains in the law. There have been numerous instances where people who are being sought by the authorities in the North, some of whom have already been convicted in the past for sexual offences, are found residing in this State. It is imperative that this loophole be closed off as quickly as possible.

Some small good - if one can call it that - might be said to have come out of the horrendous case in Roscommon in that it highlighted the positive aspects of practice within the Garda Síochána. Sergeant John Hynes showed enormous dedication, not only in bringing this particular case to conviction but also in respect of the similar cases he has pursued over his career. He has been recognised by colleagues for his tremendous work in this area. At the time of the court hearing in the Roscommon case, Sergeant Hynes singled out the family for praise, pointing out that credit was due to those members who brought these crimes to the attention of the authorities and facilitated the prosecution and conviction. In exposing what was done, that family triggered action in this area. On foot of the case, pilot audits were done in three areas, one of which was Roscommon, into how neglect cases were being handled.

In County Roscommon it identified seven families out of the 30 examined, where adequate provisions had not been put in place to protect children. The audit of three areas identified a total of 17 families who had been failed miserably by the State. The audit represents only a small snapshot of the number of neglect cases in the country. On foot of the pilot study, the Minister for Children and Youth Affairs has directed the HSE to review all neglect cases in the country. Hundreds of families will be saved on foot of the review that has taken place owing to the fact that these children were brave enough to come forward.

I acknowledge the assistance of two individuals who helped me to draft the Bill - Ms Jill Mellor in my own office and Mr. Brian Hunt without whose assistance the Bill would not be before the House today. The objective of the Bill is to ensure that through our laws we protect those who are most vulnerable in society, namely, children and all victims of such horrific crimes. We owe it to the children at the centre of the Roscommon case to ensure their courage and bravery are recognised. No other family should be failed by the State to the extent that this family were. Judge Miriam Reynolds said:

But there are six lives that are destroyed and there is no other way of saying it, they are all victims of abuse. The woman who gave birth to them will cast a long shadow over their lives forever.

Let us ensure this law will reduce that shadow somewhat. Let us close off this loophole once and for all and ensure the law reflects the abhorrence we all have of this offence.

**Minister for Justice and Equality (Deputy Alan Shatter):** I thank Deputy Denis Naughten for raising this issue. It is one in which he and I have had a particular interest for some considerable time. The Bill is, in part, a response to the Roscommon child care case, as detailed by him. As the House is aware, an inquiry team chaired by Ms Norah Gibbons presented a report on the case to the HSE in October 2010. I am conscious that the preface to the report referred to the wave of publicity and comment that, understandably, followed the sentencing of the mother and father in 2009 and 2010, respectively, for physical abuse, sexual abuse and

neglect. The inquiry team was sensitive to the fact that publication of its report was likely to give rise to further publicity. While acknowledging the public interest in this matter and a need for the facts to be reported, the team asked those involved in reporting and commenting on the case to be fully cognisant of the effect such reporting would have on each and every one of the children and young people concerned. It is important that we be just as cognisant today of the well-being of the young people in question and I do not propose to say anything more about the case referred to in the explanatory memorandum to the Bill. As the Deputy correctly said, it is an issue which I raised in the House, with others, and which was addressed at some length.

To put matters in perspective, it is important to say, as the offence of incest is narrowly defined, that incest legislation is much less used than other sexual offences legislation to prosecute familial sexual abuse. I am informed that between 2003 and 2011, inclusive, court proceedings for incest offences were commenced in only 12 cases. There were eight convictions in the same period, only one of which was for incest by a female. As the Deputy correctly pointed out, this is the only known case of incest by a female of which I am aware since the foundation of the State in which a conviction has been secured. I accept, so far as legislation on the Statute Book is concerned, that there is a gender anomaly - for historical reasons - in the penalties for incest, an issue the Deputy and I have raised previously in the House. The maximum penalty for incest by a male has been increased twice, in 1993 and 1995, and is currently life imprisonment. The maximum penalty for incest by a female has been seven years since passage of the Punishment of Incest Act 1908. Accordingly, I have no difficulty, in principle, with the Private Member's Bill and the Government is not opposing its reading on Second Stage.

On 17 December last the Government approved the drafting of a wide-ranging sexual offences Bill. This Bill will include measures to equalise upwards the penalties for incest by male and female offenders. It will also take a more comprehensive approach to reform of the law in this area than the Bill before the House which simply proposes to increase the penalty for incest by a female to life imprisonment to bring it into line with the penalty for incest by a male. I have no disagreement of any nature with this whatsoever. The Government's Bill will provide for waiver of complainant anonymity in certain circumstances. Currently, the Incest Proceedings Act 1995 provides for total anonymity of the accused and the complainant. The sexual offences Bill will also provide for repeals in order that the law on incest can be consolidated. As I have indicated, the original legislation on incest pre-dates the foundation of the State. In addition, the Government's legislation will enhance the protection of children from familial sexual abuse and abuse by persons in authority through amendments to the wider criminal law.

Incest offences, on their own, are of limited value in protecting children from familial sexual abuse. This is because prohibited relationships for the purposes of incest offences are based on a close degree of blood relationship and incestuous acts for the purposes of the Punishment of Incest Act 1908 are limited to sexual intercourse. Therefore, any other sexual interference of any nature by a parent or a very close relation with the child does not fall under the offence of incest. The offence of incest by a male, for example, does not include incest committed by an uncle against his niece - it is so confined in the manner in which it was detailed in the 1908 Act.

The wider criminal law must and does take a more comprehensive approach to the protection of children from familial sexual abuse. For example, the Criminal Law (Sexual Offences) Act 2006 created two separate offences of engaging in a sexual act with a child. These are gender neutral offences and apply whether there is a familial relationship between the complainant and the accused. Also, prohibited sexual acts include all penetrative sexual acts; therefore, they are not confined formally to sexual intercourse.

The offence at section 2 of the 2006 Act of engaging in a sexual act with a child under the age of 15 years carries a maximum penalty of life imprisonment, that is, the same penalty as the maximum penalty for incest by a male. The offence at section 3 of the 2006 Act of engaging in a sexual act with a child under the age of 17 years carries a higher maximum penalty where the offender is a person in a position of authority. That term is broadly defined. It includes blood relatives, for example, an aunt or an uncle, not covered by incest offences and household members who are not related to the victim by blood.

The sexual offences Bill will enhance the protection of children from abuse by persons in authority. In particular, it will expand considerably the definition of “person in authority” in the 2006 Act to reflect the greater diversity of family households in Ireland today. Accordingly, it is proposed to add the partner of a parent who lives in an enduring family relationship with the parent, as well as foster and adoptive parents, to the definition. As I stated, I have no difficulty, in principle, with the Bill we are discussing. However, it is necessary to point out that, in addition to the limited focus of the Bill, unfortunately, the drafting of section 1 is flawed. This is because it fails to take account of the Criminal Law Act 1997 which abolished all distinctions between felony and misdemeanour. It also abolished penal servitude and hard labour.

The explanatory memorandum to Deputy Denis Naughten’s Bill states the anomaly it seeks to address “also highlights the consequences of the State’s failure to actively review and modernise legislation in the area of sexual crimes as well as other areas”. I do not accept that is the case. My Department has undertaken a wide and comprehensive review of the law on sexual offences. This is a complex area of the law and there have been delays. However, the required Bill in this area is being drafted. The scheme of the Bill has more than 70 sections. It is extremely comprehensive and, when published later in the year, Deputies on all sides will see that we will have a modern legal architecture to address all of the various areas that need to be addressed in a consistent and coherent way and some issues that have not up to now been adequately addressed or, essentially, ignored in the law. In addition to reforming the law on incest, this comprehensive legislation will implement the following - the legislative improvements identified by the Department’s comprehensive review; recommendations of the Joint Committee on the Constitutional Amendment on Children; recommendations of the Joint Committee on Child Protection; full compliance with the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; and the EU directive on combating the sexual abuse and sexual exploitation of children and child pornography. That gives Deputies an insight into the range of issues we are dealing with and the extent to which I am committed to ensuring our full compliance with all relevant and important international instruments with regard to providing child protection and dealing with areas of child sexual abuse.

The protection of children from sexual abuse and sexual exploitation is a top priority of the Government. This is evident from the significant legislative output in this area since the Government took office. As a priority following publication of the Cloyne report, I steered two very important legislative measures through the Houses of the Oireachtas. In August 2012, the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act was enacted and introduced important measures designed to deal with the problem of failure to report abuse. Following this, in December 2012, the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 was enacted. This Act provides for the mandatory vetting of persons working with children or vulnerable adults.

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The Minister for Children and Youth Affairs has also taken a number of initiatives, as part of a wider package of measures, to further ensure the protection of children and vulnerable persons from sexual abuse and exploitation. To mention one such initiative, the Child and Family Agency became an independent legal entity on 1 January this year and is now the dedicated State agency responsible for improving well-being and outcomes for children.

I also wish to mention the registration of sexual offenders, an issue on which I have had very strong views for some time. The Deputy also has such views and referred to them in his contribution. There are specific and detailed provisions in the scheme of the Bill, which will appear in the draft Bill when it is finalised with the assistance of the Office of the Attorney General, to change our law in this area. The three day rule which the Deputy mentioned is incorporated in it. We have looked carefully at the issue of the failure of registered sex offenders to comply with their obligation to give notice of change of residence. We have also looked at issues surrounding the notification of members of An Garda Síochána of an intended residence location in the period immediately preceding an offender's release. Substantial and comprehensive work has been done on this. Of course, no Bill is perfect when published, but I look forward to having it published later this year and to the debate that will take place on it. I will incorporate the wisdom of Members in any improvements that can be made.

I understand that the Deputy is impatient to see progress quickly. It is possible to make progress on isolated issues by cherry-picking them out and putting them in a short Bill. I am not saying that in a critical fashion because this is an important issue but, because of other provisions in our sexual offences legislation, there are other charges that could be brought in the circumstances of the case we have been discussing which would hold out the possibility of a far heavier sentence than arose in the Roscommon case. It is important that we take a comprehensive approach and address all the outstanding issues that have either been too far ignored or have not been adequately addressed in existing legislation, having regard to experience and the review that has been undertaken. In so far as none of us is pleased with delay, and I tend to want legislation to be produced at a double quick time and rate, a substantive and comprehensive approach and ultimately the introduction of comprehensive reforms is of great value.

