



## SEANAD ÉIREANN

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*Déardaoin, 19 Feabhra 2004.*  
*Thursday, 19 February 2004.*  
 —————

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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*Paidir.*  
*Prayer.*  
 —————

### Business of Seanad.

**An Cathaoirleach:** I have received notice from Senator Tuffy that, on the motion for the Adjournment of the House today, she proposes to raise the following matter:

The need for the Minister for the Environment, Heritage and Local Government to outline his Department's response to the decision at European Union level which found against the practice of local authorities charging a fee for submissions made in respect of planning applications.

I regard the matter raised by the Senator as suitable for discussion on the Adjournment and it will be taken at the conclusion of business.

### Order of Business.

**Ms O'Rourke:** The Order of Business is No. 1, European Parliament Elections (Amendment) Bill 2003 — Committee Stage, to be taken at the conclusion of the Order of Business and to conclude not later than 1 p.m. If it is felt that it is appropriate to continue with Report Stage, I will return to the House and discuss it with the party leaders.

**Mr. B. Hayes:** An amendment in my name was carried in the House yesterday. Will the Leader enter discussions with the Minister for Social and Family Affairs, Deputy Coughlan, to ensure this amendment is not overturned? I do not see this as a defeat for the Government——

**Ms O'Rourke:** Yes, he does.

**Mr. B. Hayes:** ——but as a good day for the Seanad. Our primary role in this House——

**An Cathaoirleach:** That is yesterday's business.

**Mr. B. Hayes:** I am referring to what will happen next week.

**An Cathaoirleach:** We must deal with today's Order of Business.

**Mr. B. Hayes:** I am dealing with today's Order of Business. I appeal to the Leader——

**An Cathaoirleach:** That does not relate to today's Order of Business.

**Mr. B. Hayes:** I am referring to a matter that will come before the House next week.

**An Cathaoirleach:** That is next week's business.

**Mr. B. Hayes:** That is the question I am asking, I am entitled to know what will happen. This would be finished if the Cathaoirleach stopped interrupting me.

**An Cathaoirleach:** What?

**Mr. B. Hayes:** This would all be over if the Cathaoirleach stopped interrupting and I would ask him to do that. This is a serious matter.

**An Cathaoirleach:** I take exception to that.

**Mr. B. Hayes:** I am asking Leader of the House, given the decision of the House yesterday——

**An Cathaoirleach:** Yesterday's business does not arise and I am ruling the Senator out of order. He must speak on today's Order of Business.

**Mr. B. Hayes:** I am referring to today's Order of Business. This House has an important role in reviewing legislation. When this matter was debated in the other House last week, less than an hour was devoted to it, while we spent six hours on it yesterday. I urge the Government not to overturn this amendment.

**An Cathaoirleach:** That is a matter for the Government. Today's business is the European Parliament Elections (Amendment) Bill.

**Mr. B. Hayes:** This House must stand up for itself. It is a reviewing body and we must respect——

**An Cathaoirleach:** I ask the Senator to speak on today's Order of Business.

**Mr. B. Hayes:** I am speaking on today's Order of Business and I ask for respect for this side of the House from the Cathaoirleach.

