DÁIL ÉIREANN

Dé Luain, 14 Nollaig 2015

Monday, 14 December 2015

Chuaigh an Ceann Comhairle i gceannas ar 12 p.m.

Paidir.
Prayer.

Courts Bill 2015 [Seanad]: Second Stage

Minister of State at the Department of the Environment, Community and Local Government (Deputy Ann Phelan): I move: "That the Bill be now read a Second Time."

I am delighted, on behalf of the Minister for Justice and Equality, to have the opportunity to introduce the Courts Bill 2015 to the House and look forward to engaging with Members as we progress the Bill through the various Stages.

The Bill is a single provision measure, having just one purpose, an increase in the maximum number of High Court judges from 35 to 37. Section 1 provides for a net change in numbers and in doing so amends section 9 of the Courts and Court Officers Act 1995, as amended by the Courts and Court Officers (Amendment) Act 2007, to provide that the number of ordinary judges of the High Court shall not be more than 37. The number of judges of the different courts is fixed from time to time by legislation under Article 36 of the Constitution. The existing maximum limit on the number of ordinary judges of the High Court was set in 2007 by the Courts and Court Officers (Amendment) Act. That Act, as in the case of the Bill before the House, amended the Courts and Court Officers Act 1995, by providing that there would be no more than 35 ordinary judges of the High Court. The best part of a decade, therefore, has passed since the last increase in the statutory number of High Court judges.

Deputies will accept that there has been considerable growth over that period in the volume and complexity of proceedings and litigation coming before the courts system as a whole. While the pressure on the courts has been managed very effectively and professionally by the Judiciary, with the very able support of the Courts Service, in some important areas of High Court business waiting times are longer than any of us would want them to be. The allocation of a further two judges to the High Court is not just a question of addressing waiting times, although this measure will address, in particular, the waiting times being experienced in the Central Criminal Court, it is more to do with enabling the court to work more efficiently, for example, by reducing the number of reserved judgments handed down.

A separate problem but one about which the Minister has concerns and which should not be ignored is the recent loss of a significant number of judges from the ranks of the High Court, with a considerable consequential loss of experience. Some of this loss is, of course, accounted for by retirements, but only one year ago nine High Court judges were appointed to the new Court of Appeal. It has been widely acknowledged that the new court has had a marked positive impact on the problem of delays in hearing appeals. I acknowledge the tremendous contribution of the new court and the great progress it has made in the past year. Perhaps inevitably, however, there have been certain repercussions in the depth of judicial experience drawn from the High Court. Those judges have, of course, been replaced by a strong cohort of new judges, but nevertheless the Minister understands the effect of and is anxious to respond to the loss of judicial experience from the High Court.

Another factor which has had a real effect on the progress of proceedings in the High Court is the increase in the number of lay litigants. Cases involving lay litigants can take longer because of such litigants' relative inexperience of court procedures. More and more, lay litigants are coming before the court, as is, of course, their right, but because they tend not to have experience of court proceedings, there is a marked trend in these instances towards increased times for proceedings.

Various factors are leading to increased waiting times for cases to be heard in some areas of the courts and an increase in the number of cases not proceeding on days listed for hearing, as well as a significant number of reserved judgments. It was to address these issues and more generally to provide for greater efficiency in the conduct of its affairs that, having consulted the senior Judiciary, the Minister requested the Government to approve additional resources in the form of two additional judges of the High Court.

Pressure points in the High Court which the Bill will substantially alleviate include the number of cases in which reserved judgments are given. While there are good reasons for reserving judgments in many cases, giving judges time to reflect on evidence and the law, the amount is of particular concern to the Judiciary. It is easy to see why this can be most unsatisfactory from the point of view of all concerned, not least the parties to the action or matter at hand.

Reserved judgments are frequently handed down in judicial review matters, commercial court cases and chancery actions. The increase in the number of reserved judgments can perhaps be seen as an unintended consequence of the efforts being made by the Judiciary to stay on top of waiting lists across the various areas of court business.

Deputies will need no convincing about the importance of avoiding unnecessary delays in criminal trials. In the Central Criminal Court, a marked trend is the increasing duration of trials due to the greater complexity of evidence coming before the court. Waiting times here are a matter of concern. The Minister is aware that recently the court president has found it necessary to appoint a fifth judge to the full time hearing of cases in the Central Criminal Court. Currently waiting times for trials of 18 months approximately can be very difficult for all concerned and, of course, particularly distressing for victims of crime and their families. In many instances cases cannot proceed on the date listed for trial and this has implications for costs for practitioners and witnesses. I know that the Minister is particularly concerned about this and she anticipates that the allocation of an extra judge to that court will help to alleviate this.

Medical negligence litigation represents a sizeable portion of business before the High Court. Due to the lengthy duration of most of these actions, the President of the High Court

makes a very convincing case for the deployment of judicial resources to manage these actions at the earliest opportunity. I agree fully that early intervention by a judge offers the best prospects of limiting the duration of hearings by early identification of issues which can lead to earlier settlement. I think this would be helpful to families who are so often involved in these difficult and upsetting cases. Better and proactive management of these actions is likely to lead to savings in the amount of costs of litigation for actions where frequently the taxpayer must foot the bill.

This is one of the reasons the Minister has introduced new legislative measures for pre-action protocols for medical negligence cases as an amendment in the Seanad when it was considering Committee and Report Stages of the Legal Services Regulation Bill over the past two weeks.

The new Companies Act is predicted to generate an increased level of company law-related applications to the High Court. These applications, many of which relate to the restriction of directors of insolvent companies can take a number of days of court time and it is estimated that at least one extra High Court judge will be required to manage this business.

Judicial reviews of decisions of courts and other bodies where reliefs and remedies are sought, arise frequently in such areas as planning matters, challenges to the constitutionality of legislation, *habeas corpus* matters and debt cases. It is a critical area of activity for the court and more judicial resources are needed here; practically all judicial reviews require written judgments.

In concluding my introduction of this legislation before the House, I should emphasise that while the effect of the Bill, as I have already said, is merely to alter a number in the relevant statute, its importance must not be underestimated. Once appointments are made, I consider that this Bill will have a far-reaching and positive impact on the work and output of the High Court. I believe it is a worthwhile measure to underpin the efficient conduct of business right at the centre of the administration of justice in the State.

In summary, while the Bill is a response to the number of cases coming before the High Court, including judicial reviews, medical negligence actions, asylum applications and company law-related applications, its specific benefits will be to enhance the efficiency with which the business of the court is managed as a whole and how judgments are handled in particular.

This Bill further represents the determined approach of the Minister and this Government to enhance the efficiency of the administration of justice, as evidenced by bringing into existence recently a second Special Criminal Court and, last year, the establishment of the Court of Appeal. In addition, further reforms are under way to bring about greater efficiencies and streamline matters in the courts, including proposals for a new system of family courts.

I thank Deputies for their support for, and engagement with, this important measure. It represents an important step for the High Court and I look forward to our debate on the matter. I commend the Bill to the House.

Deputy Niall Collins: Fianna Fáil will be supporting the Bill to appoint two additional judges to the High Court following a significant increase in the court's caseload. Fianna Fáil is also committed to reform of the judicial appointments system and has published legislation to provide for such reforms.

The purpose of the Courts Bill is to address the problems associated with the significant increase in the number of cases coming before the High Court, including judicial review, medical negligence, asylum and company law-related applications. Problems have also arisen from the increased duration of trials in the Central Criminal Court owing to the increased complexity of evidence coming before it. These factors are leading to longer waiting times for cases to be heard and an increase in the number of cases not proceeding on days listed for hearing, as well as a significant number of reserved judgments. In order to address these problems, the Minister for Justice and Equality believes additional judicial resources are required in the High Court and the Bill provides for this. The Courts and Court Officers Act 1995, as amended by the Courts and Court Officers (Amendment) Act 2007, provides, in section 9, that the number of ordinary judges of the High Court shall be not more than 35. The Bill will increase the maximum number of judges to 37.

In October last year the President of the High Court said he was struggling to find judges for new cases because the Government had not yet moved to fill seven vacancies in the court. Seven senior High Court judges were due to be promoted to the new Court of Appeal at the end of October 2014, but although they remained judges of the High Court, they were not assigned to cases that could run from November 2014. The Judicial Appointments Advisory Board sent a list of names to the Department of Justice and Equality in mid-September 2014, but the Cabinet did not sign off on the nominations. This means, in effect, that the High Court has been short seven judges since. Twice in the High Court last year Mr. Justice Nicholas Kearns said he was hard-pressed in trying to manage his list and have cases heard because he was still awaiting the appointment of seven new judges.

There is also an issue with the shortage of court registrars. Last April the President of the High Court said serious delays in dealing with court cases would result from a continuing shortage of registrars. The duties of registrars include assisting the judge, calling cases, swearing in witnesses, drafting orders and generally ensuring the smooth running of the court.

Mr Justice Kearns warned that unless the matter was resolved and additional staff were provided, the problem would result in serious delays and logjams in disposing of court lists. He said this was not a problem of the courts' or the Courts Service's making but that approval for extra staff must come from the Department of Public Expenditure and Reform. The Courts Service had applied for approval to appoint three registrars as the bare minimum to meet its immediate obligations. Two of these would be replacements for registrars who retired years ago. It is our understanding a shortage of registrars continues.

Last year I published the Judicial Appointments Bill 2014, which proposes to reform the law in the appointment and promotion of persons to judicial office. The law simply requires the Judicial Appointments Advisory Board to recommend to the Minister for Justice and Equality at least seven persons for appointment to judicial office. The Minister may or may not accept the recommendations made. Under the Judicial Appointments Bill 2014, a new board, the judicial appointments board, would be established and the old Judicial Appointments Advisory Board abolished. Instead of recommending seven persons for appointment to judicial office, the judicial appointments board would recommend for appointment by the Government one candidate whom it would certify as the best candidate for appointment to judicial office. The name of this candidate would then be communicated to the Minister for Justice and Equality. If the Government did not accept this recommendation, it would be required to publish in *Iris Oifigiúil* and on the Department's website the reasons the recommendation was not being accepted. At that stage, it would also have to publish the written recommendation of the judicial appointments

board promoting the appointment of the person concerned.

Under the Bill the judicial appointments board would be made up of the Chief Justice, the President of the High Court, the President of the Circuit Court, the President of the District Court, the Attorney General, a nominee of the Bar Council of Ireland, a nominee of the Law Society of Ireland, a person appointed by the Minister and a person appointed by the National Consumer Agency.

Early last year a judges' committee called for a radical overhaul of the appointments process, stating a merit-based system that would limit the Government's scope to reward political allies was vital to retain public confidence in the justice system. The judges were sharply critical of what they described as a "demonstrably deficient" system and say wide-ranging changes are needed to attract high calibre applicants. They say political allegiance should have no bearing on appointments to judicial office. They said: "It is increasingly clear that the relative success of the administration of justice in Ireland has been achieved in spite of, rather than because of the appointment system". The judges also said that changes to public and private pension provisions for entrants to the Judiciary "may have little fiscal benefit to the State, yet create a wholly disproportionate disincentive to applicants for judicial posts and deter high quality applicants from seeking appointment."

The views of the State's 154 judges are contained in a joint submission to the Department of Justice and Equality, which was carrying out a public consultation on ways to reform the appointments process. The judges are critical of that "flawed and deficient" consultation, initiated by the then Minister for Justice and Equality, Deputy Shatter. The judges said it was regrettable there was no prior consultation with the Judiciary on the methodology and structure of the process and pointed out that no proposals had been put forward by Government for discussion purposes. They also said:

> Most fundamentally of all, however, the process itself is being initiated by a member of the Executive, and will apparently be decided upon by the Executive without further discussion. This is not consistent with the principles of the European Network of Councils for the Judiciary, Council of Europe, or international best practice.

The judges said a high level body should be appointed to carry out research, receive submissions and develop detailed proposals in a "structured, principled and transparent way to make a radical improvement in the judicial appointments process in Ireland."

Making preliminary recommendations for reform, the submission states that as a matter of principle, political allegiance should have no bearing on appointment to judicial office. The judges said: "The merit principle should be established in legislation." The judges said a properly resourced judicial education system should be established without delay with a mandate to provide education to members of the Judiciary on all matters bearing on the administration of justice.

A judicial council was described as a "much-needed reform" and the judges said it should be created with responsibility for representation of the Judiciary, an independent disciplinary process, judicial education and judicial involvement in the appointment process. The submission calls for far-reaching changes to the Judicial Appointments Advisory Board, which receives applications and sends to the Government a list of all candidates who meet minimum criteria. Under the current system, the board cannot rank applicants and the Government is not required

to select from its list.

I introduced a Bill on behalf of the Fianna Fáil Party, the Judicial Sentencing Commission Bill 2013. The legislation looked to establish a judicial sentencing commission, similar to the model currently in operation in England and Wales. It would reform the area of criminal sentencing, improve consistency and work to enhance public confidence. Under the proposal, the commission would be made up of eight judicial members appointed by the Chief Justice, six non-judicial members appointed by the Minister with the agreement of the Chief Justice and two judicial members would serve as chair and deputy chair. This new commission would be tasked with preparing sentencing guidelines for criminal offences, taking into account the following: the sentences imposed by courts for offences, the need to promote consistency in sentencing, the impact of sentencing decisions on victims of criminal offences, the need to promote public confidence in the criminal justice system and the cost of different sentences and their relevant effectiveness in preventing re-offending. We introduced the Bill a number of years ago and it has an impact on how the Judiciary works. We support the Bill before the House for the creation of two extra judicial posts to the High Court.