In conclusion, I reiterate that the Sexual Offences Bill will be wide-ranging legislation to advance reform on a number of fronts, including reform of the law on incest. Amendments to the law on incest together with amendments to the wider criminal law will enhance the protection of children from familial abuse. I assure the House the legislation will be published later in the year and I look forward to its early enactment.

**Deputy Finian McGrath:** I welcome the opportunity to speak on the Criminal Law (Incest) (Amendment) Bill. I welcome the legislation and commend Deputy Naughten on bringing it before the House as it is a hugely important issue that requires quick action. Leaving victims and children waiting for proper and adequate legislation is never an option when dealing with issues such as child sexual abuse and the exploitation of young people.

I am getting sick and tired of listening to all the chat from the Government on the rights of children and abuse victims, while the same Government makes life difficult for people such as Louise O'Keeffe, a child abuse victim, by chasing her through the courts, both national and international and particularly at the European Court of Human Rights, and wasting taxpayers' money on hounding sexual abuse victims. These are horrific things to do to victims of abuse. It is important to point that out in this debate. The Government is also hounding children with a disability through our courts. That is the reality. Thousands of euro in taxpayers' money is



being spent on hounding people in the courts when it could be spent on services, be it for a child abuse victim or a child with disability, and put to proper and adequate use.

While it is important to have the legislation before us today, we must also have proper and adequate prevention measures. The legislation only kicks in when the crime has been committed. My main gripe with many of the Government's Ministers is that we must be more proactive in ensuring that the front-line staff are doing their jobs to a very high standard. Sadly, having been a backbench Deputy for over 12 years, I have encountered many cases where the reaction was slow when one is very worried about a particular family. I do not like to say that. Before getting into the nuts and bolts of the legislation, we must have people working in child services and a Minister for Justice and Equality and a Minister for Children and Youth Affairs who focus on good quality services and getting the right people working on the front line, because they are the people who can prevent many situations occurring and having to deal with them through the courts. It is also important to make that point today.

Let us consider the details of what is involved. The term "incest" refers to sexual intercourse occurring between close blood relatives. Close relatives include a child, sibling, parent or grandparent. This is a criminal offence and charges are brought under the Punishment of Incest Act 1908, as amended by the Criminal Law (Incest Proceedings) Act 1995. There are no age limits so the fact that both parties are adults is irrelevant to a finding of guilt. However, a girl under 17 years of age cannot be prosecuted for incest, notwithstanding that she may have initiated the intercourse. This is based on the concept of the girl as a victim in every such instance, despite the possibility of evidence to the contrary. The maximum sentence for incest is life imprisonment for males and seven years for females as a result of amendments made by section 5 of the 1995 Act, perhaps reflecting the traditional view on the participants involved in the crime. Consent is no defence, but without consent the man may instead be charged with rape or defilement of a child. Again, these matters are covered by the legislation.

Delving further into this issue, the Criminal Justice Act 1993 was enacted after the Kilkenny incest case in 1993 in which a man who was found guilty of incest and abuse of his daughter received a sentence of seven years, which was the maximum sentence under the 1908 Act. There was a huge row in response to this and the Criminal Justice Act 1993 increased the maximum penalty for male incest to 20 years. The maximum punishment for incest for a female aged over 17 years remains at seven years under section 2 of the 1908 Act. This shorter sentence for women has caused huge controversy, which is the reason for the Bill before us today. The judge in that case pointed to the possibility for legislative intervention. This is the opportunity. I was interested to hear the Minister's remarks earlier that legislation is being prepared. Every time a sensible proposal comes up, during the Friday sittings or at other times, it is blown out of the water. I am extremely disappointed about this. We need to deal with these issues professionally and act swiftly. There are huge problems with regard to the abuse of children.

**Deputy Alan Shatter:** On a point of order, I do not wish to interrupt the Deputy's flow, but Deputy Naughten's Bill is not being blown out of the water. We are not opposing the Bill and I welcome the initiative he has taken.

**Deputy Finian McGrath:** The Minister welcomes the initiative. We all welcome the initiative, but at the same time the Bill will not be accepted next Tuesday. The Government will not support it.

**Deputy Alan Shatter:** There will be no vote on the Bill.

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**Deputy Finian McGrath:** There will be no vote.

**Deputy Alan Shatter:** We will accept the Bill on Second Stage. I have merely explained we will produce a Bill which will address a range of other matters of relevance.

**Deputy Denis Naughten:** For the record, in fairness to the Minister, Deputy Shatter, this is the second Bill I have tabled which the Government has accepted and will incorporate into the new sexual offences legislation. If other Ministers took a leaf out of his book it would be more in line.

**Deputy Finian McGrath:** Does this mean that when it goes to Committee Stage the Government will not have issues with it?

**An Leas-Cheann Comhairle:** We will deal with that on Committee Stage.

**Deputy Finian McGrath:** My focus today must be on ensuring the protection of the rights of children and those who are victims of child sexual abuse. This is the key issue with regard to the Bill.

Incest and horrific incidents occur in many families and most cases do not reach the courts. We must accept that most of these young boys and girls suffer in silence, and it is only 20 or 30 years later that they declare what happened in their childhood. We must place a strong focus on this. With all the discussion, talk and referendums, I want to ensure that those in schools and social workers deliver front-line services for these children. The safety of children is very important.

It is important to examine what is happening in other jurisdictions. Of all jurisdictions where incest is illegal, the maximum sentence for the crime of incest by a male is life imprisonment under the Punishment of Incest Act 1908. The province of Queensland in Australia also provides for a life sentence. The punishment for incest in jurisdictions where it is illegal varies substantially, with a maximum sentence of 14 years in the UK and Canada, and three years in Germany and Sweden. It is important to highlight this issue.

Where there is a lack of consent, the DPP may choose to prosecute a crime under general sexual offences legislation as rape, rape under section 4 or defilement of a child. When we speak about the Bill it is important to picture the image of the young child in these situations. We must focus on this and ensure the legislation is of a high standard and that it is brought efficiently through the Dáil and no stumbling blocks are put in its way as it goes through the Oireachtas. We do not want another young woman like Louise O'Keeffe having to fight and scream for many years before she is listened to. Many other victims in the same position also received letters from the Department of Justice and Equality and the Department of Education and Skills. These victims must be looked after. I welcome the debate on the legislation and I will support it.

**Deputy Timmy Dooley:** Fianna Fáil supports the Bill and we recognise the efforts of Deputy Naughten in bringing forward such important legislation. The legislation aims to address an anomaly in Irish law whereby females are subjected to less stringent maximum sentences than males for committing incest. The Roscommon case of 2009, with which Deputy Naughten is very familiar, illustrated this gap in the legal system and the need to address it. It also underlines the need to establish a legal framework which actively protects the most vulnerable sections of society and children. These are the victims of heinous sexual crimes which need

to be adequately punished and deterred. The Government needs to publish the Children First legislation and give effect to the referendum on children's rights passed by the people in November 2012.

Incest is one of the most disturbing crimes which can be committed against children. That close family members entrusted with the care and protection of a child could betray this duty in the most disturbing manner is a grave moral and legal violation. It is the duty of the State to establish, maintain and enforce the legal framework which protects children from this rare and awful crime. I hope the enactment of the Children First legislation will be a considerable step in this direction.

The Roscommon incest case, in which a 40-year-old woman was convicted of abusing her children, illustrated this gap in the law where different sentences apply to men and women. The appalling crimes of the woman concerned underline the need to address this discrepancy. There is something profoundly shocking about the sheer unnatural seriousness of the crimes where the mother beat, neglected and abused her own children. They bravely brought their plight to the attention of the authorities and pressed for justice to be done. A number of people in the House are very familiar with the case and with the lives of the children concerned years after the crimes were committed. It is clear that the impact on the children as they moved into adulthood was profoundly disturbing, and has an impact on their lives and the lives of those in their communities on a daily basis.

The legislation used to sentence the woman was completely outdated and was originally brought about in 1908. Reforms in 1993 excluded women, and the Bill aims to address this oversight. I hope that in co-operation with the Department of Justice and Equality and the Minister, Deputy Shatter, appropriate legislation can be enacted. It seems from the intervention of the Minister that he intends to take the content of Deputy Naughten's Bill and include it in other legislation he will introduce, which is welcome. In fairness to the Minister, he has accepted appropriate amendments to his legislation with good grace, which is right and fitting. A number of other Ministers also do this, whereby when they see a Bill with which they agree on principle, while they may not allow the Bill to proceed to enactment on its own, it forms part of their legislative framework. This is very helpful.

The case also highlighted the broader need for vigilance in potential child abuse cases and the need for a legal framework to protect children. The Government should publish the Children First legislation to give effect to the referendum passed in 2012. The entire nation was utterly shocked by the gravity of the crimes uncovered in the Roscommon incest case in January 2009. For the first time in Irish legal history a mother was convicted of incest and sentenced to the maximum seven years' imprisonment on ten counts of incest, sexual abuse and neglect of her children. The offences took place at the family home in County Roscommon over a six-year period, at a time when her children were aged between six and 15. They were regularly abused and beaten, frequently went hungry, lived in squalid conditions, suffered poor personal hygiene and endured the type of nightmare lives most of us, thankfully, will never know.