**An Cathaoirleach:** I take grave exception to that. I respect every side of the House.

**Mr. B. Hayes:** The Cathaoirleach is creating this difficulty for himself.

**An Cathaoirleach:** No.

**Senators:** Withdraw.

**Mr. B. Hayes:** Indeed he is.

**An Cathaoirleach:** That is wrong.

**Mr. B. Hayes:** On a second matter——

**An Cathaoirleach:** I ask the Senator to withdraw that remark.

**Mr. B. Hayes:** What remark?

**An Cathaoirleach:** That I am creating a problem for myself.

**Mr. B. Hayes:** No, I will not withdraw it.

**An Cathaoirleach:** If the Senator does not withdraw the remark, I will ask for him to be named.

**Mr. B. Hayes:** What did I say that was wrong?

**An Cathaoirleach:** It is unfair to accuse the Chair of creating a problem for itself.

**Mr. B. Hayes:** Any objective person watching would say the same.

**An Cathaoirleach:** Will the Senator withdraw the remark?

**Mr. B. Hayes:** If the Cathaoirleach is taking offence, I will withdraw the remark.

**An Cathaoirleach:** I thank the Senator. He can speak on today's Order of Business.

**Mr. B. Hayes:** I ask the Leader to refer to that matter in the course of her reply on today's Order of Business.

Last week I asked for a debate on sentencing policy. There is considerable public disquiet concerning a recent case in Dundalk where a person was convicted of an appalling charge of manslaughter against a German national, yet we discovered after the trial that the named individual had committed a similar offence only ten years earlier. We need a debate on sentencing policy. I am not suggesting that the Executive or the Houses of the Oireachtas should interfere in any way in court policy on this issue, but we need to know from Government its policy on a range of issues, including concurrent sentencing, the length of time offenders serve and the issue between manslaughter and murder, as was referred to by Mr. Justice Carney in a lecture he gave only six months ago. I urge the Leader to organise a debate on this matter.

**Mr. O'Toole:** It is remarkable that yesterday when we were honouring Senator Maurice Hayes on his accolade of European of the Year, the big boys club of Europe was meeting the big boys from the UK, France and Germany. Most of

Europe cheered when the Taoiseach at the beginning of our Presidency made it clear that Europe did not see itself working in a two-tier direction. I do not know what these chaps discussed yesterday, maybe it was simply sex, television and sport, but in terms of the impression they are giving, it is perhaps time they were told a few home truths, namely, that France and the UK, in the course of their histories, not that long ago were attempting to create empires covering half the world and that the third element of the triumvirate meeting yesterday sought world domination not that long ago.

The rest of us should not need to be sitting around like compliant sheep wondering what these guys are at. We should remind them that the UK has never been completely committed to Europe. It opted out of the Social Chapter, the eurozone and is now trying to create a new situation where it is half in and half out. That is simply not acceptable. The Germans might be reminded that their economy is dragging down the economic development of the rest of Europe and France should look at how adequately it applies European directives and makes them work.

The rest of us should not be simply sitting around; the rest of Europe might well also have a meeting and exchange views on what they think about these matters and make it clear that this kind of macho display by the three big boys can be defeated by the simple rule of democracy. I ask the Taoiseach to take a strong, firm and unapologetic line on it.

**Mr. McDowell:** On a point of order, how can it be that a lecture on colonialism from Senator O'Toole is in order whereas a matter of obvious pertinence to this House from Senator Brian Hayes is not?

**An Cathaoirleach:** That is not a point of order.

**Mr. McDowell:** The Cathaoirleach has allowed Senator O'Toole to give us the benefit of his worthy thoughts with salutary order for the past several minutes——

**An Cathaoirleach:** That is not a point of order.

**Mr. McDowell:** ——whereas comments on the ordering of the business of this House seem to be clearly out of order. I do not understand that.

**An Cathaoirleach:** Leaders are allowed certain latitude.

**Mr. McDowell:** The Cathaoirleach should take this up with Senator Brian Hayes——

**An Cathaoirleach:** Yesterday's business or next week's business is not appropriate business now. Senator O'Toole was making a point about a matter that was of concern.

**Mr. O'Toole:** To conclude——

**An Cathaoirleach:** Senator O'Meara is offering.

**Mr. O'Toole:** I had not concluded.

**An Cathaoirleach:** I take it the Senator was still making a point.

**Mr. O'Toole:** I am sorry I upset the sensitivities of the post-empire view of my colleague on the Labour benches on this matter.

**An Cathaoirleach:** I ask the Senator to make his point on the Order of Business.

**Mr. O'Toole:** On that basis, it would be useful if we had a further debate, although not immediately, with the Taoiseach on this issue. He was good enough to come in some weeks ago and halfway through the Presidency it would be worthwhile to debate the matter again. Such a debate would give the Taoiseach the opportunity to raise this issue. In that sense, I point out to my Labour colleague that this issue is very much appropriate to the Order of Business, and I am sorry I upset his sensitivities.

**Ms O'Meara:** I agree with the point made by Senator Brian Hayes.

**An Cathaoirleach:** Yesterday's business or next week's business is not a matter for the Order of Business today.

**Ms O'Meara:** On the amendment that was passed in this House——

**An Cathaoirleach:** That was passed yesterday and is in the past tense.

**Ms O'Meara:** I am simply stating that I agree with the point made by Senator Hayes.

The meeting of the big three, for want of a better phrase, raises an important issue for us, particularly as we hold the Presidency of the European Union. Was the Taoiseach briefed or consulted as the current President? In that regard, there is a major issue for us as a small state within the European Union, particularly with ten relatively small states joining the Union on 1 May. It would be useful to debate the matter in this House.