Deputy Jonathan O'Brien: I give notice to the Technical Group that I will only use ten minutes of the allotted time in case its members think I intend to use the full time allocation of 30 minutes. I pass on Deputy Pádraig Mac Lochlainn's apologies to the Minister of State. He is running late and has asked me to fill in for him.

We will not oppose the legislation, the purpose of which, as outlined, is to create two additional posts in the High Court to address the problems associated with the significant increase in the number of cases coming before it, including judicial reviews, medical negligence cases, asylum and company law related applications. While we support the legislation, we believe some work needs to be done to address the reasons so many cases are coming before the court and to tackle the causes of these problems before the cases reach court. For example, inaccurate measurement and mapping continues to cause more property disputes to come before the courts. The newly digitised property boundaries are not the same as those on paper maps. This means that the predicted efficiency savings associated with digitisation are absent. Landowners cannot trust the newly digitised boundaries and instead have to physically check boundaries on the ground, which entails the additional cost of employing qualified and competent surveyors. As a result, digitisation receives unjust criticism, whereas the blame should lie with those behind the rushed procedures.

With regard to medical negligence cases, the culture of defend and deny results in more and more cases going before the court and, ultimately, more tax revenue being used by the State on legal fees. This is something that needs to be addressed. We are not suggesting people should not defend fraudulent cases, but in some cases where, as we have seen in media reports, there is an obvious outcome when the case goes to court, a mediation process would be a calmer and less adversarial way in which to address the lengthy, traumatic and, mostly, unwieldy and, ultimately, highly expensive medical negligence legal system. We have consistently advocated the need for the mediation Bill to be brought forward, but, unfortunately, I do not believe that will happen before this Dáil term ends.

The Special Criminal Court is not a symbol of success but a concrete example of failure. The fact that accused citizens can be convicted of an offence not on specific evidence but on the word of individual gardaí and the secret submission of evidence that is not open for the defendant to examine and refute is offensive to all democratic sensibilities. The court is entirely

unacceptable and should be closed.

Meaningful change can, however, be achieved in the court system by introducing a sentencing council in the State. Such a council operates in other jurisdictions and provides sentencing guidelines for the judiciary. This has ensured sentences handed down for criminal offences in the courts are consistent and accountable across the board. There has been concern in recent years about the perceived inconsistency of sentencing in the courts here. We have examined other sentencing council models and believe this model of consistency and accountability should be introduced in the State. A key strength is that these models involve a range of key stakeholders such as victim support groups, academics, senior police officers, senior parole officers and the public in the process of establishing sentencing guidelines for the courts system. As members of the courts are in the majority on the sentencing council which is chaired by a senior member of the judiciary, they are still central to the process. However, the guidelines issued ensure members of the judiciary must stick to the range provided for the category of offence before them. They must also clearly indicate why they have sentenced an offender within that range, taking into consideration the impact on the victim and the blameworthiness of the offender. This ensures consistency and accountability across the courts system and the State. It is a pity such a council has not been prioritised in this Dáil term, but we hope it will be prioritised in the next Dáil term.

Deputy Shane Ross: I am always a little suspicious when a Bill of this sort is produced on a Monday morning at the end of a session. I wonder if it is intended that it will go through without maximum scrutiny and discussion and that, of course, is exactly what will happen to the Bill. The briefing document states the Bill has a single purpose: to increase the maximum number of High Court judges from 35 to 37 which will lead to an increase in the efficiency of the courts and reduce the backlog. That is correct, but I oppose the Bill, not because there is anything wrong with increasing the number of High Court judges - God knows they are needed - but because of the method that will be used to appoint them, which the Government has signally failed to tackle. It is easy to be reformist when one is in opposition. It is easy to promise reform of the courts and the Judiciary, but nothing has happened since the Government came to power to reform the system used for the appointment of High Court judges, which will be done rapidly, presumably during the Christmas period. I may be wrong, but I would not be a bit surprised if the two new judges were identifiable with the political parties that have been in power for the past five years. It may be that this will not happen, but the reason I oppose this measure is it is being brought forward in isolation when the Government has totally and utterly failed to reform the Judiciary. The Judiciary is a scandal in the way it is appointed. It is wrong, it is political, it is flawed; it is unreformed and, despite protestations by political parties when in opposition, they continue to hold the power of patronage and abuse it badly when in government.

I would like to hear from the Government that the two appointees who will probably be able lawyers will not be chosen on the basis of their political colour. That pledge, of course, will come quite easily, but I will not believe the Government parties because the evidence is absolutely compelling. I would probably be picked up by the Chair if I was to start naming people-----

An Ceann Comhairle: The Deputy would be.

Deputy Shane Ross: I have not done so.

An Ceann Comhairle: I am just giving the Deputy advance notice.

Deputy Shane Ross: I do not intend to do so.

An Ceann Comhairle: Good.

Deputy Shane Ross: However, the evidence is utterly compelling and has appeared in print and elsewhere without being corrected or contradicted that when in power, Fianna Fáil nominated people to the Judiciary who were so identifiably Fianna Fáil that they brought the judicial system into disrepute. It had been hoped when Fine Gael and the Labour Party took power that they would reform the system and make it impossible to do this, but far from it. The Government has indulged in an orgy of appointments of its own people to the top of the Judiciary which would make Fianna Fáil blush. It is quite extraordinary how, when it comes to reform of this sort, no Government has been able to do it. Governments cannot resist the temptation to put people in the High Court, the Supreme Court and the District Court, the worst of the lot, who are identifiably followers of the political parties in power or who have done service for them in the past. That is no longer acceptable. To ask us to pass such a Bill to appoint two more possible cronies of the Government in power is not acceptable either.

Of course, if the courts are short staffed and there is a backlog, they must have judges, but the way they are appointed is the most important aspect of the legislation which the Government has refused to tackle. The Minister and Government are aware that the people most embarrassed by this abuse of the Judiciary are the members of the Judiciary. The Chief Justice has repeatedly demanded that the method of appointing judges is reformed because judges are embarrassed that their reputations could be sullied by this. Her words have fallen on deaf ears; promises have been made but nothing has been done. It is perfectly obvious from the attitude of the Government to this Bill, from the appointments that have been made and from the Fianna Fáil alternative that was produced, that this particular power of patronage will continue by agreement. Even if there is a change of Government next spring, if it is formed by one of the old traditional parties, there is very little hope that this abuse will end. There are no indications that anyone wants to do it.

The system was set up as a compromise in the late 1990s as a result of a row between Fine Gael, Labour and Fianna Fáil. Albert Reynolds, his Labour partners in government and the President of the High Court came up with this extraordinary compromise on how to appoint judges. They set up the Judicial Appointments Advisory Board, JAAB, which acts as a fig leaf for the legitimacy of appointed judges. The Minister of State, Deputy Ann Phelan, and the Minister for Justice and Equality, who is not present, will know that the result of the JAAB, which is known as "JAABs for the boys" in the Law Library, is that the Government always gets its judge. As Deputy Niall Collins said earlier, a list of seven is produced by the JAAB and given to the Government. The Government looks at the list and if it does not like it, bypasses it and takes somebody else. The system is simply a cover, veneer and fig leaf to pretend that somehow the new body has the freedom to make appointments. It does not make appointments, it makes proposals. To make sure there is not too much embarrassment, the Judicial Appointments Advisory Board is stuffed with Government appointees, three of whom are appointed by the Minister. Others are *ex officio* Government appointees, come from the Law Library or courts, or are judges who are political appointees. I think it was somebody in Fianna Fáil, when asked why on earth they had appointed a Fine Gael judge to the Supreme Court, said they had run out of their own people. They had appointed every single one they could possibly think of. Unfortunately, that system continues.

One of its great flaws, apart from the fact that it serves as a political channel or free pass

to the Judiciary, is that since its establishment 20 years ago, it has not held a single interview. The Judicial Appointments Advisory Board has the power to hold interviews for judicial appointments to the District Court, Circuit Court, High Court and Supreme Court. However, it does not hold interviews, it only makes appointments. Prospective appointees are not asked any questions about their talents - they just get appointed. The JAAB sits, makes the appointments, sends a list of seven to the Government, the Government looks at it and says, "God, there is nobody in my party on this one - we are not taking any of these." Although, as it happens, there is always someone from the Government party on the list. However, in such a case, the Government bypasses the system, so we now have a system that is open to political abuse and a dumping ground for political patronage. People will say the Judiciary has served us well, which may be a fair point, but that is not due to the method of appointment. The Judiciary is a protected political species. The fact that judges do not have to make a declaration of interests remains unreformed. The two High Court judges to be appointed by way of this utterly flawed system will not be required, unlike, rightly so, Members of this House and county councillors, to make a declaration of interest. For some reason, members of the Judiciary do not have to make such declarations. If a judge forgets or omits to declare an interest that might affect his or her judgment in a case, nothing will happen because nobody will know about it. A judge is supposed to so declare behind closed doors to the President of his or her particular court, but nothing will happen to him or her if he or she fails to do so. There is no transparency in the Judiciary in that regard. There is no guarantee that judges are acting in a transparent manner. They are protected in a way that no other group is. There is no justice behind this. The Law Library has been and remains a closed club in terms of self-regulation. Politicians are wary of mentioning or talking about the Judiciary, as evidenced by the fact that members of it are not supposed to be mentioned by name in this House. While they can be mentioned and criticised in the media and books for their judgments, under the rules of this House, for reasons I fail to understand, they are protected from criticism here.

My concern about the Bill is that these will be political appointments and I ask the Minister of State, Deputy Ann Phelan, to respond to that charge. The selection and appointment of good people to a rotten system leads to a discrediting of the system of appointment. The reality is that people who are not appointed on merit often move through the system quicker than those appointed on merit. That is happening. I know of several particularly able senior counsel who have ambitions to be appointed to the Bench, but they have been passed over time and again. It sticks out a mile - everybody in this House understands what I am talking about - that the only explanation for the appointment of particular people to these positions is their political affiliation.

It is imperative that the District Court be reformed. I accept that this is not directly relevant to the Bill, but appointments to that court are even more dubious. The Minister of State will be aware of the one or two high profile cases in the District Court in respect of which people got into hot water and had to resign. However, what we have never seen in the history of the State is the removal of a judge because it is impossible to do so. Judges rarely resign and are never removed. The two judges to be appointed under this legislation will hold their positions for life. The Minister of State will be aware that, in theory, there are ways of removing a judge. She will also know that there have been attempts to remove judges by tortuous processes in this House and through various committees. One such attempt, whether genuine, was cursed by delays and it never happened. We are talking about appointing two people to jobs for life from which they cannot be removed because it needs two thirds approval of both Houses of the Oireachtas and that cannot be achieved. They will be politically appointed, get extraordinarily well paid and

be accountable to no one.

I am against the extension of this political patronage from 35 judges to 37 judges. This Government has patently failed to stop patronage in the Judiciary and has abused its powers.

Deputy Fergus O'Dowd: I welcome the Bill and its intention which is to address the problems associated with the significant increase in the number and duration of cases coming before the High Court and the Central Criminal Court. Without the addition of extra judges, the increases will mean justice is delayed. Therefore, having more judges makes a lot of sense to me.

I listened to the comments of Deputy Ross. The Minister of State might correct me if I am wrong but judges are currently appointed by the President on the advice of the Government, which is given an unranked list of seven candidates. While the Government is not bound to appoint anyone from the list, nevertheless these names must come to the Government through the Judicial Appointments Advisory Board. If we were to reduce the number of candidates from seven to five or three, that would clarify the issues and address some of the points Deputy Ross raised. It would also lead to greater transparency in the decision making if the Government were to appoint solely from that reduced short list.

The memorandum provided to us by the Oireachtas Library refers to the international status and standard of our courts. We are the second highest ranking country in the world, second only to Finland. I refute the underlying allegations made by Deputy Ross, notwithstanding the issues he raised and the veracity behind them. The fact is that our courts are perceived internationally to be the second best in the world. Why should we not be the best? I have no problem with us addressing the issues surrounding the Judicial Appointments Advisory Board, reducing the number of named candidates, allowing for interviews and having the Government appoint from the list.

Deputy Ross referred to the removal of judges. It is a very serious matter for any Government or Parliament to wish or need to remove a judge. It is right and proper that the current system requires a two thirds majority of both Houses of the Oireachtas to remove a member of the Judiciary. Judges must be free and unfettered in their capacity to make whatever decision they believe in justice ought to be made. They must never be removed at the whim of a simple majority in Parliament of a ruthless and determined Administration that feared the outcome of decisions a particular judge might make. Such cannot ever be allowed. The process in this House some years ago concerning a Circuit Court judge involved a committee of the House. It was a long process but eventually the judge concerned retired or resigned before the process was finished. However, it should not be an easy process. It should require the consent of the vast majority of Members of the House. Then one could argue that the judge must have been in serious error and what the Oireachtas - it is not just the Government - was doing made sense.

I also wish to note the months and times the High Court sits. Everyone is entitled to a summer recess and I acknowledge the fact the High Court has held vacation hearings and, on occasion, hearings at weekends. Perhaps it is time to look again at that calendar. Is justice denied if a case cannot be heard, unless it is exceptional, between the end of July and mid to late October? While increasing the number of judges will increase the overall number of cases that can be tried, we should also consider shortening the holiday calendar. That said, I acknowledge that judges have a very difficult job to do. The decisions they have to make require a unique commitment of time, knowledge, research and reflection.