There was a major fall-out in the immediate aftermath of the case and serious questions emerged as to how a mother had been allowed to perpetrate the abuse for so long. It is still shocking to think that in 2009 this type of activity could have continued in the way it did. What had gone so disastrously wrong in a care system supposed to protect children that it took until 2004 for all of the children to be finally taken into care despite recognition of the ongoing neglect among social care and health care professionals? The report of the inquiry team estab-

lished to examine the events surrounding the Roscommon child care case provides an insight. It found while the Western Health Board recognised the neglect, and on occasions recognised the emotional abuse of the children, it failed to follow up on the decisions taken by the child protection management team in a manner which offered the children the best protection. As the report states, the inquiry also recognised that “Prior to their admission to care, the voice of the child is virtually silent” and “Yet, a basic requirement in the delivery of child protection services is the necessity to at least see the children and, ideally, to seek their views of their situation”. It went on to note this is set out as a key task in Children First and that its absence in practice has been identified as a deficit in other inquiry reports, such as the Ferguson report of 2007. The report also states that while HSE staff were briefed, there was no systematic effort to embed the principles of the Children First guidelines into practice. Failure to put a legal responsibility on people to be Children First-compliant ensures that the State continues to fail children abysmally.

The report also demonstrates yet again the absolute need for the Government to build on the referendum and to legislate to properly enshrine children’s rights under the Constitution. The absence of the child’s voice was evident in court proceedings, most noticeably in the High Court injunction proceedings taken by the parents to prevent the Western Health Board from removing the children from their parents, at which, for constitutional and legal reasons, the parents’ right to be heard was not matched by equal consideration of the wishes and needs of the children. Consequently, the Children First Bill will play such an important part in ensuring these issues are addressed comprehensively in law.

In light of the harsh lessons of the Roscommon case, I believe the Government must both support this legislation and accelerate the passage of the Children First Bill. The purpose of this Bill, when it is finally published, will be to put Children First, the National Guidelines for Child Protection and Welfare, on a statutory basis, and one hopes that so doing will ensure that a situation such as then arose will never happen again. Under the Children First legislation, organisations that are involved with children will have statutory responsibility to make sure the organisation is a safe place for children. The organisation will be required to notify the Child and Family Agency, which has been devolved from the Health Service Executive, that it comes within the remit of the legislation and to appoint a designated officer. This role of designated officer will provide the kind of protection all Members recognise as being important. That designated officer will have responsibility for ensuring that staff and volunteers are vetted, recruited and properly trained in safe practices with children and in recognising signs of abuse and neglect. The obligation to report abuse will extend to abuse and neglect wherever it occurs. The officer must make available to parents information about child protection within the organisation and must have a system in place to check and report on compliance with the legislation. The officer will have statutory responsibility to report suspicions as allegations of abuse to the Child and Family Agency, and further, where a named professional such as a doctor or a nurse works in an organisation under the legislation, he or she may report that information to the designated officer in the organisation.

In conclusion, I and my party will support every effort the Minister makes in enacting this legislation and making it part of the formal statutes that will afford greater protection to children. However, Fianna Fáil encourages the introduction at the earliest possible opportunity of the Children First legislation and its enactment without delay to ensure children are protected in the manner all Members have a responsibility to ensure. It would be deeply disturbing were a case similar to the one that brought about this legislation as proposed by Deputy Naughten to

emerge. However, it always is possible, and Members must be seen to have made the greatest effort to put in place a legal framework that at least ensures the State has taken seriously its responsibilities and has attempted, to the greatest extent possible, to afford protection to children through the various different agencies that work with children.

**Deputy Dessie Ellis:** I dtús báire, cuirim fáilte roimh an mBille seo agus gabhaim buíochas leis an Teachta Naughten mar gheall air. I welcome the opportunity to speak today on behalf of the Sinn Féin party on Deputy Naughten's Criminal Law (Incest) (Amendment) Bill 2012 and I commend the Deputy on his preparation of this Bill. Deputy Naughten's Bill proposes to end a legal loophole that for 17 years has ensured that while men are liable for life imprisonment if convicted of incest, women may face only shorter sentences. The Bill seeks to amend the Punishment of Incest Act 1908, a law inherited by the Irish State after Independence, in order that both men and women can be imprisoned for life. As most Members present are aware, the original legislation carried a maximum prison term of seven years. This was extended in 1993 and 1995 after a public outcry when a Kilkenny father was jailed for abusing his daughter. The problem is that although the legislation now means that men could face life imprisonment for such crimes, the amendments did not cover women. This means the law now is different for men and women, as the latter are still faced with only a seven-year maximum sentence. Over the years, a number of cases have highlighted the need for this change in the law, and one particular high-profile case in Deputy Naughten's own constituency comes to mind. At the time, the judge pointed to the need for legislative intervention to remedy this discrepancy, and there was a public call from legal experts to have equal sentencing for men and women convicted of incest.

This Bill also highlights a true failure on the part of the State to proactively review and modernise legislation relating to sexual crimes. Sexual violence probably is the most pervasive crime in Irish society, yet it remains under-reported, under-investigated and under-prosecuted. Conviction rates are low and criminal sentences rarely reflect the devastating impact of the crime on its victims. For their part, policy makers and policing services consistently fail to give this crime the focus or resources it deserves. Service provision for victims and survivors is entirely dependent on where one happens to reside, and there is a lack of consultation with those affected regarding the types of service they seek and need. At present, there is an insufficient number of sexual assault treatment units, SATUs, nationwide. According to research conducted by Rape Crisis Network Ireland, RCNI, the reasons victims do not make complaints or reports to the Garda are varying and complex, and concerns about the criminal justice system feature prominently among them. However, the most commonly stated reason is the victim did not want others to know what had happened. In general, new and more effective systems are needed, backed by increased resources, training and other measures, to ensure that sexual assaults and sexual abuse are thoroughly and sensitively investigated and prosecuted and that the victims or survivors receive adequate support to proceed with and complete prosecution.

Sinn Féin acknowledges that most child victims of abuse are abused by a family member. Therefore, measures such as sex offender registers and vetting in isolation will not stop abhorrent crimes of sexual abuse from occurring. Sinn Féin recognises the potentially grave harm that can be caused to children and others by tabloid-style naming-and-shaming policies, particularly to victims and survivors of incest, and therefore it opposes such policies. My party calls for adequate resources for best-practice sex offender treatment programmes, both in custody and post-release in the community. Sinn Féin believes that safeguarding the well-being of children and young people to protect them from physical, sexual and emotional harm and

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neglect should be a priority in law and policy. In all matters concerning the child, the welfare and protection of the young person must be paramount.

In concluding, I reiterate my support for Deputy Naughten's Bill and state that my party and I will support its passage to Committee Stage. This should have happened a long time ago. I also repeat the call for the Government to prioritise reforming the law in respect of sexual crimes to create a safer environment for all citizens.

**Deputy John O'Mahony:** Briefly, I wish to support the principle of Deputy Naughten's Bill and commend him on it. He has articulated well the issue in respect of the Roscommon case and the history of legislation in this regard. It is obvious to everyone that the legislation currently in force comes from a completely different era and is not suitable or appropriate to life as it now is lived. It comes from a time when women obviously were discriminated against in many areas and perhaps at the time were thought to be of so little significance that they were incapable of committing an offence. I also welcome the Minister's response.

*11 o'clock*

The issue here is to deal, in a comprehensive way, with incest and, as we have seen in this House in recent years, there is also a need to address a range of issues. I welcome the fact there will be wide-ranging legislation to cover these issues later in the year.

I suppose all of us read the details of the Roscommon case and, for those of us who live close to the area, it made us realise what is sometimes happening under our noses or in our neighbourhoods without us knowing it. That made it even starker for some of us from the region.

I welcome the fact Deputy Naughten praised the work of the individual gardaí in that case. Sometimes people and institutions are all painted with the same brush. There are a few corrupt politicians but every politician should not be seen in the same light. Some members of the Garda Síochána do not act in the way they should but that does not mean great work is not being done by other gardaí.

I very much welcome the highlighting of this issue and the response from the Minister that it will be dealt with later in the year.

**Minister for Justice and Equality (Deputy Alan Shatter):** I thank Deputy Naughten. It is a very good thing that we have had this discussion and I very much appreciate the work he has done in this area. When we talk about child sexual abuse, the focus is very often on the stranger who poses a threat to a child but much of the research done and much of the experience in this area show that children more often than not know their abuser. Often the abuser is within a family, is very close to home or is a close family friend. We must bring our legal architecture up to date and meet our international obligations. As I said, I very much look forward to publishing the measure on which we have worked.

There has been a slight delay in publishing the scheme. I envisaged it would be published at the end of January but it should be published at the end of March or early April. The work is ongoing with the Office of the Attorney General. When it is published, there will be various detailed explanations of each of the heads of the scheme. There will be a full visibility as to the direction in which we are going in advance of the Bill, in its final form, being published. However, it will only be in its final form in the context of commencing the debate in this House.

I am sure that as it weaves its way through this House and the other one, various amendments, changes and improvements will be made to it based on the insights of Deputies and on the very valuable work done by organisations outside this House, many of which made very substantial and important submissions to the two Oireachtas committees which reported on this area. Not only did they make written submissions but some of them appeared before those committees.

I thank Deputies for their contributions. I am sorry if I disappointed Deputy Finian McGrath who seemed to think we would vote this down. I did not want to spoil his narrative but I take the view that we should encourage Members of this House to publish Private Members' Bills in areas where Government is not doing the work. I am in favour of Bills ultimately being enacted and of contributing to their amendment. In the context of Deputy Naughten's Bill, a huge amount of work has been done in this area and I think he will be very pleased with the Bill we ultimately publish. I am not saying I will be immune from criticism on some bits of it but they are issues on which he and I soldiered together to try to bring about reform.

As I said, it has taken a bit longer to get the Bill published but that is because we are seeking to incorporate within it all of our international obligations in regard to the various instruments mentioned. It would have been quite simple to produce a Bill that did not deal with those issues which will make it very complex, detailed and comprehensive legislation. It is better to do this comprehensively than have another item of piecemeal legislation in which we partly address issues and leave a whole range of other matters aside for a future date. I am really anxious that by the time this Government has completed its terms of office, we are in a position to fully comply with and sign up to any international obligations we have in this area, or ones to which we should be happy to sign up, and have reflected them in our domestic legislation.