We raised the matter of dormant accounts yesterday and sought clarification on the Government's intentions in that regard, which we have not received. Specifically, why has the Government changed its mind on a very important element of legislation only recently passed through the Houses? At the minimum, we are entitled to know why the Government has changed its mind on such a fundamental issue and also when that legislation will come forward. Will the Leader also indicate when the legislation on electronic voting will come forward given that the timeframe for its introduction is tight?

I ask the Leader to consider a review of the issue of insurance, which has been raised on a number of occasions in this House and is a matter of great public concern. I note there is coverage in the national media this morning of a report by the Competition Authority which indicates that the level of charges by insurance brokers to consumers has increased considerably and is now forming a substantial component of insurance charges. It is worrying to note, for instance, that most consumers do not know the percentage of their insurance payments that go in charges to brokers. As the Competition Authority states, there is clearly a need for reform. We have had considerable reform in the insurance area, but the level of profit and the level of charges by insurance brokers appears to have been ignored for whatever reason. It is clearly emerging as an important issue, and I ask the Leader of the House to consider it.

**Mr. Leyden:** I support the request by the Senator O'Meara that the Leader make time available in the next few weeks for a full debate on the report by the Competition Authority and the Department of Enterprise, Trade and Employment published yesterday, particularly on the percentage profits of insurance brokers from insurance premia. Much work has been done in regard to the insurance industry. The Joint Committee on Enterprise and Small Business has carried out extremely important work but most Members of the House are not on that committee. It is important that we have a full debate on that report, the insurance industry and the workings of the PIAB.

**Mr. Coghlan:** Whatever happened to the much lauded State inventory of assets that was to be conducted, or perhaps was conducted, by the Minister of State at the Department of Finance, Deputy Parlon, a year or more ago? It was announced with much fanfare at the time and we all looked forward to it. In response to a request I made at the time, the Leader promised that the Minister of State, Deputy Parlon, would come to the House at a suitable time to speak to us about it. This relates to a study in regard to a proposed sell-off of whatever assets would have been surplus to requirements. I would like to hear what stage it is at.

When is it intended to take Report Stage of the Civil Registration Bill? What, if any, amendments might it contain? I believe that gets around the issue.

**Ms O'Rourke:** There is more than one way to skin a cat.

**An Cathaoirleach:** I do not believe the Leader will be in a position to say what or how many amendments there will be to that Bill.

**Mr. Coghlan:** As ever, I am always grateful for the Cathaoirleach's kindness. If the Leader

[Mr. Coghlan.] wishes to address it, that would be welcome. As the Cathaoirleach would say, he does not have any control over what the Leader might say in her responses.

**An Cathaoirleach:** However, I have control over what the Senator may say.

**Mr. Coghlan:** The Cathaoirleach always finds me a very obedient State servant. I support the calls by Senators Leyden and O'Meara for a debate on the Competition Authority's report. Such a debate would be timely.

**Mr. Norris:** The House will probably want to recognise the presence in the Visitors Gallery of a distinguished representative of South America.

**An Cathaoirleach:** On the Order of Business, please.

**Mr. Norris:** Continuing on the foreign affairs area, will the Leader arrange for the Minister for Foreign Affairs, Deputy Cowen, to come into the House to explain policy formation in principal areas of Irish foreign policy, following the announcement in the newspaper in recent days that we are giving full diplomatic recognition to the military junta in Burma? This seems extraordinary. We continually hear about the miseries of Aung San Suu Kyi, whom we made a freeman of the city of Dublin. Government is posing as the friend of democracy in this area and now we have this sudden shift. It is very important that, as a matter of principle, the Seanad, as a House of the Oireachtas, is not party to these very dramatic and violent shifts.

I ask for this debate because we have not yet had one, although there is a motion on Tibet on today's Order Paper in the name of the Independent Senators. This is exactly the same issue and it shows that if one does not challenge a situation such as that in Tibet, the whole procedure spreads. In 1959, Frank Aiken said to the United Nations General Assembly that Tibet had been as free and as fully in control of its own affairs as any country in the UN and more than most of them. We co-sponsored three resolutions on its independence in the 1960s—

**An Cathaoirleach:** That is a point that could be made in the debate.

**Mr. Norris:** —mild revolt against any idea that we should treat Tibet, which has always been accepted as a distinct and separate entity, as an internal Chinese question. We now find that the Department of Foreign Affairs has done what successive representatives of Ireland have said is utterly wrong and illegal. There is nothing in the treaties or the diplomatic documents—

**An Cathaoirleach:** The Senator has made his point adequately.

**Mr. Norris:** —we have signed stating we recognise Tibet as part of China. We do not.

**An Cathaoirleach:** The Senator should conclude.

**Mr. Norris:** If we want to recognise it as such, the Government must bring the matter before both Houses of the Oireachtas. I ask the Leader to request that the Minister for Foreign Affairs come to the House to debate the question of Burma.