It should be noted that a justice of one of our courts, Ms Justice Miriam Walsh, was assaulted last week while hearing a family law case, which was both appalling and disgraceful. I hope the Houses of the Oireachtas and the Minister for Justice and Equality will send on good wishes to the judge. The Government must also ensure that steps are taken to protect the Judiciary so such an incident never happens again.

The Sinn Féin representative commented on the Special Criminal Court earlier. That court is special for a particular reason, namely to protect juries. Non-jury trials require an extra burden of proof and extra judges. There is an increasing number of judges available to preside over exceptional cases which may involve firearms, explosives as well as significant and very serious criminal activity. I would prefer if we never had to use the Special Criminal Court and agree that it should only be used in cases where there is a significant possibility that either witnesses or jury members will be intimidated. It must be said, however, that the IRA, with its campaign North and South of the Border, would not have been defeated without the Special Criminal Court because convictions would probably never have been attained in the normal courts because juries and witnesses would have been interfered with and intimidated.

This is a good Bill. As Deputy Ross pointed out, it is very simple, with only two parts to it but it represents a start. I hope that further legislation which will bring about significant reforms of our courts system will be enacted in the period ahead.

Minister of State at the Department of the Environment, Community and Local Government (Deputy Ann Phelan): I thank the Deputies for their contributions. It is clear that the House recognises the importance of ensuring that the High Court and all other courts have the resources necessary to ensure the efficient processing of proceedings and actions. This is vital to the proper functioning of our justice system.

Deputies Niall Collins and Ross raised the issue of the reform of the judicial appointments process. The Government is currently conducting a wide ranging review of all matters concerned with judicial appointments. This full assessment of these matters is essential. Careful and comprehensive research and consultation is required to develop and reform this very important area of the administration of justice. This is particularly so given the complexity and extent of existing legislative provisions and the very wide range of issues for consideration across many aspects of the appointments process, including appropriate qualifications, eligibility criteria and diversity. A consultation process relating to the system of judicial appointments was conducted in early 2014 with the intention of instituting reforms to enhance the current system. The need to ensure and protect the principle of judicial independence was a significant factor in initiating the consultation process. Furthermore, while the Judicial Appointments Advisory Board process was a model of best practice in its day, almost 20 years from its establishment it was considered worthwhile to review the operation of the entire judicial appointments system to ensure it reflects current best practice. Therefore, the proposal reflects openness, transparency and accountability and promotes diversity.

There was a significant response to the call for submissions, with substantive and wide-ranging views received on the legislative framework that provides for eligibility for judicial appointment and the process of appointment, including a comprehensive submission from the Judiciary. Arising from the consultation process, draft legislative provisions to reform and update judicial appointment procedures are being prepared by the Department. Such legislation is part of the agreed programme for Government. Review and reform of this area is critical to the functioning of the system of justice and provides an opportunity to determine how the system

can best respond to the expectations and needs of a modern state. I anticipate that legislation in this area will be published in 2016.

Deputies Shane Ross and Fergus O'Dowd referred to judicial ethics and conduct and the removal of judges. The programme for Government contains a commitment to legislate to establish a judicial council, with lay representation, to provide an effective mechanism for dealing with complaints against judges. The judicial council Bill will give effect to this commitment. In its current form, the Bill provides for the establishment of a judicial council and board which will promote excellence and high standards of conduct by judges. It will also provide a means of investigating allegations of judicial misconduct. In this context, a judicial conduct committee, with lay representation, will be established. The Bill will facilitate the ongoing support and education of judges through a judicial studies committee and the establishment of judicial support committees.

I support Deputy Fergus O'Dowd's remarks about the recent assault of a judge in the family court. We were all appalled by the attack and condemn it outright.

Question put and agreed to.

Courts Bill 2015 [Seanad]: Committee and Remaining Stages

Sections 1 and 2 agreed to.

Title agreed to.

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

An Ceann Comhairle: A message shall be sent to the Seanad acquainting it accordingly.

Prisons Bill 2015 [Seanad]: Instruction to Committee

Minister of State at the Department of the Environment, Community and Local Government (Deputy Ann Phelan): I move:

That, pursuant to Standing Order 177, Standing Order 131 is modified to permit an instruction to the Committee on the Prisons Bill 2015 empowering it to make provision in the Bill in relation to:

(*a*) certain persons who are serving sentences of imprisonment, for the purposes of deportation or removal from the State; and

(*b*) amendment of the Petty Sessions (Ireland) Act 1851;

and to change the title of the Bill to take account of these provisions.

The amendments to the Prisons Bill 2015 that the Minister for Justice and Equality has tabled on Committee Stage are linked with High Court proceedings in connection with prison related matters.

It was unfortunately not possible for the drafting of these amendments to be completed in

time for inclusion in the Bill as published or for them to be brought before the Seanad last week. Arrangements have been made for the Bill to return to the Seanad later this week so the Bill can complete its passage through both Houses and be signed into law by the end of the year.

The background to the first proposed new section is that until recently, where prisoners were subject to deportation orders, it was considered appropriate in certain cases to grant them temporary release for the purpose of facilitating their deportation. This generally arose in the context of the availability of places on a chartered flight to the state to which the persons were to be returned. Earlier this year, in the case of NBO and others *v*. Minister for Justice and Equality, the High Court considered the legality of the temporary release of a prisoner who was subject to a deportation order and was deported immediately after his release from prison. The High Court decided that section 2 of the Criminal Justice Act 1960, which governs the temporary release of prisoners, does not permit the temporary release of prisoners subject to deportation orders for the purpose of their deportation or removal from the State. Given the practical implications of the NBO judgment for the deportation process, the Minister believes that a clear legislative basis is needed to allow non-national prisoners to be taken from prison by members of the Garda Síochána or immigration officers for the purpose of giving effect to deportation orders under the Immigration Act 1999 or removal orders under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006. She therefore proposes to bring forward an amendment to the Bill to make provision for this specific purpose.

1 o'clock

With regard to the second proposed new section, arising from an issue that has emerged in very recent High Court proceedings, the Minister considers it appropriate to bring forward a technical amendment relating to the warrants issued by courts in Dublin for the committal of persons to prison. Outside of Dublin, District Court committal warrants are addressed to An Garda Síochána in accordance with the Petty Sessions (Ireland) Act 1851. However, the District Court rules permit committal warrants in Dublin to be addressed directly to the governor of the prison to which a person is to be committed. It had always been thought that this was permitted under the 1851 Act and the courts have operated on that basis. However, in a judgment on the recent case of Grant *v*. Governor of Cloverhill Prison, a judge of the High Court expressed the view that the relevant provision of the District Court rules may be inconsistent with the 1851 Act. As this opens the prospect of uncertainty in the legal position, the Minister proposes to table an amendment to this Bill in the Dáil to declare that a committal warrant issued by the District Court in Dublin can be addressed to the governor of a prison. This is the position that has been taken to apply in Dublin over many years.

As the addition of the proposed new sections to the Bill will broaden the scope of the Bill as published, it will be necessary to amend the Long Title of the Bill to include appropriate references to the purposes of the two new sections. In the circumstances, the Minister hopes that the Deputies will agree to the proposed motion and I commend it to the House.

Deputy Niall Collins: The Fianna Fáil Party is happy to support the motion.

Deputy Bernard J. Durkan: I agree with the motion. As somebody who has dealt with quite a number of cases of deportation, as I am sure everybody else in the House has, I am a little concerned and I ask that the Minister bear in mind the individual nature of the cases. In some circumstances, a person has been deemed appropriate for deportation but on subsequent review of the case, the person has had the decision reversed. I ask that this be taken into account where possible or in all cases. I am not talking about people who committed offences in the State but rather people who made an application under immigration laws for refugee or asylum

status. I would like to be reassured with regard to those cases that have been particularly delayed for a long time after the decision. Some people have been reporting on a monthly basis to their local Garda station for up to ten years pending their deportation. Inherent in the delay is recognition of the fact that the case may be answerable. In these circumstances I would like to be reassured that such persons will have an opportunity to have their cases reviewed before deportation, particularly if they have been reporting to their local Garda station for ten or 12 years in accordance with requirements. It would be a safeguard in the legislation.

An Ceann Comhairle: Perhaps that matter might be dealt with on Second Stage. This is a technical motion.

Deputy Bernard J. Durkan: Yes.

Question put and agreed to.

Prisons Bill 2015 [Seanad]: Second Stage

Minister of State at the Department of the Environment, Community and Local Government (Deputy Ann Phelan): I move: "That the Bill be now read a Second Time."

I am pleased to present the Prisons Bill 2015 to the House on behalf of the Minister for Justice and Equality who has been unavoidably detained on other important business. The main purpose of the Bill is to facilitate the complete closing of St. Patrick's Institution. The Bill will repeal statutory provisions that enable the courts to order the detention of offenders under the age of 21 years in St. Patrick's Institution and also delete references to St. Patrick's Institution from the Statute Book.

St. Patrick's Institution was originally established in Clonmel early in the last century as a borstal institution for young male offenders. It was transferred to its current site adjacent to Mountjoy Prison in 1956. The Criminal Justice Act 1960 which gave St. Patrick's Institution its statutory title made provision for the sentencing of offenders aged 16 to 20 years to detention in that institution.

The detention of children in St. Patrick's Institution has been the subject of consistent criticism for many years. The report of the Committee of Inquiry into the Penal System under the chairmanship of Dr. T. K. Whitaker in 1985 noted that "the dominant features of St. Patrick's for the majority of those contained there are boredom and demoralisation". The report recommended the closing of St. Patrick's Institution as soon as possible, stating:

> Rehabilitation is not possible where the physical and environmental conditions are such as to nullify any personal developmental programmes. The facilities and services which a human and morally acceptable detention centre should provide for juveniles could not be provided even in a renovated St. Patrick's.

The former Inspector of Prisons, Mr. Justice Dermot Kinlen, in his annual report for 2004 and 2005 described St. Patrick's Institution as a "finishing school for bullying and developing criminal skills".

The detention of children in St. Patrick's Institution has been criticised by the Ombudsman for Children, the United Nations Committee on the Rights of the Child, the European Com-

mittee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Committee of Social Rights and the Council of Europe Commissioner for Human Rights. In addition, organisations such as the Irish Penal Reform Trust and the Children's Rights Alliance have called for the detention of children in St. Patrick's Institution to be ended. The programme for Government 2011 to 2016 included a commitment to end the practice of sending children to St. Patrick's Institution. Very significant progress has been made by the Government in fulfilling the programme for Government commitment. Responsibility for 16-year-old males remanded in custody or sentenced to detention was transferred from the Irish Prison Service to the children detention schools at Oberstown in May 2012. The €56 million development of national children detention facilities at Oberstown is almost complete. This development will increase the number of children detention places available on the campus to enable the transfer of responsibility for all children remanded in custody or sentenced to detention from the Irish Prison Service to the children detention schools.

In 2012, the Inspector of Prisons and Places of Detention, Mr. Justice Michael Reilly, presented an inspection report on St. Patrick's Institution which raised serious issues and concerns. The inspector reported that a combination of, among other things, weak management, the culture in the prison, inattention to human rights norms, prisoners on protection and the prevalence of drugs meant that St. Patrick's Institution had not lived up to the mission statement of the Irish Prison Service. He concluded that there was a culture in St. Patrick's Institution that resulted in the human rights of some prisoners, children and young adults, being either ignored or violated.

In his annual report for 2012, the Inspector of Prisons and Places of Detention acknowledged the efforts made by prison management to deal with the issues previously identified at St. Patrick's Institution and the improvements made. However, in follow-up inspections undertaken in March 2013 he found disturbing incidents of non-compliance with best practice and breaches of the fundamental rights of prisoners. He reported that, despite the best efforts of management, the culture in St. Patrick's Institution had not changed and that the safe and secure custody of young offenders detained there could no longer be guaranteed. He recommended that the facility be closed, that prisoners be dispersed to other institutions, that existing staff be dispersed likewise and that the name St. Patrick's Institution be consigned to history. In line with the recommendations made by the Inspector of Prisons and Places of Detention and in order to effect the changes necessary in the regime and culture and ensure safe and secure custody, the Government decided in July 2013 to close St. Patrick's Institution completely.

As an interim step, arrangements were made for sentenced 17-year-old males to be transferred, shortly after committal to St. Patrick's Institution, to a dedicated unit in Wheatfield Place of Detention. This is an interim measure until they can be accommodated in the new children detention facilities at Oberstown. Males aged 18 to 20 years sentenced to detention are detained in a separate unit at Wheatfield. Subsequently, the Minister for Children and Youth Affairs made the necessary orders under the Children Act 2001 to transfer responsibility for newly remanded 17-year-old males to Oberstown from 30 March 2015. However, for legal reasons, it has been necessary to retain St. Patrick's Institution on a contingency basis for remands awaiting places in Oberstown. The courts have on occasion remanded 16 and 17-year-olds to St. Patrick's Institution for short periods until places in Oberstown become available. These children cannot be transferred to Wheatfield because section 88 of the Children Act 2001 which provides for the remand of children in custody does not permit the transfer of remanded children from St. Patrick's Institution to a place of detention.