**Deputy Denis Naughten:** I thank the Minister for his response and his assurance that the forthcoming legislation will close this loophole. As I said earlier, I do not question the Minister's bona fides in regard to this issue. He is sincere and committed. As he said, we have soldiered together on many of these issues over many years. The reform of the legislation in this area is important and I accept the Minister wants to incorporate this into his Bill. It makes sense to do that and to deal with the issues in the forthcoming legislation. I accept what the Minister said in his contribution and thank him for it.

The Minister has been more than accommodating in trying to facilitate the enactment of legislation by members of the Opposition. I hope we will see more Members of the Oireachtas, whether on Opposition or Government benches, bringing forward legislation.

The Minister raised the issue of a technical flaw in the drafting of this Bill in that it does not take into account the Criminal Law Act 1997. There has been an ongoing problem in that accessibility to legislation has been difficult. No official record is maintained of amendments to pre-1922 legislation. The legislative directory, formerly known as the chronological table, on the Office of the Attorney General's website does not track changes to pre-1922 legislation. We still have a substantial amount of legislation which pre-dates the foundation of this State. If I, as a legislator, find it difficult to access that information, what hope has a member of the public?

I am glad the Minister is accepting the principle of the Bill and is not throwing the baby out with the bath water and rejecting it on the basis of a technical issue. One would want to be an expert in the field to have made the connection between the two because of the weaknesses in terms of the transparency of the legislation. I hope that can be addressed by modernising the

laws and bringing them up to date and by ensuring that if there are amendments to legislation which pre-dates 1922 that it is easy to see them.

Although the Minister said it was not a criticism, he made the point about cherry-picking this issue, which I want to take up. In the legislation I brought forward in October, which the Minister accepted, I made proposals to close off some of the gaping loopholes. The difficulty is that members of the Opposition do not have the resources available to them. I would like to have brought forward far more comprehensive legislation but if it is taking the Minister's Department five years to do so, what hope do I have as an individual? I hope that by bringing forward these two Bills, they highlight flaws in the current legislation. If the Government is not forthcoming with legislation, these could be used as vehicles to close off some of the substantial problems with the current legislation.

I am as impatient as anyone can be in Parliament because legislation is slow to be enacted. However, there are loopholes in the current laws that need to be closed. The biggest one, on which are agreed, relates to the sex offenders register. The Minister is committed to reforming the law in this area and said during his contribution that the legislation would be published later this year. However, it will be at least 12 months before it is enacted.

**Deputy Alan Shatter:** Maybe not; it might be a little quicker.

**Deputy Denis Naughten:** We are splitting hairs. I do not have too many to split, but it is a fine line.

With regard to incest, the Minister is correct that other provisions are in place that can be used. I wanted the loophole relating to it to be closed before the end of April for particular reasons, but there are mechanisms in place. However, there is a serious problem with the sex offenders register. The Minister's predecessor, former Deputy Dermot Ahern, stated in the House in April 2009: "A three day notification period in this jurisdiction for the sex offenders register would ensure a harmonisation of our laws in that respect and would ensure that none of our jurisdictions became a safe haven for convicted sex offenders." Every year 100 sex offenders are released back into the community, approximately 5% of whom will reoffend and commit a sexual offence within three years. That is a lower rate than among the general prison population, but a sexual offence is a heinous crime. Five out of every 100 will be prosecuted for committing sexual offences.

The vast majority of sexual offences against children are committed by someone known to the family, but 70% of offenders come from outside the immediate family. The Rape Crisis Network produced statistics that the Minister of State, Deputy Brian Hayes, furnished to the House on behalf of the Minister last October. It found that 7% of offenders were strangers and, therefore, comprised a relatively small cohort, while 31% were close family members, which means that 62% were friends, neighbours or new partners from outside the immediate family circle. They have built a relationship and trust with the families and groomed not only the child but also the family. We cannot get away from this fact; that is the big risk.

I will give an example of why the sex offenders register needs to be reformed. If someone is released tomorrow morning from Arbour Hill Prison having served a sentence, he or she must register with a Garda station within seven days. There is nothing to prevent him or her from going to Bantry Garda station in west Cork to register and giving an address in Malin Head, County Donegal. He or she can spend six out of seven days working and living in a community



in Wexford, for example, building relationships with families. Once he or she returns to Malin Head on the seventh day, he or she is complying with the law. That is why we urgently need to reform the sex offenders register. We cannot wait another 12 months; we have waited too long. That is why we need disclosure laws and to put on a statutory basis what is in place on an administrative basis for the Garda in order that parents would have access to information on these individuals in limited circumstances. These offenders turn up in communities and begin to build relationships. They groom not only the children but also the parents and family members and the communities in which they reside because communities provide the safe haven for them. The current law, as the Minister's predecessor said, facilitates such safe havens. Emergency legislation is needed to close this loophole. It has gone on for too long. Children are being exposed to unnecessary risk and I hope we can deal with all of the loopholes in an urgent and comprehensive manner to give them the priority they deserve.

Question put and agreed to.

**An Leas-Cheann Comhairle:** Since this is a Private Members' Bill, it must, under Standing Orders 82A and 118, be referred to a select or special committee. The relevant committee is the Select Committee on Justice, Defence and Equality.

### **Criminal Law (Incest) (Amendment) Bill 2012: Referral to Select Committee [Private Members]**

**Deputy Denis Naughten:** I move:

That the Bill be referred to the Select Committee on Justice, Defence and Equality pursuant to Standing Orders 82A(3)(a) and 118 and paragraph (8) of the select committees' order of reference.

Question put and agreed to.

### **Misuse of Motor Vehicles (Public Spaces) Bill 2012: Second Stage [Private Members]**

**Deputy Dessie Ellis:** I move: "That the Bill be now read a Second Time."

I thank all those in attendance who have helped to ensure this debate goes ahead. I hope to secure cross-party support for the Bill. Anti-social behaviour is a major problem in communities. It is particularly endemic in working class areas owing to lower levels of employment and educational attainment and fewer amenities being available for young people who need an outlet. The effect of four years of austerity in the communities I represent is clear. Grants, supports and front-line services have been cut, leading to young people finding it harder to stay in education and training or to find productive and useful uses for their time. Community projects, community employment schemes and youth centres and projects have been cut to a point where even the most essential are struggling to survive. We have more young men with more time on their hands, less to do, fewer places to go to and less hope for their future and their control over

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it. Austerity has resulted in a generation of angry young men in some parts of Ireland who see no value to their lives and no purpose for them. Sinn Féin has been clear on the need to row back on this process of degeneration and abandonment of working class communities. We have been clear that austerity may meet the short-term tick box criteria of the troika, but it is damaging our communities and tears the social fabric. We are all worse off as a result of austerity, whether it hits us in our pocket, owing to the effects it has on the world in which we live. The Bill cannot solve these problems, but it would, I hope, deal with some of their side effects.

I have been aware of this issue for a long time. As a public representative for the working class areas of Finglas and Ballymun, I could not have avoided it. Going around these areas, particularly in the summer months, the problems these vehicles are causing are undeniable. They are noisy and too often used by young men with reckless abandon, which endangers their safety and that of others. I was first struck by the need for this legislation almost two years ago after attending a number of safety and policing fora meetings. I raised the issue with the Garda and others and it was apparent that there was a hole in the legislation which allowed people who used these vehicles for anti-social behaviour to sidestep gardaí in public spaces and prevent the seizure of their vehicles. Currently, if someone is misusing one of these vehicles on a public street, gardaí have the powers to deal with the issue. The vehicle can be confiscated and, depending on the severity of the infraction or the history of the vehicle and its owner, may be held or returned. This provision, when enforced, can work to discourage slowly such behaviour. Unfortunately, however, these vehicles are not just used and misused in public streets. They are also very common in our green areas and our public parks. They bring with them all of the same anti-social problems from the street coupled with greater potential for damage to public property. These vehicles tear up soil and destroy flower beds, pathways and other amenities. On YouTube one can find videos of the all too common and very dangerous practice of using the rear wheel of a dirt bike to spin a child's merry-go-round in a playground. In many of these videos the foolish people who elect to, or unwittingly, sit on the merry-go-round fly off at great speed potentially injuring themselves greatly.

This is a very simple Bill which will give the power and the impetus for the Minister for Transport, Tourism and Sport, in co-operation with the Minister for Justice and Equality, to lay down regulations allowing the Garda to deal with the problem of the misuse of motorised vehicles in public spaces, namely areas designated as such by local authority by-laws. This Bill will help gardaí in co-operation with local communities to deal with the growing problem of the anti-social misuse of all-terrain vehicles, ATVs. Similar vehicles have been recognised to be causing considerable damage to environmentally sensitive parts of the country with flora or fauna which must be protected. This was dealt with in legislation and though some will break the law, the powers to deal with them act as a significant demotivating factor. Our public parks are important to providing access for our communities to wildlife, leisure activities, a place to relax, exercise and come together as communities. They deserve to be protected and we deserve to have them protected from anti-social behaviour.

Many of the areas I encountered on the edges of Finglas in one of my own areas, Dunsoghly, where the old Dunsink tip head was, residents have been kept up all night as a result of this. In Tolka Valley there is a brand new park which cost millions of euro and these motorbikes and other vehicles are flying up and down these parks. This was brought up at the joint policing committees and the safety fora. I dealt with all the senior gardaí, who told me they could not seize these vehicles as a result of an anomaly in the law. That anomaly exists. There are rules in place for mountainous areas but none for our public parks and spaces. I accept that this Bill

may have problems and may require work but I ask that the Government allow it to go forward to be fully debated, developed and amended if necessary.

**Deputy Finian McGrath:** Hear, hear.

**Deputy Dessie Ellis:** I will be happy to work with anyone to address this problem in the best possible way. This has caused major problems in parks throughout the country, not just in Dublin. We need to close this loophole and if the legislation I propose does not meet all the requirements, I am open to any suggestions and to listening to what people have to say. This issue has been a scourge on our communities for too long and will continue to be if it is not addressed.