The Children (Amendment) Act 2015, for which the Minister for Children and Youth Af-

fairs is responsible, was passed earlier this year. When operational, the Act will enable the full transfer of responsibility for children in detention to the children detention schools. The Act provides for the repeal of all legislative provisions which permit the detention of children in adult prison facilities. The relevant provisions of the Children (Amendment) Act cannot be commenced until Oberstown is ready to receive sentenced persons aged 17 years. This will not be possible until sufficient additional staff have been recruited. While the Irish Youth Justice Service has experienced difficulty with recruitment, the necessary staff are expected to be in place early in 2016.

Two partial closing orders under section 2 of the Prisons Act 1933 have been made in relation to St. Patrick's Institution. However, it will be necessary for the Prisons Bill to be enacted before St. Patrick's Institution can be completely closed. When closed, the intention is that the St. Patrick's Institution buildings will be designated as part of Mountjoy Male Prison. The Minister for Justice and Equality and the Minister for Children and Youth Affairs will give particular attention to the need to co-ordinate the commencement of the relevant provisions of the Children (Amendment) Act 2015 and the Prisons Bill, when enacted.

Part 1 of the Bill contains standard preliminary and general provisions. Section 3 provides for the repeal of certain enactments relating to St. Patrick's Institution. The provisions to be repealed mostly relate to court powers to commit offenders under the age of 21 years to detention in St. Patrick's Institution. These repeals will have the effect of ending the separate categorisation of males aged 18 to 20 years for the purposes of sentencing. Where a custodial sentence is imposed on such a person, he will be committed to his local committal prison and can subsequently be transferred onwards, where appropriate, to another prison or place of detention. The section also contains a transitional provision to ensure the continued lawfulness of the detention of persons previously sentenced to detention under the repealed provisions.

Part 2 of the Bill will enable St. Patrick's Institution to be completely closed. The main provision in this Part is section 6 which provides for the complete closing of St. Patrick's Institution by ministerial order. The section also contains transitional provisions to deal with warrants for the committal or remand of persons to St. Patrick's Institution which remain unexecuted on the date St. Patrick's Institution is closed. The section provides that, following the closing of St. Patrick's Institution, any outstanding warrant that refers to St. Patrick's Institution as the place of committal or remand can be executed in a specified prison. In addition, provision is made for persons on temporary release from St. Patrick's Institution on the date of its closing.

Part 3 of the Bill provides for the removal of references to St. Patrick's Institution from the Statute Book. These provisions, contained in sections 7 to 22, inclusive, are technical drafting amendments which are consequential on the closing of St. Patrick's Institution and do not otherwise affect the provisions concerned. It is proposed to retain the references to St. Patrick's Institution in a small number of legislative provisions in order to avoid unintended consequences for the operation of these provisions.

Part 4 of the Bill deals with issues that have emerged regarding the closing of prisons. The transfer of detainees aged 17 years and in the 18 to 20 year age group out of St. Patrick's Institution required Wheatfield Prison to be closed as a prison and reopened as a place of detention. However, the existence of unexecuted warrants directing the committal of persons specifically to Wheatfield Prison meant that it could not be completely closed as a prison. An interim solution was implemented to deal with this issue. Wheatfield Prison was closed, with the exception of the gatehouse, which, in law, remains open as a prison. This means that persons can

be brought there on foot of committal warrants which specify Wheatfield Prison before being immediately transferred elsewhere in the prison system. The main part of Wheatfield Prison that was closed was reopened as Wheatfield Place of Detention.

Section 23 will amend section 2 of the Prisons Act 1933 which provides that the Minister for Justice and Equality may make a closing order directing the closing of a prison or part of a prison. The amendments have two purposes. The first is to provide that, following the closing of a prison, any outstanding warrant that refers to that prison as the place of committal can be executed in another specified prison. The second purpose is to address the situation of persons on temporary release from a prison which has been closed. The amendments will deal with the current situation at Wheatfield and also any future prison closure.

We are all aware that the path from St. Patrick's Institution to Mountjoy Prison has been too well worn during the years. We must interrupt the predictable path of violence, crime and repeat offending which progresses to further serious offending and committals in adult prisons. The Government's unprecedented programme of reform in closing St. Patrick's Institution and developing national children detention facilities at Oberstown will allow young people who are sentenced to detention to be placed in a secure environment that will offer them a better chance, in the words of the Children Act 2001, "to take their place in the community as persons who observe the law and are capable of making a positive and productive contribution to society". It is now a matter of when, not if, there will be a final end to the practice of detaining children in adult prison facilities. I hope the Prisons Bill will be passed by the Dáil and the Seanad quickly in order that St. Patrick's Institution will finally be consigned to history at the earliest possible date. I commend the Bill to the House.

Deputy Niall Collins: Fianna Fáil supports this Bill, the main purpose of which is to facilitate the long overdue complete closing of St. Patrick's Institution. In July 2013, the then Minister for Justice and Equality, Deputy Alan Shatter, said St. Patrick's Institution was to be closed down and all prisoners moved to different institutions within six months. Subsequently, in September 2014, the Children's Ombudsman, Ms Emily Logan, referred to the closure as an unfinished project with eight vulnerable boys remaining at the facility.

St. Patrick's Institution for young offenders finally closed its doors on 30 March this year. Its closure had been recommended for decades. In 1985, the Committee of Inquiry into the Penal System recommended the closing of St. Patrick's as soon as possible.

In 2012, an inspection report by the Inspector of Prisons and Places of Detention on St. Patrick's Institution said that a combination of, *inter alia*, weak management, the culture in the prison, the inattention to human rights norms, prisoners on protection, and the prevalence of drugs meant that St. Patrick's has not lived up to the mission statement of the Irish Prison Service. The inspector's report stated:

> To say there is a culture in St. Patrick's where the human rights of some prisoners are either ignored or violated is a serious statement. Individual instances, where the rights of prisoners appear to have been ignored or violated, may not indicate a culture. However, when the number of instances, found by me and outlined in this chapter, are taken together the cumulative effect can only lead to the conclusion that there is a culture in St. Patrick's which results in the human rights of some prisoners - children and young adults - being either ignored or violated.

The inspector also said that this was not to be taken as an indictment of the vast majority of officers who, in the course of their work, show respect to and an understanding of the prisoners in their care. They act in a professional manner when at times circumstances can be very challenging.

Subsequently, in 2012, in his annual report the Inspector of Prisons and Places of Detention said, "I am satisfied that, despite the undoubted efforts of management the culture referred to by me in my St. Patrick's report has not changed". He also said he was "satisfied that the Irish Prison Service can no longer guarantee the safe and secure custody of young offenders detained in St. Patrick's Institution". He went on to make the following four recommendations: first, that St. Patrick's Institution should be closed forthwith; second, that prisoners should be dispersed to other institutions where they could be guaranteed safe and secure custody; third, that existing staff in St. Patrick's Institution should be dispersed to other institutions; and fourth, that the name, St. Patrick's Institution, should be consigned to history.

St. Patrick's Institution was established in 1904 in Clonmel. It moved to the present site in 1956. In 2012, it was catering for males aged between 16 and 21 years. In reality it was two separate entities: a B division for children aged 16 and 17 years; and C and D divisions for adults aged 18 to 21 years. Another area known as "the unit" catered for one section of prisoners who, because of the nature of their particular crimes, cannot be accommodated with other prisoners. The unit catered for both children and adult prisoners.

The Fianna Fáil spokesperson on children, Deputy Robert Troy, has said that the severity and graphic nature of the report into St. Patrick's Institution must be treated with the utmost seriousness. He commented that:

> The detention of 17-year-olds at St. Patrick's should cease immediately and they should be transferred to Oberstown or other appropriate rehabilitation facilities. The focus must shift from simple punishment to rehabilitation ... We can no longer wait for the May 2014 deadline. The report into St. Patrick's Institution has called for a review of this timeline and I will support any initiative Minister Shatter or Minister Fitzgerald seek to put in place to provide an appropriate setting for these vulnerable young people. No child should ever be detained at St. Patrick's again. This is the first time a report has identified that the human rights of young people were being seriously violated by the conditions at St. Patrick's Institution ... I think it is important to remember that these are children first and young offenders second. Of course, where criminal offences take place, the appropriate sanction must be applied but we must have a system in place that will rehabilitate young people back into society, and one that is not simply focussed on detention. It is clear from the Inspector of Prisons' report that far from rehabilitating offenders, St. Patrick's Institution has hardened many prisoners and allowed drug abuse to foster in a completely unsuitable environment for children. I want to commend the Inspector of Prisons for his report. His dogged and determined efforts to get to the bottom of what has really been going on at St. Patrick's Institution shows a great commitment to public service and the welfare and right of children.

As regards young offenders' rehabilitation, earlier this year Fianna Fáil supported the passage of the Children (Amendment) Bill 2015, the main purpose of which was to enable the amalgamation of the three children's detention schools in Oberstown, Lusk, County Dublin and to provide for the necessary legal changes required to end the detention of children in adult detention facilities.

Rehabilitation must be a paramount consideration in the detention of young people. Oberstown is the most appropriate environment for the small number of young people for whom detention is necessary. Nevertheless, it is vital to ensure that the detention or imprisonment of a child, whether on remand or under sentence, is only ever used as a measure of last resort and for the shortest appropriate period of time, as required by the Children Act 2001.

The Irish Penal Reform Trust, IPRT, along with the Ombudsman for Children, the Children's Rights Alliance, Empowering People in Care or EPIC, and many other youth justice advocates, are concerned about the over use of detention of children for welfare reasons. Children in the detention school system will often have had an experience of the care system, with many under HSE care at the time of their committal, and some coming directly into the detention system from secure care. This group is among the most vulnerable group of children in Ireland. Many of the traumatic factors which led to the children being taken into care in the first place are also at the root of their offending behaviour.

The children's detention schools system invests its resources in addressing these challenges, and what can be the extremely challenging behaviour of these young people. We have a duty to support these young people leaving detention in their efforts to desist from offending behaviour, through the provision of aftercare, safe housing and support, and to ensure they do not return to the chaotic conditions which gave rise to their offending behaviour in the first instance. It could change their lives and, in turn, lead to safer communities for everybody. In accordance with international human rights standards, and particularly in line with the provisions of the UN Convention on the Rights of the Child, custody for children should only be used as a last resort and for the minimum required period of time. International law stipulates that all efforts should be made to apply alternatives to detention to ensure that any such measure is only used in exceptional circumstances.

Earlier this year the Irish Penal Reform Trust called for more support for young adult offenders. It said that the Department of Justice and Equality should develop a strategy to deal specifically with young adults aged 18 to 24 years within the criminal justice system. The trust called for measures to support young offenders who are what it described as being "on a transitional journey from childhood into adulthood".

A report entitled The Turnaround Youth: Young Adults (aged 18-24) in the Criminal Justice System shows that the human brain and maturity continue to develop into the mid-20s, which means that young adults are particularly vulnerable to peer pressure. The report also found that socioeconomic factors such as unemployment, not being in education and living in a disadvantaged area led to young adults becoming substance dependent and at a greater risk of offending.

According to Ms Deirdre Malone, executive director of the Irish Penal Reform Trust, "The current justice system has created a cliff face off which you fall within months of your 18th birthday. We're relying on the most expensive and the least effective way of reducing re-offending - and it doesn't make economic sense or social sense". The IPRT found that in Ireland, "once a person reaches 18 years, they are no longer treated as a child but become immediately answerable to the laws and regulations that govern the adult population, regardless of their level of maturity or vulnerability".

Prison should only be a sanction of last resort for young adults, particularly those convicted of non-violent offences, the report says. While only 9% of the population is aged 18 to 24 years, this age group makes up 24% of the numbers in Irish prisons according to data from the

Central Statistics Office. A recent study from the Irish Prison Service also found that 68% of people aged 21 to 25 years of age re-offended after release, compared to 53% of the rest of the population.

I will now refer to the problems experienced at the Oberstown facility earlier this year. Four persons, aged 15 and 16 years, fled the facility on 25 July. This was the third group of teenagers to break out of the north Dublin facility. The escape was a sharp reminder of the need to address the serious security issues at the facility.

The Oberstown centre, near Lusk in north County Dublin, has undergone a €56 million redevelopment recently and taken in children who were detained in the St. Patrick's youth wing in Mountjoy Prison. Before then the Oberstown centre held around 35 children, aged between 12 and 17 years. Workers have complained that they are under-resourced and understaffed owing to a high number of staff going on sick leave following assaults by children detained at the centre. Since March, 31 staff have had periods off work as a result of injury caused by assault, in restraining detainees or by accident. Morale is low and, according to media reports, highly critical Health Information and Quality Authority, HIQA, reports have done little to boost confidence.

Between March and July this year, according to a report submitted by staff to the Oireachtas Joint Committee on Health and Children, nine female and 22 male staff suffered injuries that included concussion, nerve damage, throat injury due to strangulation, muscle and ligament damage, stabbings, bites and having hair pulled out at the roots. The staff say the crisis inside the centre was precipitated by bad planning and management of the programme to transfer young offenders from the St. Patrick's youth wing in the Mountjoy Prison complex to Oberstown in the past two years. Staff considered taking industrial action in the face of the lack of Government action to address the problems at Oberstown.

Oberstown is not purely a custodial setting. There are education and therapeutic services, as well as access to psychiatric services. The aim is very much to attempt to change the course of a young person's life and such a setting is the only one suitable for offenders under 18 years.

A HIQA inspection that took place in October indicated improvements in some areas of concern such as restriction of the use of single separation, but significant deficits remain in other areas. However, there is still huge mistrust of management by staff at the facility. Staff appear to be overburdened and simply do not have time to build personal relationships of trust with the children in their care. According to the report, morale at the facility is still very low. It is clear that many of the staff remain distressed after the terrible stabbing incident which took place during the summer and which could potentially have been fatal. There is a lack of trust by staff in risk management and many still feel the health, safety and well-being of workers at the facility are not being regarded sufficiently by senior management.

Over the summer we urged the Minister for Children and Youth Affairs, Deputy James Reilly, to intervene to ensure staff would receive more training to deal with the violent behaviour of some of the older, newer inmates who had been transferred from St. Patrick's Institution. It is imperative that the Minister acts on the recommendations made in the report and engages with staff concerns to facilitate management reforms at the facility. We are happy, however, to support the legislation.

Deputy Pádraig Mac Lochlainn: Sinn Féin, obviously, supports the Bill. As previously

stated, the main purpose of the legislation is to facilitate the complete closure of St. Patrick's Institution. It repeals statutory provisions that enable the courts to order the detention of offenders under the age of 21 years in St. Patrick's Institution and deletes references to "St. Patrick's Institution" from the Statute Book.

In part, the Bill has its origins in a commitment given in the programme for Government to end the practice of sending children to St. Patrick's Institution. For decades non-governmental organisations, the Irish Council for Civil Liberties, the Irish Penal Reform Trust and a number of international organisations, including the United Nations, have been calling for the closure of St. Patrick's Institution and an end to the detention of children in adult prisons.

Across the child protection and criminal justice spectrum there is unanimous agreement on the importance and significance of ending the practice of detaining children in adult prisons. For example, the Irish Penal Reform Trust has repeatedly pointed out that adult prisons are completely unsuitable in meeting the particular needs of young offenders. This sentiment was echoed by the new Ombudsman for Children, Dr. Niall Muldoon, who stated rehabilitation must be a paramount consideration in the detention of young people.

The closure of St. Patrick's Institution and the building of six new buildings, each with the capacity to house between eight and ten children, are positive steps. Again, the Ombudsman for Children and the Irish Penal Reform Trust agree that the Oberstown centre is the most appropriate environment for the small number of young people for whom detention is necessary. However, both entities have also expressed concern at the findings of a report by HIQA published on 23 February on two inspections it had carried out in the Oberstown centre in October and November 2014. Of a total of ten standards, HIQA found that the children detention schools met just one, that of education, in full. Six standards were found to require improvement, while the failure to meet three standards was found by HIQA to present a significant risk. These were in the areas of single separation, the management of medication and staffing and training issues. The isolation of any child or young person from his or her peers can be damaging and the standards are clear that isolation must only be used sparingly and for the minimum, appropriate period of time.

The Irish Penal Reform Trust is particularly concerned at reports that single separation was used owing to staff shortages. Concerns about insufficient staffing, staff training and high levels of staff absenteeism are also detailed in the inspection report. In a 12-month period more than 700 cases of single separation were recorded at Oberstown, with one child spending more than 83 hours in isolation over a four-day period.

It has been proved that in areas where there are supports for minors who are exposed to violence or trouble in their communities, these supports significantly reduce the number of children who get into trouble with the law. We must start to discuss the issue of early intervention and prevention. We must create a system which will be humane and progressive - a rehabilitation process which will encourage all children to reach their full potential rather than a system which will impact negatively on future generations for life.

On prisons, it is worth reminding ourselves that the State's reputation is justly criticised as being embarrassing. The Government should be embarrassed. Ireland is one of only four European countries not to have ratified the United Nations' anti-torture protocol. Professor Malcolm Evans whose work focuses on preventing torture and degrading treatment has expressed frustration that the Government has repeatedly promised but failed to ratify a system of inde-

pendent, international inspections. At the last universal periodic review of the human rights records of all 193 UN member states in 2011 he said Ireland's failure to sign the United Nations' anti-torture protocol was openly criticised, even by some countries with, historically, very poor human rights records. He said some would reach the conclusion that the justice authorities in Ireland had an issue with transparency and accountability. The protocol provides for UN and national bodies to make unannounced visits to all places of detention, including prisons, police stations and psychiatric hospitals, and report on what they find. The bodies have the power to examine the facilities and interview staff and detainees in confidence as part of the inspection process. Sinn Féin recommends expedited ratification of the protocol.

It is a well accepted maxim that a society is best judged by its treatment of prisoners. In Ireland the issue of prison conditions has a special resonance associated with colonial rule and the legacy of conflict over centuries. Prisons were sites of execution, torture and ill-treatment of many thousands of political prisoners and inhumane warehouses for the destitute in an unjust and unequal society. Fundamental prison reform is a priority for my party and should be for all republicans. It is crucial that prisoners and children in the care of the State are not failed, as they have been for too long.

Deputy Finian McGrath: Thank you, a Cheann Comhairle, for the opportunity to speak on this new legislation, the Prisons Bill 2015. I warmly welcome the Bill, but I also welcome the opportunity it gives us to look more closely at the prison system and the broader criminal justice system as well and the impact it has on citizens. We must dig down and see how the public is losing confidence in the justice system and the way it is run. The Government must face up to that reality. Something must be done by senior gardaí, who must face up to the problems in the justice system. The Department of Justice and Equality must also face up to the reality of the disconnect between a substantial section of society and the justice system.

Deputy Bernard J. Durkan: Hear, hear.

Deputy Finian McGrath: I will go into detail on the legislation later. This is an opportunity to find out what the public wants in the justice system. People want fairness and accountability. They want to be able to trust in the justice and prison system. That is the case at present and it is something we must face up to. Let us consider what happened in recent days. Where is the logic in arresting and transporting two anti-war activists such as Deputies Clare Daly and Mick Wallace to prison and then releasing them within a matter of hours? The system is deeply flawed. We must come up with a system whereby non-violent prisoners or people who have been fined do not clog up the system and waste resources and public money. The opposite is also the case; we cannot have a situation where very violent prisoners are released on bail and peaceful prisoners with no track record of violence are kept in prison. Something is radically wrong in our system.

Something is also radically wrong if somebody stabs a person 13 times and only gets a sentence of eight or nine years. I do not wish to interfere with the justice system but there is something wrong in society when violent assaults do not merit tough punishment and resources are directed at less serious assaults and fines. I raise those issues because they are linked to the prison system. We must address the issue of violent prisoners. Judges must wake up and deal with the problem. There are too many violent people in broader society and they seem to get away very lightly. That is something people find very annoying.

In the context of prison reform, we have a major problem with drugs in prison. That is

something society must address. I accept the drugs issue is part of a broader debate. I support some of the recommendations for non-violent and first-time offenders in particular who are found in possession of cannabis. A current problem throughout Dublin city that might also affect other parts of the country is a new strain of cannabis that results in young people becoming very violent and getting involved in serious assaults and stabbings. This strain of cannabis is currently ravaging my constituency and across the north side of Dublin. It is important to consider those issues in the context of a broader debate. One cannot tolerate a situation whereby a dangerous strain of a drug is leading to assaults and local people and gardaí are in fear because people are totally strung out on it. Some people do not seem to live in the real world and must face up to reality.

I welcome the legislation which specifically deals with St. Patrick's Institution. The main purpose of the Bill is to facilitate the complete closure of the institution. However, we must also consider the broader issue of how we deal with prisoners and other issues that arise in prisons. Another issue that is often neglected is the significant number of people with intellectual disabilities and mental health issues in prison. People with disabilities or mental health issues must be treated from a medical perspective, regardless of the consequences. In addition, it is important to identify such people earlier and for them to receive the necessary support. There have been many sad cases where people with serious issues were not treated and were involved in violent assaults. They were then locked up after the damage was done and people were injured following a stabbing or other violent assault. We must focus on that aspect of the situation as well.

In considering those who end up in prison, we must look at dysfunctional families as well. Many blame poverty as a cause of people ending up in prison but that is only one aspect of the debate. Many of those who end up in prison come from very violent, dysfunctional families where children as young as three do not have a hope in hell of getting out of the situation. The problem is not necessarily poverty; it is a lack of love and warmth for them as young children. One cannot expect a four year old child who lives in a very violent, dysfunctional family or is in a house that is fuelled with cocaine, alcohol and violence to go into school every day and be a normal child. We must face that reality. Dysfunctional and bad parenting is a significant cause of much violence. When one visits prisons, as I have done on many occasions, and look into the eyes, for example, of young men in St. Patrick's Institution, one can see the anger, hurt and damage. That was evident also in the Tipperary case when one looks at the shots of some of those people. We are talking about damaged people. My view is that they were damaged at a very young age. We need to look at that issue. It is a tough one to face because one must be tough with violent crime but one must also take a broader view.

Young people who are abused or damaged in any way must be looked after. We must focus on the issue. I do not wish to sound like a boring, windy liberal but the way to deal with the issue is through early intervention. I have seen it work in many communities throughout this city and I have seen some excellent early intervention projects focusing on dysfunctional families with young children of one, two and three years of age. The children were reached even before they started primary school. That is something the Minister for Children and Youth Affairs should focus on and that is something that should be supported when it comes up at Cabinet level. An excellent campaign that is currently running, called Hands Up for Children, deals with this issue. It is important to put intervention services in place. I have met many young parents and seen the positive results. Research bears out what I say. It is necessary to prove that intervention works. Many groups set up under the auspices of the Minister for Children and

Youth Affairs are in places which operate on the north side of Dublin. In the past such schemes were funded by people such as Chuck Feeney. Such schemes prove that early intervention works and goes a long way towards preventing people ending up in prison.

One issue that greatly irritates me in the context of the justice system and the prison system is the attitude of a section of society which I call the nanny state brigade, whereby we seem constantly to target the regular person going in and out of work. Perhaps the intention is to hand out soft penalty points or to penalise people with soft fines. This morning the Garda was on duty at 8 a.m. trying to catch out people who were in huge traffic jams struggling into work in the rain and damp. Do senior gardaí not accept the reality that the vast majority of taxpayers obey the law and they do not have to come down on them like a tonne of bricks if someone goes into a bus lane for three minutes to get onto the main lane in order to try to get to work on time? It seems that those are the people who are being hammered all the time. I refer to the good responsible driver who does not want to drink and drive, who leaves his car at home when he goes to his factory staff night out but when he goes into work the following day in his car the Garda target him and people like him.

We should get real when it comes to policing and focus on the issues. That is important. We do not want to end up penalising the law-abiding people who are totally excluded from Irish society and who are constantly hammered. The same is true of taxi drivers who get hit with three penalty points when they drive innocently by a speed detection van at 3 a.m. or 4 a.m. at a speed a few kilometres over the speed limit. One taxi driver I met recently had been hit with nine penalty points. The purists can say he should not have been driving at 40 km/h in a 30 km/h zone at 3 o'clock or 4 o'clock in the morning when everybody was in bed. Many taxi drivers are being put off the road by the constant issuing of penalty points detected by those who hide in speed detection vans. We all support road safety but we need to ensure that the penalty points system is not just used to gather money and as a sop to say we had so many prosecutions this year and so many people were awarded so many penalty points. By all means, we should hammer the serious speeders but, for God's sake, we should not be driving people such as van drivers or taxi drivers out of their jobs for the sake of driving 10 km/h or 11 km/h over the speed limit when no motorists are on the road. We need to use discretion and we also need to cop on when it comes to policing because if we do not we will lose the trust and confidence of the public, and the reality is that many members of the public have lost any trust they had in the system.

I might have gone off-message for a while but to return to the subject of prisons, this is a very important Bill. I strongly support it because it facilitates the closing of St. Patrick's Institution. As the explanatory memorandum sets out:

> *Section 3* provides for the repeal of certain enactments relating to St. Patrick's Institution, in particular the remaining provisions that enable the courts to commit offenders under the age of 21 to detention in St Patrick's. The section also contains a transitional provision to ensure the continued lawfulness of the detention of persons previously sentenced to detention under the repealed provisions.

Section 3 is a very important provision relating to young people under the age of 21.

It is also important when discussing the broader issue of justice in this State that we are mindful of people who have come to our State, be they asylum seekers or refugees. Many of them have made a huge contribution but some of them are under pressure because of our justice system. There is a case involving a young man in my constituency, whose neighbours, friends

and job mates are trying to stop his deportation. A letter written by a constituent on his behalf, states:

> I am trying to stop the deportation of Pravish Howlodhur, originally from Mauritius, out of Ireland in the next 12 weeks.
>
> This young man came to Ireland after leaving school at the age of 18. He has lived in North Dublin for the last 9 years. In fact he has lived all of his adult life in Ireland as he left Mauritius in his late teens. To be returned to a developing world country from the developed world would be quite traumatic for him at the age of 29. His emotional attachment, evolved sense of identity and capacity to cope with civil society is essentially with Irish society and not at this stage of his life with his original island home in the Indian Ocean.
>
> He came originally to study but has been working for some years with ... [the] Dublin Airport Authority and due to what they call the unskilled nature of his work [the] DAA refused to apply for a work permit for him. What job [these days] is unskilled? Large organisations can sometimes have an attitude that seems to be a combination of arrogance and indifference to desperate and powerless individuals in our society. If he got the work permit he could apparently stay longer.
>
> ... the campaign on his behalf is based on grounds of human compassion and a demand for ... humane flexibility in the operation of the system.