Over the years the superintendent and all the gardaí I have met have told me this anomaly is preventing them from seizing these vehicles and dealing with them. I am not asking that we criminalise the people on the vehicles but that we put in place legislation to allow gardaí to seize these vehicles and stop this. Children, some of them four or five years of age, are going around on these small motorbikes with no helmets. They are flying up and down parks and the vehicles cannot be seized. If they are taken, they have to be given back. That is unacceptable and I ask the House to support me on this.

**Deputy Finian McGrath:** Hear, hear.

**Minister of State at the Department of Agriculture, Food and the Marine (Deputy Tom Hayes):** I thank Deputy Ellis and the other Deputies who will be contributing to the debate. Everyone in this House would agree that the safety of the public is, and ought to be, a primary concern of any Government, and reflected in all areas of policy. It is, therefore, good to have an opportunity to discuss this issue here in detail. I will start by setting out the actions and systems that are already in place to address the problem identified in the Bill, which can be disturbing in a neighbourhood, damaging to public property and a threat to the safety of ordinary citizens, in particular children and young people.

The misuse of vehicles, as described in this Bill, is a matter the Garda Síochána addresses on a practical level as incidents arise and come to its attention. Effective roads policing is central to the Garda policing plan 2014 and enforcement activities are focused on the main causes of death and serious injuries on our roads. The Garda Síochána conducts specific operations to improve the compliance culture among young male drivers including road traffic enforcement measures targeting incidents of anti-social driving behaviour. The Garda authorities work with the Road Safety Authority and other road safety stakeholders to promote road safety among this target group and conduct Garda road safety awareness programmes in schools and third level institutions.

The Garda Síochána conducts ongoing strategic local enforcement operations targeting dangerous and anti-social driving practices. These enforcement operations are intelligence-led, targeting areas in particular where young male drivers congregate. Regular Garda mobile patrols and checkpoints are also conducted in these areas and websites are monitored to assist in establishing where events are taking place and to implement the necessary operational Garda response. Such operations have resulted in a significant number of young drivers being prosecuted for driving without a learner permit, driving unaccompanied while on a learner permit and driving a vehicle with prohibited modifications.

The Garda Síochána's operational response to this type of crime and anti-social behaviour generally is backed up by a long-standing commitment to working in partnership with local

communities, which is supported by the Garda national model of community policing. Under this model, community policing teams are headed up by a sergeant with clear objectives such as high visibility in the community, ease of contact by members of the public, and enhanced support for crime prevention strategies. The policing approach under the national model plays a key part in responding to crime by taking into account and responding to local conditions and needs.

The impact of Garda measures to tackle crime and anti-social behaviour can be seen in the official crime figures from the Central Statistics Office. These have been falling steadily, and the most recent figures, for the 12 month period ending 30 September 2013, show an overall reduction of 7.1%. This includes reductions in the range of offences commonly associated with anti-social behaviour and a decrease of 12.6% in offences relating to the taking of a vehicle. Public order offences also showed a decrease of 15.9%. There is also continuing Garda engagement with local communities by working with local groups under the community alert and neighbourhood watch programmes. There are more than 3,500 such groups around the country. In January 2013 the Garda Commissioner and the Minister for Justice and Equality launched new Garda community crime prevention guidelines, which contain advice for those wishing to set up community alert, neighbourhood watch or similar groups and on the support local community gardaí can provide. Additionally, a new Garda text alert scheme has also recently been launched with the support of a variety of groups and organisations.

The issues often associated with the misuse of vehicles and anti-social behaviour are ones which may benefit from a collaborative approach between the Garda, local authority and community stakeholders. In this regard, An Garda Síochána continues to participate in a wide range of local fora, including joint policing committees which are established in each local authority area under the Garda Síochána Act 2005. These committees may be an appropriate forum in which to raise particular issues relating to the misuse of vehicles and anti-social behaviour in order that an appropriate collaborative approach can be devised with the support of the relevant local stakeholders. Members of local authorities, with their close contacts with their local communities, are in an excellent position to bring specific concerns to the joint policing committees.

There is a range of strong legislative provisions available to An Garda Síochána to combat anti-social behaviour, including provisions under the Criminal Justice (Public Order) Acts and the Intoxicating Liquor Acts. They include powers to seize alcohol to prevent under-age drinking in public places and to forestall public disorder or damage to property. Section 8 of the Criminal Justice (Public Order) Act 1994 provides that a garda may direct a person who engages in disorderly or anti-social behaviour to leave the area in question. Failure to comply with the direction is an offence punishable by a fine or up to six months imprisonment, or both. Incidents of public disorder and other forms of anti-social behaviour are also dealt with by way of a juvenile or adult caution, fixed charge penalty notice or initiating criminal proceedings. Provisions for civil proceedings relating to anti-social behaviour are also available under the Criminal Justice Act 2006, Part 11 of which provides for civil proceedings relating to anti-social behaviour by adults, while Part 13 relates to anti-social behaviour by children. These provisions set out an incremental procedure for addressing anti-social behaviour. With regard to children, they range from a warning by a member of An Garda Síochána and a good behaviour contract involving the child and his or her parents or guardian to referral to the Garda juvenile diversion programme and the making of a behaviour order by the Children Court. With regard to adults, provisions include a warning and the making of a civil order by the court.

Gardaí are playing an essential role in addressing factors contributing to local crime and

anti-social behaviour concerns by making considerable efforts to divert young people from offending and being drawn into gang activity. This is illustrated through the Garda diversion programme and a network of 100 Garda youth diversion projects nationwide. The diversion programme operates in accordance with Part 4 of the Children Act 2001, as amended, and under the general superintendence and control of the Garda Commissioner. The aim of the programme is to deal with juveniles who offend by way of administering a formal or an informal caution, thus diverting the offender away from the courts and minimising the likelihood of further offending. The programme embraces, whenever possible, the principles of restorative justice and has due regard to the needs of the victims of youth offending. The Garda youth diversion projects are community-based, multi-agency, crime prevention initiatives designed to engage with and seek to divert young people from becoming involved in or further involved in anti-social or criminal behaviour. They are staffed by two youth justice workers and managed locally by community-based organisations working with a local project committee which is chaired by the local Garda district officer. They aim to bring about the conditions where the behavioural patterns of young people towards law and order can develop and mature through positive interventions and interaction with the project.

An Garda Síochána has advised that it is its view that the Bill is non-specific in what it offers to attempt to deal with or the power it attempts to provide towards investigation. The intended wording may prove problematic and it is the view of the Garda that current legislation adequately provides for the investigation of offences connected with the use of mechanically propelled vehicles under road traffic Acts, as amended. It is clear that there is a very wide a range of approaches already available to An Garda Síochána and communities, either directly or via their local authority, to address the problem the Bill is seeking to consider. There are clear and adequate systems and structures in place, integrated with other measures in criminal law, supports for communities and diversionary approaches for those at risk of offending. The Bill runs the risk of diverting valuable resources from these integrated measures to actions that could only be focused on one symptom of wider problems in some communities. Accordingly, the Government is opposed to approving the Bill on Second Stage.

**Deputy Timmy Dooley:** I am disappointed that the Minister of State ended his contribution by suggesting the Government would not support the Bill. My party is happy, in principle, to support what Deputy Dessie Ellis is trying to achieve. Although it is a relatively short Bill, the Deputy has indicated that he is prepared to amend elements of it if the Government sees fit to at least take into account the principle he is seeking to address. The Bill underlines the need for a shift in power towards local authorities and citizens, rather than a centralised approach. This would enable by-laws to be applied in problem areas, rather than having a one-size-fits-all approach. The Bill offers an opportunity to discuss important issues around parking in general and fees, in particular.

The Bill would enable the Minister for the Environment, Community and Local Government, in consultation with the Minister for Justice and Equality, to draw up regulations to remove abandoned vehicles in public spaces. This is a major issue for people living in urban areas and cities who are trying to maintain communities in a clean and tidy manner. The notion of abandoned vehicles can present a big difficulty. In built-up areas of my constituency small community and neighbourhood groups have come together to attempt to clean up areas and attract positive attention. They seek to get people involved in the maintenance of areas in a neat and tidy manner. For no good reason, others seek to undermine such efforts by abandoning vehicles, which is both annoying and a nuisance for so many communities. We must try to

tackle this problem. The Local Government Reform Bill, pressed through by the Minister for the Environment, Community and Local Government, Deputy Hogan, fails to address the imbalance of power between local and national government. We need to empower local authorities to tackle these problems and make local decisions. This Bill would afford an opportunity to create by-laws to deal with these problems.

A related issue, not contained in the Bill, is nuisance parking by people who want to avoid paying fees during shopping trips or daily commutes. Fianna Fáil has put forward detailed proposals to address this as part of its vision to revitalise town centres. We propose a review of the parking fee structure in out-of-town developments, a new graded parking fee structure and payment methods and special parking offers to encourage people to visit town centres. This would help re-energise towns while also encouraging people to park legally.

One of the major problems undermining the vitality and viability of Irish towns is the burden of hefty parking charges in town centres in contrast to the cheap or free alternatives in out-of-town shopping centres. The additional cost of parking, wide variations between local authorities, high fines when one overstays the allotted time and the prospect of clamping combine to deter people from shopping in towns. The so-called doughnut effect, which has been recognised in many other countries, is a proliferation of activity on the outskirts while the centre is hollowed out, which damages the vitality of a town. It had implications also for planning law. Local authorities have grown accustomed to using parking charges as a revenue-raising mechanism rather than viewing them as an impediment to businesses, which pay significant rates while their business is sucked out by the areas out of town where customers get free parking. Parking charges penalise customers for shopping in towns, which leads to an increasing number parking illegally.

Any parking charge structure should be equitable across all shopping locations rather than penalising town centre shoppers, which also penalises town centre businesses that pay significant rates and generate revenue for the local authorities. It should be a sustainable source of revenue for local authorities that can be reinvested in the towns and be used to attract people back into urban centres. The current parking charge system is a burden on cash-strapped customers, with a knock-on effect on the businesses that rely on them.