I am quoting from a letter from a constituent who wrote to me seeking any help or suggestions I could provide to stop this man's inhumane deportation. This is a young man who wants to work in this country. He is to be kicked out of the country because he is unskilled even though he is working with the Dublin Airport Authority. I raise that issue when we are discussing the issue of people and their experience of the justice system. It is important that we focus on this issue.

I welcome the broad thrust of this debate. I note that section 6 contains the transitional provisions to deal with warrants for the committal or remand of persons to St. Patrick's Institution which remain unexecuted on the date St. Patrick's is closed. It is important when we close a system that we have a proper system in place to replace it and that we also deal with the overall issues in regard to the Prison Service.

I am thankful for the opportunity to have contributed to this debate and, overall, I welcome the legislation.

An Leas-Cheann Comhairle: Deputies Dan Neville, Fergus O'Dowd and Bernard Durkan are sharing time.

Deputy Dan Neville: I appreciate the opportunity to welcome this Bill. It will allow for the complete closure of St. Patrick's Institution. It is part of the Mountjoy Prison complex which dates back to 1850. It is located in the former Mountjoy women's prison. It is currently described by the Prison Service as "A closed, medium security place of detention for 17 year old males, held on remand or for trial". It has previously held male prisoners between the ages of 16 and 21. It currently has operational capacity for 34 prisoners. Responsibility for 16 year old males remanded in custody or sentenced to detention was transferred from the Prison Service to the children's detention schools at Oberstown in May 2012.

St. Patrick's Institution has been widely criticised for holding male prisoners aged 16 to 21 years. Best international practice suggests that children under the age of 18 years should be separated from adult prisoners. Article 37 of the UN Convention on the Rights of the Child prohibits the detention of children with adults. The Children Act 2001 provides that children must be detained in a children detention school or centre rather than a prison. Children detention schools have particular objectives for children in their care, which are very different from those in prisons. The Child Act 2001 provides that it shall be the principal objective of children detention schools to provide appropriate educational and training programmes to facilitate children referred to them by the court and by having regard to their health, safety, welfare and interests, including their physical, psychological and emotional well-being. It also provides that they should cater for providing proper care, guidance and supervision for them and preserving and developing satisfactory relationships between them and between their families. It further provides that they should exercise proper moral and disciplinary influences on them and recognise the personal, cultural and linguistic identity for each of them in order to promote their reintegration into society and prepare them to take their place in the community as persons who observe the law and are capable of making a positive and productive contribution to society.

I want to raise an issue, to which Deputy Finian McGrath referred, namely, the system for dealing with prisoners with mental health illness in our prison system. The mental health experts have warned of systematic discrimination against people with serious mental health illness in the criminal justice system. Recent figures show a high level of psychosis among remand prisoners. A private project in Cloverhill Prison identified psychosis arising from conditions such as schizophrenia and bipolar disorder in 561 new remands from 2006 to 2011. Research shows that almost 8% of male remand prisoners have psychotic symptoms, which is ten times the rate of the community at large. Experts have stressed that psychosis is defined as an abnormal condition of the mind, and should not be confused with psychopathic behavioural disorders. Professor Harry Kennedy, who has one of the best reputations for psychiatry, is the clinical director of the Central Mental Hospital. He has stated that figures across the entire prison system are "quite frightening", with an estimated 300 people with severe mental illness coming into the prison service every year. He spoke of the multiplying of this over a period.

Professor Kennedy pointed out: "There is a very strong chance that any young man with a recent onset of schizophrenia or bipolar disorder may spend some time in prison – and it's no respecter of class." I welcome that the Minister of State at the Department of Health and Children, Deputy Kathleen Lynch, has reiterated the Government's pledge to create four regional intensive care units to relieve pressure on the Central Mental Hospital, the State's only specialist forensic mental health facility. It has complained for some time about the scale of court referrals and has a constant waiting list. In addition, we are developing an exit programme from prisons, which would give support to vulnerable people re-entering society. This would run alongside existing court diversion and in-prison mental health services. This is important and it has been neglected not just over the decades but over the centuries. The Cloverhill project has diverted more than 700 prisoners to mental health care settings since it was established in 2006 but it covers fewer than 60% of the remand population, according to mental health campaigners.

2 o'clock

All over the State, people are falling foul of the law because of behaviour arising from mental illness and often they end up in custody, either in the Central Mental Hospital, Dundrum, or in mainstream prisons where, according to repeated inspection reports, their mental and physical health deteriorates. If two people commit a minor offence, the one with a mental

illness is much more likely to be incarcerated because, according to Doctor O'Neill:

> To get bail all you need is an address, a sum of money or someone to vouch for you. These are things people with mental illness don't tend to have. They are often homeless, impoverished, and they have lost contact with their families.

We discussed this aspect recently during the two recent debates on homelessness and those who are on the streets as a result of mental illness. They are released from prison and discharged from psychiatric units back on to the streets without services being available for them. There are factors relating to mental health in our prison population. Lack of early intervention, the prevalence of drug abuse and inadequate community resources all contribute to the high rate of mental illness in prison. Even the closure of psychiatric hospitals may play its part, as the phenomenon known as Penrose's Law suggests. It says a country's prison population increases as its number of psychiatric beds decreases.

Dr. Brendan Kelly, a consultant psychiatrist at the Mater Hospital, has studied the trend in Ireland, and says:

> The obvious hypothesis is that persons released from psychiatric hospitals somehow end up in prison, but that's not at all clear. Is there a subgroup of patients who have ended up in prisons as a result of hospital closures? The answer is probably yes, but it is a small subgroup and it needs to be addressed. The correct solution is not to reopen custodial-style institutions, because they resulted in casual violations of human rights.

In 2012, in his annual report, the Inspector of Prisons, Judge Michael Reilly, concluded that the management of prisoners with mental illness remained a "significant problem", and a review group operating under the Department of Justice and Equality recently admitted that "imprisonment can aggravate mental health problems, heighten vulnerability and increase the risk of self-harm and suicide". However, there have been improvements. A few years ago, when prisoners arrived at Mountjoy, they were brought straight up to the landings and put into shared cells. Now they spend their first night in a committal unit, where they see a nurse and, if necessary, a doctor. They are allowed a phone call and given details of the Samaritans listener service, a counselling network run by fellow inmates. Enda Kelly, Mountjoy's nurse manager said: "We are much more proactive in identifying risk. Officers will approach us and say, 'X is not well.' That is probably the single most important development: the changing culture". If mental illness or a suicide risk is diagnosed on admission, prisoners can be transferred to the high support unit. Prior to this, they were placed in a padded cell in totally unsuitable conditions.

There is a natural tension between balancing the need to address a mental illness with the necessity to provide justice. Of course, it is important in all aspects of this issue to ensure the protection of society and to ensure there is no danger to citizens of violence in our communities but if the resources were there, it would be an excellent opportunity to move people on, because the one thing about prison is that there is a captive audience.

People working in the sector stress that mental illness does not excuse bad deeds. According to Dr. Brendan Kelly:

> Most people may have some irrationality as a result of mental illness, but they also have a lot of rationality. The majority of psychiatrists and citizens would agree there are occasions when individuals are so mentally ill they can't be held responsible for their actions.

> But, even in these cases, victims and families of victims have a legitimate expectation of justice. The issue is complicated by the fact that mental illness is "not a binary state" and can evolve over a life. Kelly stresses, however, "the vast majority of mentally ill people are in no way more violent than other people. They are more likely to be the victims of crime than other people.

I welcome the closure of St. Patrick's Institution and I congratulate the Minister and the Government for bringing the Bill forward.

Deputy Fergus O'Dowd: I very much welcome the Bill. This will be an effective decision, which is long overdue. Nobody wants children sent to St. Patrick's Institution and that will not happen anymore. However, the question is where will they go now. More important, can we give these children who are in detention centres a better life, intervene at an earlier stage and provide more facilities so they will not have to be housed in the centres that are proposed?

I received a reply to a parliamentary question I tabled to the Minister for Children and Youth Affairs regarding the number of children in private residential care centres for those aged under 17. They could be in the centres voluntarily or they could be put there by the courts. On average, the State spends €150,000 per annum on each child. In my constituency, Louth, communities have experienced problems with people who have been placed in high dependence units, which might hold up to four children at a time. I am concerned about whether these units are the best place for children. Is there a better model? Can children in dysfunctional families be identified at an earlier stage whereby other types of intervention could be made that might be more effective than the current model? Ultimately, children who do not successfully improve their pattern of behaviour when they go through these care institutions will end up in prison anyway. The Government has identified the need to increase the services and resources available to child and family centres and to go back further to when children are in pre-school. It is exceptionally clear from disadvantaged communities that pre-school education and involvement with children before they go to primary school has a very significant capacity to improve their outcomes in terms of educational attainment and socialisation. The result is a much happier, more involved and integrated society. It is absolutely clear that the earlier we identify, intervene and support children who come from a dysfunctional family or have mental health issues, the better their outcome will be. That is a particular objective of everybody.

It is a matter of great concern that in an inspection of Tusla and the services it provides for children in County Louth it received a score of one out of 27. In other words, in almost all cases, it failed or has failed in the past. I welcome the fact that its chief executive and chief operations officer are taking direct responsibility for what is happening in my constituency with the care of children who would otherwise end up in prisons. I welcome their concern and involvement. We need a value for money audit of our services for children right across the country to examine whether it is the best model and conforms to best practice internationally. Is there a better way? I welcome the personal commitment of Mr. Gordon Jeyes of Tusla and his chief operations officer to examine these issues. They are absolutely committed to Tusla being the national centre of excellence for looking after young people and keeping them out of the care of the State as they grow into young adults. Such an assessment would show if we are getting value for money and establish if there is a better way to do what we have been doing to get better outcomes. It will be for the good of everybody.

Yesterday, I listened to a famous Irish artist with a very difficult family background speak to Miriam O'Callaghan. I was deeply impressed that he had a very difficult family background,

had been involved with gangs and other criminal activity when he was very young, yet now his art is of such a high professional standard that each painting is worth at least $1 million. This shows how successfully he has overcome a very difficult background. He has shown leadership and commitment to bring about change in his own life which affects everyone who comes into contact with him. He is a brilliant person and has succeeded fantastically to overcome his background. In his assessment of his life, he respects how disadvantaged his parents were. As a former teacher, I have known lots of young people who despite the best efforts of teachers, parents and peers ended up in prison and on the wrong side of the law. A very significant number of those are not violent people but fell into drugs and criminality because of poverty, lack of education or educational attainment or their inability to read and write. There are huge issues in our society and we are throwing money at them. We need to reassess and look for a better way to keep people out of trouble, support families, and help these young people. We could look again at better models of care and early intervention. By the time young people reach St. Patrick's Institution, which thankfully is closing, they have passed the stage at which they can be helped because in most cases they are fixed on a course which is irreversible. The message I have from my experience of working with young people and my knowledge of the communities that I work in is that the earlier the intervention, the better and more successful it will be. I am talking about starting at pre-school, working in primary schools and putting more resources into places of disadvantage.

Some years ago, the *Journal of Health Gain*, which was produced by Maynooth University, mapped Dublin city by the location of where people died younger, had the worst health, lowest educational attainment and most often ended up in Mountjoy jail. Those people all came from particular electoral divisions of Dublin. It is a fact that communities that suffer poverty, ill-health and criminality are the most deprived in society. The only way forward is to put money into those communities to provide earlier interventions, more support services and family supports. That is the only way we can change. In terms of the significant positive outcomes for educational attainment, the younger those children can be reached, the better. The support services given right around the country to breakfast clubs, homework clubs and getting involved with communities is the future and is how change is brought about. It is how change is happening.

I welcome the principle of the Bill but I have concerns about how we can make a better country for these young people so they feel part of society, that it is there for them, reaches out to them and helps them, their siblings and family. My criticism of Tusla is balanced by my knowledge of its commitment to bring about change. It needs more funding as it has a significant inability to employ social workers. There is a shortage of social workers nationally to intervene and help in situations that clearly exist. Tusla needs to get a better report from HIQA when it next examines Tusla's services in County Louth. I have no doubt that those who work at the very top in Tusla are committed to achieving that. It will impact right through our society and offer a better opportunity for young people to succeed and achieve the best they can for their lives with the talents they have been given.

Deputy Bernard J. Durkan: I welcome this legislation for a number of reasons. I refer to the important points made by other speakers on the detention of juveniles and the detention of all prisoners, which I will speak on in a moment. In 1985, T.K. Whitaker wrote, on the viability of St. Patrick's Institution as a corrective, rehabilitative or educational centre for reintroducing young people who have erred into society, that, "The dominant features of St. Patrick's for the majority of those contained there are boredom and demoralisation." That was a very significant

remark at that time. In the intervening years much legislation has passed through the Houses and a large number of prisoners have been through the system of detention. The 1985 report should have been adequate to force change to occur much sooner. It went on to state:

> Rehabilitation is not possible where the physical and environmental conditions are such as to nullify any personal developmental programmes. Facilities and services which a human and morally acceptable detention centre should provide for juveniles could not be provided even in a renovated St. Patrick's Institution.

In his annual reports for 2004 and 2005 Mr. Justice Dermot Kinlen described St. Patrick's Institution as "a finishing school for bullying and developing criminal skills", which is a sufficient epitaph that whatever the initial purpose of the institution was, it was not capable of delivering services of a rehabilitative nature or improving in any way the opportunities for those who had deviated from the right path.

Deputy Finian McGrath made an interesting contribution. It should be remembered that, in the case of juvenile offenders, insecurity is often at the heart of their problems. They may be insecure for many reasons such as dysfunctionality within the family home and so on. Without a shadow of doubt, dysfunctionality impacts on a child and moulds his or her character such that when first introduced to what is commonly known as corrective training it should be conducive to re-establishing his or her confidence in the system and improving his or her chances of induction into society in a way that is reassuring from his or her point of view.

I probably have a little more knowledge of prisons than many of my colleagues. If one looks into the eyes of a prisoner, particularly a young prisoner, one will see doubt, fear and concern about the future and know that there is a lack of knowledge of what might happen to him or her in certain circumstances. If the system is to be rehabilitative and educational, it needs to provide reassurance for the prisoner that society will look after him or her if he or she co-operates and helps it. When we point the finger and say people are beyond salvation, that there is no hope for them and so on, all we are doing is abdicating our responsibilities. I do not agree with that approach. With proper intervention and the right programme, it is possible to rehabilitate the person who has erred and help him or her to regain confidence in the system. It is vital that an offender who has had a deprived childhood or suffered social and economic deprivation or abuse in the home or society is, through proper intervention, given an opportunity to change and thus make a valuable contribution to society.

I have mentioned that insecurity has a huge impact on a family and, in particular, the children within it. That insecurity can lead to a deviation from the straight and narrow early on in a child's life or during his or her teenage years. This brutalisation of children, incidences of which have been brought to our attention, leads them to believe only the fittest will survive and that if they are not able to stand up for themselves, they will not survive. Fear then takes over. When fear takes over a child or teenager, he or she is liable to do anything to distance himself or herself from the place in which he or she finds himself or herself at the time.

A number of speakers referred to dysfunctionality within the family home and poverty as being among the reasons young people became involved in crime. I do not agree. Poverty may be a contributory factor, but there are many people who come from poor families who do not engage in criminality or regard it as a natural progression. It is not true to say, therefore, that all people who are poor are naturally inclined to engage in lawlessness or criminality. There are other influences at play also, about one of which nobody talks about any more. A number

of years ago parents were discouraged from giving their children cowboy outfits and guns for Christmas on the basis that it would give the wrong message. The messages being sent in terms of the violence depicted in films shown on television these days which are often considered appropriate for viewing by small children are very worrying. I have no doubt that this is impacting on young people who are subject to peer pressure. Witnessing gratuitous violence has, without doubt, an influence on criminality. Violence against women is depicted in a way which indicates that it is normal practice. Previously if a person was shot in a film, he or she fell down. Nowadays he or she will have his or her throat cut, followed by people stomping on his or her head, which violence no human being could withstand in the ordinary course of events and this is portrayed as entertainment. It is also portrayed as being normal activity in today's world. This is hugely damaging to children, in particular those who are impressionable. There are many people, including children and teenagers, who are impressed by gratuitous violence and accept it as being part of life today, which is sad. This is very damaging to our young population. It is important that those with responsibility address this problem before it gets worse.

It is important that, on leaving an institution after a first incarceration, a young offender recognises that what he or she did was wrong and that he or she has the wherewithal, by way of a rehabilitation and education programme, to become part of society. I agree with the remarks made by colleagues about juveniles with mental health problems. There is no point in referring a juvenile or an adult to an institution of correction if, on leaving it, his or her greatest achievement will be acquiring a masters degree in criminal activity. Where this occurs, society has done the offender a disservice because he or she has learned more in prison about criminality and how to succeed in that environment than he or she would have learned had he or she never been sent to prison.

The extent of the intervention, in particular in the case of first-time offenders, has to be focused on looking after their education, presenting them with the various options that can, should be and are available and trying to ensure the intervention is made not so much in a punitive and regressive way but in a way that is helpful to their ability to live normal lives in society. It must help them recognise there is another, better way and that, if they follow that route, they are likely to get support from the State. Unfortunately, it is easy for people to say these offenders were wrong, which they were, and should be condemned for ever more but that is not the way to do things. If we proceed along that route, we will only end up with bigger and bigger prisons holding more and more people. There will be no possibility of rehabilitation or reintroduction into society or of changing their views on society. That is not a good thing.

Various people who have progressed after prison have been mentioned. Johnny Cash comes to mind, a Leas-Cheann Comhairle. Both you and I well know his story. He sang about it many times in the past. I am sure the Minister of State has heard it as well although he was before her time. It is a fact, however, that he overcame the difficulties with which he was then surrounded and saw another side of society in which he excelled.

I do not wish to delay the debate but I am strongly of the view that if corrective training does not carry the degree of education, support, reassurance and rehabilitation of the human being it should, no matter what we do in terms of location, it will not work. However, it should work. We need to focus on that element. Having tabled numerous parliamentary questions on it, I have already spoken on previous occasions on what prison and detention does for an individual. It should be an improvement and a reassurance. When juveniles are referred to a place of detention they need to feel the people into whose charge they are going will help them. They need to know the system will help them. They need to know that when they come out, the date

of which they will know when they go in, they will be in a better position to survive in society. What they should not come out with is a Ph.D. in criminality. They should not have learned more about how to take on the system they feel has not been fair to them.

In the old system, when health boards had visiting committees, I was one of the people who had to visit the various institutions from time to time. It was a great way for public representatives to learn about the system and how it affected people. I saw some appalling situations, including inappropriate referrals, in particular of young people, to mental institutions where they were associated with people way older than themselves. Juveniles were being treated the same way as people with serious mental disorders who were to be detained for a long time. If they were in a different institution, they would have had a very good chance of survival and a different attitude to society.

It would also have been far better value for money in so far as the State was concerned. Value for money comes into it as well. There is no use spending money on something that will not improve society or the individual and which will do nothing other than punish someone. Punishment is fine in so far as those who administer the punishment may feel they have done their bit and avenged society. This, however, is not about vengeance or reprisal. It is about doing the best for those involved. The end benefit should be one to society.

Deputy Jerry Buttimer: In welcoming the opportunity to speak on the Bill, I wish to speak as Chairman of the Oireachtas Committee on Health and Children, in which capacity I will reference Oberstown. I also wish to speak as a Deputy from the city of Cork, where there is a proposal for a new prison. The important point is that the Minister for Children and Youth Affairs has indicated it is his intention that the practice of detaining children in adult prison facilities will cease as early as possible this year. All of us who are involved as members of the Committee on Justice, Defence and Equality or the Committee on Health and Children or as Members of this House will welcome the fact that St. Patrick's Institution will close.

St. Patrick's Institution was where we housed young adult offenders and children. Everyone recognises that this approach was wrong, unhelpful and did not lead to rehabilitation. When we hear the reports today on the number of people who re-offend within three years of coming out of our prison system, it begs the question, what is the main purpose of detention and incarceration? The purpose of this Bill is one which I am sure will be welcomed by all Members of the House in the context of where we are going as a society and as a country. The Minister of State in her fine speech referred to Dr. T.K. Whitaker in the 1980s and noted that there has been a huge momentum towards closure. This Government, in its programme for Government, committed to closing St. Patrick's Institution and refurbishing, rebuilding and changing Oberstown. The committee I chair visited it and met members of staff and I will return to that matter later.

It is important to examine how we want to rehabilitate and educate young people who offend. It is important to examine how we allow the system punish them for their wrongdoing. It is also important they recognise that wrongdoing has a consequence while, at the same, they are given the opportunity and the skills to put right their wrongs. This is why the programme for Government was critical in terms of bringing those under 16 years of age and between 16 years and 18 years in custody into the right zone.

The €56 million development of Oberstown was necessary and one we all welcome. The development is now almost complete. Along with my colleagues in the Committee on Health and Children, I had the opportunity to visit the campus. I thank all the staff who work in Ober-

stown. In recent weeks and months, these men and women have seen changes to their work schedules and working lives as well as having to deal with serious workplace issues. All of us involved in the area of children and justice want to see those working in our prison system and our young offenders system be able to do so in a safe and secure manner. At the same time, we want those who are under their care to be equally safe when detained. As the Minister of State stated in her reply to the committee in September, we want children in the criminal justice system to be detained as a last resort only. There is a need for an ongoing dialogue on Oberstown. We have heard the concerns of staff members. The Minister, her Department and the staff at Oberstown are committed to ensuring the staff do not have to continue to endure some of the difficulties currently faced by them.

I hope we will see an end to 16 and 17 year olds being detained by order of the courts. There is no place in the criminal justice system for incarcerating young people in Dickensian institutions.

On the question of admission to custody, I do not want to be controversial in the sense that what I speak about is outside the remit of the House, but members of the Judiciary must give consideration to where they place young people. Should St. Patrick's Institution or the Oberstown centre be the first port of call? Issues such as the age of the defendant, the complexity of the crime and proportionality must be taken into account. I am not trying to minimise in any way the crimes that have been perpetrated, but we must examine continually the youth justice system and the sanctions imposed on young people.

It is important that we continue the programme of capital investment and recruitment of new staff. In that regard, in recent weeks the Oberstown centre has been advertising posts and recruiting new staff. The management structure and culture within institutions must be closely monitored.

The report of the Inspector of Prisons, Mr. Justice Michael Reilly, referred to a lack of attention to human rights and the prevalence of drugs within St. Patrick's Institution, both of which are unacceptable.

I commend the Minister for Justice and Equality and the Department for the recent investment in Cork Prison. City councillors and Oireachtas Members from Cork city recognise the importance of the investment of €38 million in the development of a new prison. It will increase capacity and allow for the recruitment of more staff. In recent days Newstalk radio ran a series of programmes on the prison. I commend those involved in the development project which will be completed on time. A new, modern prison is being built on a site adjacent to the existing prison. I also pay tribute to the Cork Prison Visiting Committee for its annual report for 2014. Often we do not see what happens behind the scenes, but the members of the visiting committee are actively involved in the workings of the prison.

Education and training are of paramount importance. Prisoners are engaged in numerous activities, including taking various FETAC-level courses.

On the issue of bullying, I pay a particular tribute to the staff and the visiting committee for setting up a pilot project, with the Cork Traveller Visibility Group, to deal with the bullying of Travellers in prison. Classes were offered to members of the Traveller community which proved successful. As a former director of adult education, I am very pleased that staff at Cork Prison have been providing night classes for prisoners. One such class focuses on the making

and fixing of hurleys, which will be of interest to the Minister of State and the Leas-Cathaoirleach. The class has enabled prisoners to develop a new and useful skill.

It is important to point out that Cork Prison has adopted a multi-agency approach which plays a key role in it being able to offer educational opportunities, tackle mental health problems, addiction problems and so forth. While it is correct that we incarcerate people for wrongdoing, we must continue to engage with and mentor them when released, particularly those who want to change and begin a new life. We must encourage them and give them every opportunity to do just that. The criminal justice system is an integral part of society and people look to the courts for safety and sanction. We all support the Judiciary and it is very important that it operate independently.

I again commend the Cork Prison Visiting Committee for its information booklet which was made available in 2014. It facilitates improved access to services within the prison for prisoners, which is very important as it allows them to begin a new phase of their lives, even while still in custody. I acknowledge the work of the Irish Prison Service, the visiting committee and staff in that regard.

The Irish Prison Service in Cork was instrumental in providing two excellent playgrounds for the children of St. Brendan's and St. Mark's primary schools on the north side of the city with funds from the community dividend, which is indicative of the partnership approach adopted. As the visiting committee's report points out, the playgrounds were badly needed and greatly appreciated by the parents, staff and pupils of the aforementioned schools.

I have referred to the hurley repair workshops that take place in Cork Prison. I commend the officers involved, particularly Mr. Andrew McCarthy who has been involved for almost two decades. In the workshop prisoners are taught a new skill which gives them a new outlook, while also benefiting local GAA clubs. It is estimated that between 100 and 150 hurleys are repaired in the workshop. Last year, 22 basic certificates and eight advanced certificates were awarded to prisoners. The work of prison visiting committees and the reports they produce often go unnoticed.

I take the opportunity to pay tribute to Fr. Michael Kidney who was chaplain in Cork Prison for many years. He was a devout but ordinary man whose life was built on the maxim of Christianity. He provided hope for so many prisoners who had very little to hope for in their lives. I must also pay tribute to Sr. Mary Jo Sheehy for the invaluable work she has done in Cork Prison.

In the context of this debate we must review the rules for what were known as detention schools and also how we discipline young people. I hate using these old, cold terms because that is not what this debate is about. It is about moving on to a different era and new opportunities. The Oberstown centre must be viewed in that context. The Minister for Children and Youth Affairs is committed to tackling various issues within the youth justice system. The Oireachtas Joint Committee on Health and Children raised the matter with him last week and has raised it with management at Oberstown. There is a need for further engagement and dialogue because we need a more co-ordinated approach to detaining young people. I hope any custodial sentence imposed will prove beneficial to those concerned because custody should be about rehabilitation and re-education. It should not just be a matter of locking the door and throwing away the key because that does not work. We must offer people hope and the opportunity to begin a new life.