The current system of a standard rate per hour and the need for coins is inconvenient for customers and discourages short-term visits to the towns. There should be a graded parking charge structure and more modern payment methods. This would involve lower costs for shorter stays, with the price escalating for longer stays to deter commuters from parking in town centres. In addition, to make trips into town more convenient and cheaper, we should broaden the payment methods available for parking charges to encompass Internet and debit card payments. The penalty system imposed for overstaying should also be implemented on a graded basis. Minimum fees should be imposed in the case of brief overstays, with costs rising as the length of time involved extends. The focus should be on taking the hassle out of a quick shopping trip into town.

Special parking offers to encourage town centre visits could also be used to revitalise town centres. Flexibility and incentives to attract people back into towns must be at the heart of local authorities' parking strategies. Special weekend festivals or late-night shopping offers should be accompanied by complementary breaks in parking charges. A frequent-user reduced rate or day break from charges would help encourage greater use. These reduced payments for frequent weekly visits should be integrated into the pricing structure. Local authorities should use

innovation and flexibility in parking charges, with local initiatives such as free Fridays to draw additional customers into town.

The wide variety of charges across towns is not simply linked to the differing costs in the provision of parking spaces. There is a wide disparity in parking charges across local authorities. A national parking league showing the various parking fees would bring greater transparency to the system and encourage greater efficiency between authorities and towns. Voters could use this information to lobby their representatives to reduce onerous rates while businesses could use the information to press for greater services on the basis of higher parking costs. The presence of a clear league centralised on the website of the Department of the Environment, Community and Local Government would encourage greater efficiencies in local authorities when they set out pricing structures that help bolster the transfer of best practice between bodies. Combined, these measures will help ensure that cars are not inappropriately parked or abandoned. Local authority by-laws should deal with these continuing problems.

My party echoes Deputy Ellis's concerns about the abandonment of cars. While the Minister of State has outlined the Garda procedures for dealing with the perpetrators of these offences, I look forward to more action by the Government on this.

**Deputy Finian McGrath:** I welcome the publication of the Misuse of Motor Vehicles (Public Spaces) Bill 2012. I commend Deputy Ellis's work on the Bill. I will support the Bill, which sets out regulations and common sense. I am extremely disappointed that the Government has blown this legislation out of the water before we even get into the serious debate on it. It is not acceptable.

This Bill will save lives and protect public spaces, football pitches and parks. It will prevent many nasty incidents affecting young people, their families and the broader community. This activity in public spaces is a major problem, not only in Dublin but across the country. Clubs contact us regularly about their pitches being destroyed. Young families are afraid to go into certain areas of public parks after 8 p.m. because of threats, violence and anti-social activity, but the Minister for State, Deputy Tom Hayes, and the Minister for Justice and Equality, Deputy Shatter, say they do not accept the legislation. That is not good enough when a proposal is put forward to deal with this national problem.

The detail of the legislation gives the Minister for Transport, Tourism and Sport the power, in co-operation with the Minister for Justice and Equality, to lay down regulations allowing the Garda to deal with the problem of the misuse of motorised vehicles in public spaces, designated as such by local authority by-laws. It will also help the Garda, in co-operation with communities, to deal with the growing problem of the anti-social misuse of all-terrain vehicles. We are aware of the popularity of mini-bikes, dirt bikes and quad bikes in recent years, which has given rise to many problems in residential areas and public spaces. There has been noise pollution, damage to public property, threats and violence against families, all sorts of carry-on. This Bill aims to resolve these problems. I welcome the fact the Bill will not criminalise the user of these vehicles but will allow the gardaí to act when they are misused in public spaces. The Bill attempts to deal with the issue in a sensible way that does not criminalise young children. However, while legislation offers part of the solution, we must also deal with the lack of youth facilities in many disadvantaged areas. On youth issues more generally, we need leadership and greater efforts to deal with youth unemployment. Our youth unemployment rates are among the highest in Europe. This Bill would support the development of an overall strategy through co-operation between the Garda and communities.

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As a former member of Dublin City Council, I am aware of the magnificent work it does in managing public spaces. Dublin city has more green spaces per square mile than any other European capital city. There are 30 public parks within a three-mile radius of the city centre and 97% of Dublin city residents are within 300 m of a public green area. Dublin City Council manages 1,500 ha of parks and open spaces, or 2.96 ha of public green per 1,000 head of population in Dublin. It also manages 255 playing fields. This legislation goes a long way towards protecting these open spaces. Approximately 1,000 official matches are played on these pitches every weekend. North Bull Island in my constituency is Dublin's largest park and a UNESCO biosphere reserve. These spaces belong to the people of Dublin and the parks in the other parts of Ireland belong to the people of their respective counties.

This legislation offers an opportunity to better utilise public spaces. We need to up our game in this regard because public spaces have to be protected and landscaped in a common-sense way. Parks departments need the resources to employ sufficient staff. It gets up my nose to hear people being paid €1 per hour to assist local authorities under the Gateway scheme. People should be employed in full-time jobs with proper rates of pay in local authority parks departments rather than being exploited at rates of €1 per hour.

This morning I read that the Dublin Port Company is again looking with greedy eyes at Dublin Bay. I advise it to keep its hands off Dublin Bay and, in particular, the 52 acres in Clontarf. The national disability strategy aims to support equal participation of people with disabilities. We need to ensure our open spaces are accessible to people with physical and intellectual disabilities.

It is not right that football clubs have to contend with pitches that have been vandalised or destroyed the night before they use them for matches. Dublin City Council and local communities have invested in the region of €4 million in developing these pitches. The Government must listen to the people on the ground.

The Minister of State, Deputy Tom Hayes, referred to the provisions in the Criminal Justice Act 2006 dealing with anti-social behaviour by children. I accept that these provisions are important, but this Bill deals specifically with the issue of all-terrain vehicles. The Minister of State also referred to the 100 Garda youth diversion projects in operation around the country. These projects do great work and I have worked with some of them in my previous day job in the north inner city. However, I could use 100 youth diversion officers on the north side of Dublin alone, never mind nationally. We need to invest resources in protecting our young people before it is too late.

I welcome this Bill's emphasis on protecting public spaces, young people and lives. It is a miracle that more people have not been seriously injured or killed in these open spaces. I commend Deputy Ellis on the work he has done on the Bill and I will be supporting it.

**Deputy Róisín Shortall:** I am happy to support this legislation and I commend my constituency colleague, Deputy Ellis, on his work in drafting and tabling it. The Minister of State's response is disappointing, however. He seems to be in denial of the problem and in his speech he went on various tangents without making a serious attempt to address the nub of the problem, namely, the increased use of vehicles such as mini-bikes, dirt bikes, scramblers and quad bikes in housing estates. Many of us, particularly in the Dublin area, are conscious of the concerns this problem has caused among local residents. There are serious dangers for the users of the vehicles, who can be as young as seven years, other children playing nearby, residents out



walking and elderly people who fear being knocked down. The use of these vehicles is also associated with other anti-social behaviour. These vehicles are noisy and they create a hostile atmosphere wherever they are used. I am not sure that the Minister of State appreciates the extent of the problems they cause.

Parents often mean well in buying these vehicles for their children as Christmas or birthday presents but they do not realise the responsibility that accompanies them.

*12 o'clock*

A person is required to have tax and insurance to operate a mechanically propelled vehicle, but that point is not widely understood. There is a job of work to be done by the Garda in addressing that and making it clear to those operating a mechanically-propelled vehicle what their responsibilities are in that respect.

These are issues that crop up in the constituency I share with Deputy Ellis and in many other constituencies, particularly in the Dublin area, where there are large housing estates. There has been no serious attempt by the authorities to address this problem, which tends to be hidden away in estates and for that reason causes much aggravation to local residents. There has not been any adequate official response to it. The problem exists, certainly within housing estates, but it is particularly acute when young people use those vehicles in what are regarded as public places other than public roads. I refer in particular to playing fields and public parks. This is something that has been identified over some time by the Garda. For example, local authority parks do not come under the ambit of the Road Traffic Acts because the roadways or pathways in parks do not constitute public roads. This was confirmed to me in a reply to a parliamentary question by the Minister for Transport, Tourism and Sport, Deputy Varadkar, earlier in the year. I raised this issue and asked him to confirm that the Road Traffic Acts did not apply to public parks. The Minister confirmed this in his reply, stating that if the parks are places to which the public do not have access with vehicles, it is a matter for the management body concerned to provide for and enforce relevant governing legislation or by-laws, including on the use of quad bikes, as the case may be, to ensure that all persons comply with the permitted use of the park. It has been confirmed that the Garda cannot enforce the Road Traffic Acts within public parks, and that is the nub of the problem. Deputy Ellis, in this legislation, is seeking to provide for powers in order to be able to enforce that legislation in public parks.

Deputy Ellis stated quite clearly that he is dealing with one aspect of the issue here. He is open to amendments in any part of the Bill where they are required. He is taking an open approach in a genuine attempt to address this issue. Deputy Ellis has drafted this legislation and I believe the response of the Government, as outlined by the Minister of State, Deputy Tom Hayes, is wholly inadequate. The Minister of State is ignoring the existence of a problem and putting his head in the sand. I do not know whether it is through lack of awareness of the problem, but there is a genuine attempt being made here to address the problem.

Undoubtedly, there is a serious issue with the use of various motor-propelled vehicles by young people in parks. Others have spoken about this. We regularly hear complaints from sports clubs that on a Saturday or Sunday morning when they go to play a match the pitch has been all dug up the previous night due to the use of scrambler bikes or mini-bikes. It costs a lot of money and takes a lot of time to reinstate a pitch that has been destroyed in such a manner to a point at which it is playable.

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The other point is that public parks are where parents take their children to ride tricycles or go to a playground and where the elderly go for walks, and they are prevented from doing that because of the use of these kind of vehicles.

The Garda's hands are tied in tackling this problem. If the Minister of State speaks to a garda working in any of the constituencies in the Dublin area, the garda will explain the nature of the problem here. Their hands are tied because they cannot enforce the Road Traffic Acts in a public park. This is a genuine issue.