The passage of the Bill is significant. It is important that we learn from the mistakes of the past. Oberstown will transform the issue of detention for young people. We must not spurn that opportunity. We must use it to create a secure and safe environment for the staff who work there. It must become the beginning of a second chance for the young people placed there. It is about allowing them to recognise their mistakes and go on to make a contribution to society. If people re-offend at a later time, that poses a different challenge. We must consign St. Patrick's Institution to history. It has out-served its time. In creating the new campus at Oberstown, it is important that we get it right.

I commend the Minister for the work she has been doing in the Department. The Bill before us will allow young people who are sent to Oberstown the space and time to learn the importance of right and wrong.

Minister of State at the Department of the Environment, Community and Local Government (Deputy Ann Phelan): I thank all the Deputies who contributed to the debate. Their contributions have been very good and interesting. While they all may not have spoken specifically to the Bill, we have been given much food for thought.

The Prisons Bill finally delivers on the calls to close St. Patrick's Institution which, as we know, go back over 30 years. Achievement of the goal set out in the programme for Government commitment to end detention of children in adult prison facilities is a key priority for the Minister for Justice and Equality and the Minister for Children and Youth Affairs. Deputy Buttimer referred to this as being a historic day. Substantial progress has been made on this commitment, with the capital development project in Oberstown now largely complete, responsibility for all 16 year old males and 17 year old male remands assigned to Oberstown and the recent enactment of the Children (Amendment) Act 2015.

Before I continue with my closing remarks, I want to address some of the issues that were raised. Deputy Durkan raised a specific question about deportation. The amendment regarding deportation of prisoners will not affect the operation of existing procedures under immigration legislation in cases where a person may wish to seek an appeal or review of a deportation order.

Deputy Buttimer recognised the correspondence between his committee and the Minister for Children and Youth Affairs, Deputy Reilly. The Minister wrote to the Chairman of the Oireachtas Joint Committee on Health and Children last week about a range of issues regarding the Oberstown campus. The following developments that have occurred in recent months are to be noted: the new education and recreational building was opened in September 2015 and is now fully operational; progress has been made with the final residential unit under the Oberstown capital project and the unit is due to be handed over in late December 2015 or early January 2016; a training officer was appointed in September and a campus-wide training strategy and schedule is currently being implemented; and a designated human resource manager for the campus commenced in post in August 2015, which will ensure that best practice human resource management is the norm for the campus. There has been a review of the security call system in use on the campus and a revised staff notice has been issued on its use.

Deputies also referred to the HIQA reports, the most recent of which was issued in October. While it does single out particular areas for further attention, it also recognises that progress is clearly being made in the development of the campus. The updated action plan has been accepted by HIQA on foot of the inspection. It identifies ongoing areas of improvement for the delivery of service on the campus in order to ensure that the journey of a young person through

Oberstown is seamless. HIQA also inspected the campus in mid-November and the initial feedback from that inspection is also positive.

All the Deputies have referred to education, rehabilitation and training for prisoners. If the Leas-Cheann Comhairle will allow me, I will outline a couple of very important points. The Prison Service provides a wide range of rehabilitative programmes to those in custody. These include education, vocational training, health care, psychiatric and psychological care, counselling, and welfare and spiritual services. These programmes offer purposeful activity to those in custody and encourage them to lead law-abiding lives on release. They are available in all prisons and all prisoners are eligible to use them. The development of prisoner programmes forms a central part of the Prison Service three-year strategy for 2012 to 2015. There is a clear commitment to enhanced sentence planning through integrated sentence management and the delivery of prison-based rehabilitative programmes.

The Government's unprecedented programme of reform in closing St Patrick's Institution and developing national child detention facilities at Oberstown will allow young people sentenced to detention, which is a last resort under the Children Act 2001, to be placed in a secure environment that will offer them a second chance to be productive people who contribute to society.

I am advised that most of the 17 year olds currently serving sentences in Wheatfield will either reach the age of 18 or will complete their sentences by the end of March 2016. Deputies will appreciate that this position changes on a daily basis as a result of cases being dealt with in the courts. When the relevant provisions of the Children (Amendment) Act 2015 and the Prisons Bill are commenced, the Prison Service and the Youth Justice Service will be in a position to evaluate the situation regarding the 17 year olds then detained in Wheatfield. However, at present, it is not envisaged that the remaining 17 year olds will transfer to Oberstown. Rather, it is envisaged that they will continue to serve their sentences in Wheatfield. This is consistent with what happened previously in the transfer of responsibility to Oberstown for all 16 year old males and 17 year old males on remand. Those phases of transition were done on the basis of new cases only of children received under new court orders from a particular date.

As regards issues that have been raised in respect of imprisonment for non-payment of fines, the Fines (Payment and Recovery) Act 2014 represents a major reform of the fine payment and recovery system in Ireland. The new system provides flexibility for the payment of fines and seeks to reduce to a minimum the number of people committed to prison for non-payment of fines, which will now be a last resort. While it is desirable to commence the legislation as soon as possible, it was important that the necessary preparations were made, in particular by the Courts Service, in order to ensure that the significant changes to the fines system are implemented smoothly and effectively from the start. Good progress has been made on this preparatory work and it is now envisaged that the Act will commence on 11 January 2016.

3 o'clock

Once again, I thank Deputies for their support for the Bill.

Question put and agreed to.

Sections 1 to 23, inclusive, agreed to.

NEW SECTIONS

An Leas-Cheann Comhairle: Amendments Nos. 1 and 3 form a composite proposal and may be discussed together.

Minister of State at the Department of the Environment, Community and Local Government (Deputy Ann Phelan): I move amendment No. 1:

In page 12, after line 23, to insert the following:

"PART 5

MISCELLANEOUS

Taking of certain persons from prison for the purposes of deportation or removal from the State

24. (1) Where a person who is serving a sentence of imprisonment is subject to—

(a) a deportation order under section 3 of the Immigration Act 1999 or an order made under any other enactment that deems such order to be an order made under the said section 3, or

(b) a removal order under Regulation 20(1)(a) of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006),

the Minister may direct that the person, specified in the direction, shall be taken from the prison, in accordance with this section and subject to the condition specified in subsection (3)(a), if, in the opinion of the Minister, it is necessary or expedient to facilitate the person's deportation or removal, as the case may be, from the State before the completion by the person of the term of imprisonment concerned.

(2) (a) The Minister shall not give a direction under *subsection (1)* in respect of a person where more than one year of the term of imprisonment concerned remains to be served in a prison.

(b) For the purpose of *paragraph (a)*, in determining the term of imprisonment that remains to be served in a prison, account shall be taken of the period of any remission of sentence earned by the person in accordance with Rule 59 of the Prison Rules 2007 (S.I. No. 252 of 2007).

(3) (a) The condition referred to in *subsection (1)* is that the person shall remain out of the State as required by the deportation order or removal order, as the case may be, to which the person is subject.

(b) A person who is taken from a prison pursuant to a direction under *subsection (1)* shall comply with the condition specified in *paragraph (a)*.

(4) Where a direction under *subsection (1)* has been given in relation to a person

specified in the direction—

(a) the direction shall be given to the governor of the prison concerned,

(b) a notice in writing in the form prescribed under *subsection (5)*, or in a form of like effect, of the direction and the condition specified in *subsection (3)(a)* shall be completed and signed by the governor of that prison,

(c) the person specified in the direction shall sign or place his or her mark on the notice in the presence of a witness (other than the governor of that prison) who shall also sign the notice,

(d) the person specified in the direction shall be given a copy of the notice at the time of his or her being taken from the prison in accordance with this section, and

(e) the governor of the prison concerned to whom the direction is given shall comply with that direction, and shall make and keep a record in writing of that direction.

(5) The Minister may by regulations prescribe the form of the notice referred to in *subsection (4)*.

(6) If a person specified in a direction under *subsection (1)*, having been requested to sign or place his or her mark on the notice referred to in *subsection (4)*, refuses to sign or place his or her mark on the notice—

(a) the refusal shall be recorded on the notice, and

(b) the refusal shall not affect the lawfulness of the person's being taken from the prison in accordance with this section.

(7) A person who is to be taken from a prison pursuant to a direction under *subsection (1)* shall be placed for the purposes of this section by the governor of the prison concerned in the custody of an immigration officer or a member of the Garda Síochána and detained by him or her in accordance with *subsection (8)*.

(8) (a) A person who is placed in the custody of an immigration officer or a member of the Garda Síochána and detained under *subsection (7)* may be detained for the purpose of his or her being placed in accordance with *subsection (9)* and for a period or periods each not exceeding 12 hours—

(i) in a vehicle, for the purposes of bringing the person to the port from which the ship, railway train, road vehicle or aircraft concerned is due to depart, or

(ii) within the port referred to in subparagraph (i).

(b) On the expiry of each period of 12 hours referred to in *paragraph (a)* an immigration officer or a member of the Garda Síochána shall return the person to the prison in which he or she is required in accordance with law to be detained and place the person immediately back in the custody of the governor of the prison concerned.

(9) A person who is placed in the custody of an immigration officer or a member of the Garda Síochána and detained under *subsection (7)* may be placed on a ship, railway

train, road vehicle or aircraft about to leave the State by an immigration officer or a member of the Garda Síochána, and shall be deemed to be in lawful custody whilst so detained and until the ship, railway train, road vehicle or aircraft leaves the State.

(10) The master of any ship and the person in charge of any railway train, road vehicle or aircraft bound for any place outside the State shall, if so required by an immigration officer or a member of the Garda Síochána, receive a person who is placed in accordance with *subsection (9)* on board such ship, railway train, road vehicle or aircraft and afford him or her proper accommodation and maintenance during the journey.

(11) (a) Where a person, having been taken from a prison pursuant to a direction under *subsection (1)*—

(i) escapes the lawful custody of an immigration officer or member of the Garda Síochána, or

(ii) contravenes the condition specified in subsection (3)(a) (save where *subsection (13)* applies),

such person shall be deemed to be unlawfully at large.

(b) A person who is unlawfully at large under *subparagraph (i)* or *(ii)* of *paragraph (a)* shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 6 months.

(c) An immigration officer or a member of the Garda Síochána may arrest without warrant a person whom he or she suspects to be unlawfully at large under *subparagraph (i)* or *(ii)* of *paragraph (a)* and the person may be returned to the prison in which he or she is required in accordance with law to be detained and placed immediately back in the custody of the governor of the prison concerned.

(12) Where a person, having been taken from a prison pursuant to a direction under *subsection (1)*—

(a) by reason of his or her conduct, is refused permission to embark, or is required to disembark, or is disembarked from, the ship, railway train, road vehicle or aircraft on which he or she was to be deported or removed from the State,

(b) does not leave the State by reason of ill-health, or

(c) does not leave the State because the ship, railway train, road vehicle or aircraft on which he or she was to be deported or removed from the State failed to leave the State,

an immigration officer or a member of the Garda Síochána may return the person to the prison in which he or she is required in accordance with law to be detained and place the person immediately back in the custody of the governor of the prison concerned.

(13) (a) Where a person, having been taken from a prison pursuant to a direction under *subsection (1)*, returns to the State because the ship, railway train, road vehicle or aircraft on which he or she was to be deported or removed from the State returns to the State, having failed to complete its journey, such person shall be deemed to be unlaw-

fully at large.

(b) An immigration officer or a member of the Garda Síochána may arrest without warrant a person whom he or she suspects to be unlawfully at large under *paragraph (a)* and the person may be returned to the prison in which he or she is required in accordance with law to be detained and placed immediately back in the custody of the governor of the prison concerned.

(14) The currency of the sentence of imprisonment of a person who is unlawfully at large under *subparagraph (i)* or *(ii)* of *subsection (11)(a)* for any period shall be suspended in respect of the whole of that period.

(15) In this section—

"governor" includes, in relation to a prison, a person for the time being performing the functions of governor;

"immigration officer" has the meaning it has in section 3 of the Immigration Act 2004.

(16) In this section—

(a) references to a person who is serving a sentence of imprisonment shall be construed as including references to a person being detained in a place provided under section 2 of the Prisons Act 1970 and "sentence of imprisonment" shall be construed accordingly, and

(b) references to a prison shall be construed as including references to a place provided under the said section 2.".

Amendment agreed to.

An Leas-Cheann Comhairle: Amendments Nos. 2 and 4 form a composite proposal and may be discussed together.

Deputy Ann Phelan: I move amendment No. 2:

In page 12, after line 23, to insert the following:

"Amendment of section 41 of Petty Sessions (Ireland) Act 1851

25. Section 41 of the Petty Sessions (Ireland) Act 1851 is amended by adding the following:

"For the avoidance of doubt it is hereby declared that the reference in this section to the executing of any warrants does not include a reference to the addressing of such warrants.".".

Amendment agreed to.

TITLE

Deputy Ann Phelan: I move amendment No. 3:

In page 5, line 7, after "enactments;" to insert the following:

"to make provision, in respect of certain persons who are serving sentences of imprisonment, for the purposes of deportation or removal from the State;".

Amendment agreed to.

Deputy Ann Phelan: I move amendment No. 4:

In page 5, line 7, after "enactments;" to insert "to amend the Petty Sessions (Ireland) Act 1851;".

Amendment agreed to.

Title, as amended, agreed to.

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

An Leas-Cheann Comhairle: The Bill, which is considered to be a Dáil Bill in accordance with Article 20.2.2 of the Constitution, will be sent to the Seanad.

The Dáil adjourned at 3.05 p.m. until 11 a.m. on Tuesday, 15 December 2015.