I would appeal to the Minister of State, who has been given a script to read, to engage with those on this side of the House and accept that we raise this issue genuinely because it is a serious problem. It means that what should be the terrific local amenities of public parks, in which local authorities are investing a great deal, are being rendered unusable in many cases because of the practice of young people using these vehicles which cause such a danger to other park users and to themselves.

There is a need for the Department of Transport, Tourism and Sport to focus on this issue. It should stop talking about youth diversion programmes and such matters. That is irrelevant to this problem. There is a real practical problem in relation to the use of these vehicles in public parks and we need a practical solution. Deputy Ellis has proposed a solution that goes a long way towards dealing with the problem, and I would appeal to the Minister of State to keep an open mind on this and recognise at least that the problem exists and that something practical has to be done to enable it to be tackled by the Garda in conjunction with the local authorities. As for stating that it is a matter for the local authorities to deal with, the Minister of State knows perfectly well that there are not staff from local authorities in parks at 10 o'clock, 11 o'clock or 12 o'clock at night. Gardaí recognise that there is a problem but their hands are tied because of the absence of appropriate legislation.

I would ask the Minister of State to step back to consider the points being made here today, to recognise that this is a real problem in local communities, to accept the bona fides of Deputy Ellis in attempting to address this problem and to at least not oppose this legislation. He should say that the Government accepts the legislation, recognises there is a problem and will do its utmost to deal with it. I strongly appeal to the Minister of State to take that approach.

**Deputy Aengus Ó Snodaigh:** I seriously expect the Government at least to support the Bill's proceeding to Committee Stage.

This is an issue that has been addressed at virtually every joint policing committee, JPC, around the country. I am one of those who has served on a JPC since such committees were founded and who encouraged the then Minister to set them up to address problems such as this. When the local authority members, national public representatives, local gardaí and officials from the local authorities come together and find problems in legislation that need to be addressed, they can raise those issues.

This issue has been raised in particular in Dublin, because that is the area that I am well aware of. Time after time, we have been told by the Garda and local authority officials that their hands are tied. This piece of legislation is to address a particular problem.

I was not in the Chamber to hear all of the speech by the Minister of State, Deputy Tom Hayes, but I have not heard such claptrap in all my life. Most of the four-page script that he read out had nothing to do with the point that has been raised, but one of the worst aspects is

that Deputy Tom Hayes knows about his own local authority area in south Tipperary, where this is a problem. Deputy Tom Hayes raised the issue of anti-social behaviour in the towns of Cashel, Cahir and Carrick-on-Suir in this Chamber when he was on the Opposition benches. The local authorities in those areas with which he is familiar have identified the misuse of quads and other motorised miniature vehicles as a particular anti-social problem in specific areas. I will give one example, which emerged only recently, in the Glen Oaks estate in Clonmel, of which Deputy Tom Hayes will be aware. It was only last year that the local authority had to take measures to put in place two walls to prevent access to a field which was being misused by anti-social elements in that town. One of the residents' chief complaints related to the noise associated with the misuse of scramblers on that site. If it was so easy for An Garda Síochána to-----

**Deputy Tom Hayes:** What happened in that instance? If the Deputy is going to tell a story, he should tell it properly.

**Deputy Aengus Ó Snodaigh:** The council blocked access to the site. My point is that if it really was so easy for gardaí to address the problem, then they would have done so. The Minister of State has referred repeatedly to the force's position on this issue, but the reality is that the Garda did not have the law behind it in this case. The only way to deal with the issue was to block access to the site. Of course, blocking access to public parks is not a desirable solution. We should not be making it more difficult for parents with prams, for example, to walk through the gates of public amenities. We should be seeking to ensure that people who want to play football at the weekend can do so. There should not be a situation, as other Deputies referred to, where people turn up to find the pitch destroyed. Public moneys are being pumped into these parks to maintain playing surfaces and so on, only to have them destroyed by motorbikes or, on one occasion in my constituency, a car. In that instance the council had spent a fortune upgrading two pitches but on the weekend they were due to be opened, a car was driven into the park and destroyed them both. Local football teams and local communities are suffering the impact of this type of activity.

The response from the Garda at local level to these events is that its hands are tied. The purpose of this legislation is to untie the hands of gardaí, so they can go in and confiscate the vehicles that are causing the problem and pursue the people who are engaged in this type of vandalism. Gardaí must have the capacity to take action against the owners of the quads, motorcycles, scramblers and other vehicles that are causing damage and creating a noise nuisance, right through the night in some cases. The problem is especially acute around Christmas time, when people receive these vehicles as presents. Young people are putting themselves and others in dangerous situations because the vehicles are being driven at breakneck speed through public areas. That is what the Bill seeks to address. It is not about trying to deal with the problem in the way it was dealt with in Clonmel, because that was a private park and it was possible to block access to it. I am aware of other areas in south Tipperary in which this problem has arisen and has not been fully addressed. I am sure gardaí in south Tipperary would love to have the powers Deputy Ellis is proposing to give them to confiscate the vehicles in question.

This issue has been an ongoing problem for several years now and any step we can take to address it is welcome. Some local authorities might be able to take imaginative action, as was done in Clonmel and in certain instances by South Dublin County Council, for example, but they should not be obliged to create new by-laws to address the problem. What we need is an overarching law, which is what Deputy Ellis's Bill will provide. The Deputy has acknowledged that his proposals might not be the final word on the issue. That is why he has asked that the Bill

be sent to the committee where there will be an opportunity to invite local authority members, gardaí and so on in to discuss it.

The Minister of State indicated that the Garda has a certain view on this matter. I would be interested to know the view of the Attorney General, which is what is usually referenced by Ministers in this Chamber. Anybody who attends meetings of any joint policing committee in this city or throughout the country will conclude that the view of gardaí, in fact, is that there is a need for this legislation. Gardaí are not seeking new laws for the sake of having new laws. They are seeking change because this particular problem is one of the issues that is raised most often in local policing fora. Gardaí have repeatedly stated that this change is required because, without it, their hands are tied. Even the Minister with responsibility for this area, who is not in the Chamber today, has acknowledged the need for action, in a context where public parks are designated in a way that makes it difficult for An Garda Síochána to confiscate vehicles and prosecute those involved in this type of activity.

I appeal to the Minister of State to reconsider his position. Opposing this measure would be a retrograde step. I urge him instead to allow it to progress and be a mechanism by which the transport or justice committee can examine the issue in full and perhaps determine whether there is any additional mechanism to prevent the type of abuse of our public spaces we have seen. The people who engage in this behaviour have no regard for their own community, other road users or the users of public amenities. In many ways, they have no regard for themselves - after all, these are dangerous vehicles being operated in a dangerous way. It is something that happens quite regularly in my own area of Dublin South-Central and is raised by constituents on a continuous basis. I urge the Minister of State to get real and recall when he was on this side of the House, not so long ago, appealing to Ministers to allow the Garda Síochána to take the type of action to tackle anti-social behaviour that Deputy Ellis has proposed.

**Deputy Seán Crowe:** The Minister of State has said he is not for turning on this issue. If there is a problem there, he is telling us, there is already legislation in place that covers it. Our information is the opposite to that. The Minister of State said that gardaí have told him they do not recommend the approach we are proposing. Will he indicate the ranks of those gardaí? There is clearly a disconnect between the gardaí, of superintendent rank, who have given us information about what is happening in these areas and their colleagues who are informing the Minister of State and his officials.

Does the Minister of State accept there is a problem? Anybody who goes into these areas would agree there is. I am sure there is legislation in place that might possibly be applicable to this problem, but it is not sufficient to address it. Other speakers referred to the noise nuisance element. It is unfortunately the case that in many of the areas I represent, the vroom of revving engines is a constant presence in parks and other green spaces. Sometimes it starts as early as 7 a.m. and, as Deputy Ó Snodaigh mentioned, it might go on through the night. Are the departmental officials suggesting that those responsible should be pursued under the noise legislation?

Reference was made to the cost borne by local football teams as a result of the damage done to pitches. We all commend the many volunteers who work hard to maintain these facilities and ensure they are safe for players. Go to any match, whether soccer, GAA or rugby, and one will see the volunteers walking around the pitch to ensure there are no broken bottles, syringes or anything else that could potentially be harmful. Has the Minister of State attended a football match where a vehicle crosses the pitch during play? Perhaps this type of thing is unknown to others in this House, but I have been at football matches where a horse crossed a pitch. I have

seen quads and motorcycles being driven across the field. What does one do in a situation where these vehicles are causing damage to public spaces day after day and night after night? Mostly people pick up the telephone and call the local Garda station; certainly, that is what we would advise them to do. I am going around knocking on doors at the moment and people are telling me there is a problem in regard to green spaces. Johnny So-and-So has a moped or motorcycle, they tell me, and is going up and down the green space day and night. What does the Minister of State suggest I do? I tell them to telephone the Garda and they do. However, when the Garda come down they say that, because of the way the legislation is framed they cannot seize the vehicle. Therefore, what does one do? Does one wait for them to come off the green space and arrest them on the road? We have a situation where we will get a Garda vehicle, possibly more than one, to catch the individual, particularly if he is on a motorbike, so the gardaí will sit around the park all day in the hope of catching the individual leaving the park. They may be able to do it under the Criminal Damages Act or perhaps under the Wildlife Act on the basis that they are interfering with wildlife and the noise may be affecting the breeding season of the local ducks. Is that what the Minister of State is suggesting?

Like others, I have sat on local policing forums where we have discussed the problem of motorbikes and quads. At my own local forum in Tallaght, we discussed the problem in terms of motorbikes. At the time I was told by the local superintendent that the Garda would upskill and train a unit to go into the parks and arrest the individuals on these bikes. As many parks do not have fencing, they can come in at different angles and get away just as easily. When my local GAA club telephones and asks if I can do anything about the mopeds, quads and whatever else is driving across the pitch and destroying it, I say that legislation is already in place and the Garda can respond. Yet, when one telephones the Garda station, the Garda says it cannot do it because it does not have the powers to seize the vehicles. Do we have to wait for them to come back on the roads, if that is the solution?

I believe that parks should be inclusive spaces for everyone. I do not think anybody in the House would disagree with that. A young mother or a young father with a child in a pram, will certainly not go into a park where there are motorbikes, quads and other vehicles driving up and down. That means those families cannot enjoy the playgrounds or the services in that park. Again, what are we to say to those families? Do we tell them it is an exclusive space for these individuals. Deputy Róisín Shortall said that the noise of the vehicles driving up and down is intimidating. If this happens on the green space where one lives and one telephones the Garda and there is no response, what is one to do? The Minister of State is saying there are responses and solutions here. We are supposed to be legislators to come up with solutions.

Deputy Dessie Ellis has drafted legislation having seen a gap, a problem and the impact it has on the community he represents. Many of us who are active in our own communities could say that the problem is not just in Finglas and Crumlin, it all over this city and other cities and towns and villages. The problem may not be as bad in other areas but it is bad and it is really bad in some areas, so the attempt in the Bill is to come up with a solution. However, we are told there is no need, that the legislation is in place. I am aware of the positive work of the youth diversion projects in many communities and I would like to see more of them active right across the State.

We speak about anti-social behaviour. I do not know what happens at the Minister of State's clinics but not a week goes by but people come to my office intimidated and frightened and want to get out of their homes because of what is happening. I am aware that legislation is in place to deal with intimidation but, unfortunately, it is not delivering for those families who

are affected, and similarly in this case. Will the Minister of State please outline to us who are active in our communities what exactly the Garda is to do in such a situation? It tells us one thing: it may be telling the Minister of State something different. If so, that is wrong; that is not the approach I want to see. If there are steps we can take to eliminate the problem without the necessity for Deputy Dessie Ellis's Bill, please outline them to us before the debate ends.

The Minister of State mentioned neighbourhood watch. If there is a problem concerning these cars in one's neighbourhood, does one telephone the Garda and what happens next? What are the steps after that? He has not outlined that in his contribution - he may have another contribution in his pocket - and the position is not clear. The problem still exists and it will exist when the Government votes down the Bill on Tuesday. I do not know if he can go back and discuss the matter with his colleagues. I do not think that anything I say will convince him that we have a serious problem which is growing. Some people said the problem was with youth. It is not just youth as some of those involved are adults and some are teenagers but there are many people involved in this activity and it is getting worse.

In my community we have joyriders back again. Many of us thought that was a thing of the past and we will be told there are all kinds of responses to that issue. The joyriders or the joy killers are active again. I am aware there are measures the Garda can take. We had an epidemic of it before and it is back again. Similarly, with this problem, sometimes it ebbs and flows but where there is a problem it is really difficult. We do not have any solutions and we cannot say anything to those families who are affected by it. We are talking about decent families who want their children to live in the best environment possible, who want to walk their children in the park and who want their children to play in the park, the car parks to be inclusive and we have not been able to deliver. Shame on us, and shame on this House if the Bill is voted down.

**Acting Chairman (Deputy Seán Kenny):** As no other Deputy is offering, the Minister of State may reply for five minutes, immediately before the proposer replies, if he wishes.

**Minister of State at the Department of Agriculture, Food and the Marine (Deputy Tom Hayes):** I thank Deputies for their contributions which were quite genuine and informative. There are a few basic points I wish to deal with. Much emphasis was put on the Garda Síochána. I was quite clear and I outlined the position in my opening statement. I was questioned on where the Garda came from, and from what level of the Garda the information came. The information arrived this morning from the Garda Commissioner's office in the Phoenix Park. The view of the Garda Síochána, as I made clear, is that there are sufficient powers available to them under existing legislation and that there are serious problems inherent in the draft Bill, as presented to the House. That is the view of the Garda in black and white and I have no problem putting that on the record of the House.

I did not deny at any stage that there was a problem in some communities. This problem is being addressed by the Garda. The fact is that I mentioned this in my opening address. Section 8 of the Criminal Justice (Public Order) Act 1994 provides that a Garda may direct a person who engages in disorderly or anti-social behaviour to leave the area in question. That is in the legislation. Failure to comply with the direction is an offence, punishable by a fine or up to six months imprisonment, or both. These are the facts. That is why I stated in my opening remarks that there are other ways of doing it. There is no point in introducing extra legislation and believing that it will solve every problem. That is the issue. There are other ways of dealing with it.

Deputy Ó Snodaigh referred to Clonmel. I do not know if he is relying on his memory or it is good research, but it is true that there was an issue. It was dealt with, and fair play to the gardaí who dealt with it in co-operation with the local community. They did not fob it off.

**Deputy Aengus Ó Snodaigh:** The council built the wall, not the Garda.

**Deputy Tom Hayes:** Yes. It was dealt with in co-operation with the local authority. That is what must happen.

If this becomes a bigger problem-----

**Deputy Seán Crowe:** If it moves to middle class areas, it will be a problem.

**Deputy Tom Hayes:** The members of the Dublin local authorities were contacted for the numbers. It has been raised at some of the joint policing committees but it was raised in tandem with other issues in the area. To suggest that introducing this legislation will immediately eliminate the problem is not the case. That is the reason it is being opposed.

Other issues were raised in this regard. Deputy Dooley raised the matter of car parking charges. While I agree with what he said, decisions on car parking charges can be made by the members of the local authority. This is an issue his party has been promoting.

In general, the reason the Government decided to oppose this legislation is that it is not seen as something that can solve a problem. We do not believe the problem is as big as the Deputy outlined, but if it becomes a bigger problem and there are statistics and facts to support that from the local authorities and there is a recommendation from the Garda, the Deputy could introduce it at a future date. At present, however, it is the Government's decision to oppose the legislation.

**Deputy Dessie Ellis:** I am absolutely flabbergasted by the Minister's response. It is not dealing with the real world. The Minister says advice was provided from the Garda Commissioner's officer. It flies in the face of what is said by every garda and superintendent I have met at the joint policing committees, which are also attended by councillors and Deputies from Fine Gael and the Labour Party. The Acting Chairman, Deputy Seán Kenny, attends them and has heard that there is a problem in the legislation. We have road traffic legislation, but it does not deal with public parks.

This is not just about the damage done to the parks. It is about the pathways on which these vehicles, be they motorbikes, quads or otherwise, are driven in a dangerous fashion, sometimes by children as young as four years old. We are talking about a very specific area, not all the laws that are in place. We already know those laws are there and that there are other means of catching people, but this is specifically to deal with a vehicle. The gardaí cannot seize the vehicles. Did the Minister not understand that? That is the problem.

**Deputy Tom Hayes:** I did, but they can talk to them.

**Deputy Dessie Ellis:** No, they cannot take them. If they do, they must give them back. That is the specific issue we are discussing. I have attended numerous meetings with gardaí but they have consistently told me that they cannot seize the vehicles. Is the Garda Commissioner lost somewhere? If he is giving this advice, there is something wrong.

All we ask is that this legislation be brought forward and debated and if areas must be ad-

dressed or areas are omitted, let us deal with that. However, the Minister has come here to shoot down this simple Bill. Everybody here knows there is a problem, as does the Minister. He might be defending the position as written in the script, but he knows there is a problem just as I do.

People in communities in my area cannot sleep because of the motorbikes driving around all night. In Finglas, vehicles travel around Dunsink dump all night and the residents cannot sleep. The vehicles cannot be seized, so they can be driven around until the cows come home. Our parks and some of our green areas are a safe haven for them. The Government is putting its head in the sand and the Garda Commissioner says we do not have a problem, but the gardaí tell us something different.

I cannot believe what I have heard. We cannot even debate this in the House. Members of the Minister's party know that not only Dublin but Cork and other areas across the country have the same problem, because they are encountering it daily. Can we not hear their voices to verify that this is the case? The Government is saying it will shoot down this Bill, but the community safety statement from the south Tipperary joint policing committee in 2011 identified quads and motorised miniature vehicles as an issue. That is in the Minister's constituency. The committee knows it is a problem and knows we cannot seize the vehicles. People can joyride around the park until the cows come home. The attitude is that it will be dealt with when they come out onto the road. The Minister is saying that if they are not doing damage in the park, even though they are flying around on the paths and endangering people, they can be left there as there are other means of dealing with them when they come out onto the road. We are putting people's lives at risk and communities in danger.

This is happening everywhere. It is not just confined to working class areas. It is a bigger problem in certain areas, but it is a problem in every area of the country. The Minister mentioned section 8 for dealing with this, but that does not confiscate the vehicle. The big problem here is the vehicle. I am pleading with the Minister. The Minister for Justice and Equality, Deputy Shatter, or the Minister for Transport, Tourism and Sport, Deputy Varadkar, should have been in the House to deal with this. I called down to the Minister, Deputy Vardkar, to try to explain what I am seeking to do but I could not catch him. I ask the Minister of State to go back to the Ministers on this specific matter. It is a major problem and we cannot ignore it, but that is what the Government is trying to do.

The gardaí will confirm this and are saying as much themselves. The Minister should ask them. The policing committee in Dublin City Council, which is the biggest in the country, has this issue on its agenda. The gardaí and the superintendents have said it is a problem that must be dealt with. The specific problem is that the Garda does not have the power to seize the vehicles. All I ask is that the Minister reconsider his position and not just shoot down this Bill. He should think again and ask the Ministers to examine it again. I am prepared to meet with them and explain the problem.

It is a far bigger problem than the Minister has said. It is a massive issue because communities are being tortured. People in parks are not afforded the same protection as they have on a road. That is the issue, and it must be addressed. One cannot simply leave them be in that area, which is what the Minister is effectively saying. I never claimed that this Bill would solve everything. I asked for suggestions to deal with the problem. I plead with the Minister to think again and not just put the Bill to a vote and dismiss it. For me, this is an issue involving the health, safety and interests of our citizens in our parks as well as looking after our parks.



Question put.

**An Leas-Cheann Comhairle:** In accordance with Standing Order 117A(4), the division is postponed until immediately after the Order of Business on Tuesday, 11 March 2014.

The Dáil adjourned at 12.40 p.m. until 2 p.m. on Tuesday, 11 March 2014.