**Mr. Daly:** I support Senator O'Toole on the point he raised about the summit meeting between the United Kingdom, France and Germany. It is very ominous and damaging and serves to undermine the Community. Perhaps the meeting was to try to mend fences after the debacle to which the three countries were party regarding the war in Iraq. However, the feeling abroad is that the meeting was designed to set the foundations for a two-speed Europe, which could be very damaging for the Community in the longer term. It is not acceptable to have this type of arrangement on the eve of enlargement. Will the Leader arrange for the Minister for Foreign Affairs to give us some indication as to how this matter will be dealt with or if it is to be ignored?

I believe the three countries have had such meetings before. We should not read too much into them but such meetings of three important leaders in Europe are very damaging at a time when the European Union is to be enlarged. If they want to be part of the European Community, they should abide by its rules and not dictate who should be appointed to positions, etc. It is totally unacceptable. I ask the Leader to arrange a debate with the Minister for Foreign Affairs.

**Mr. Bannon:** Farmers are caught between the Departments of the Environment, Heritage and Local Government and Agriculture and Food and the advisory body, Teagasc, regarding the implementation of the nitrates directive. I call on the Leader to invite the Minister for Agriculture and Food to the House as a matter of urgency to debate the nitrates action plan. If this is implemented in its current format, it will result in a loss of income for Irish farmers of between 10% and 20%. There is great anger among the farming community on this issue and the Government does not seem to have a policy on it. One Department is contradicting the other and the advisory body is coming up with a different statement on the matter. I ask the Leader to urgently invite the Minister to the House to discuss this issue.

When is it anticipated that Report Stage of the European Parliament Elections (Amendment) Bill will be taken?

**Ms White:** I remind Members that I asked for a debate on human rights as soon as possible. It

is my pleasure to let Senator Norris know that the Vice President of Colombia has been invited to the Committee on Foreign Affairs to talk about human rights in Colombia.

**An Cathaoirleach:** The Senator should address the Chair.

**Ms White:** Senator Norris is a member of that committee.

**Mr. Norris:** Free the Colombia 2,000.

**Mr. Ross:** I endorse what Senators Daly and O'Toole said about the need for a debate, protest or opposing voice regarding the summit held between the three leaders in Europe. I do not know what we expected because this is the inevitable result of handing over so much power to the European Union. It reminds me of IBEC and ICTU, the public service unions, the INTO and other such organisations.

**An Cathaoirleach:** Is the Senator supporting Senator O'Toole and Senator Daly?

**Mr. Ross:** I am supporting Senator O'Toole in a very limited way. We must remind ourselves that when Germany and France breached the Growth and Stability Pact, nobody seemed to worry too much about it, but when we breached it people got very hot under the collar. Therefore, this is a legitimate issue for debate and one in respect of which the Taoiseach should intervene.

The second issue I wish to raise, which is very appropriate for debate and which was raised by several Senators, is the insurance industry, particularly insurance brokers. The Competition Authority concentrated on it yesterday. We should ask what we are doing by tolerating the activities of small numbers of people who are ripping off large numbers of people. I ask the Leader and others — I am slightly in two minds about this myself — that if we insist on bringing in many politicians and MEPs to address us, which I believe has limited value, whether it would be more useful to ask people with the expertise of John Fingleton in the Competition Authority and others to come to the House so we could ask questions on this issue and on why the Competition Authority reached its findings.

**Mr. Norris:** Hear, hear.

**Mr. Lydon:** I call for a debate on pornography. This issue was first raised by Senator Tuffy and I supported her call in this regard some weeks ago. A debate would be useful because of the proliferation of pornography. We might consider whether it is harmless or if it has a detrimental effect on society, particularly regarding abuse.

**Mr. Feighan:** I ask the Leader to invite the Minister for Justice, Equality and Law Reform to the House to discuss the closure of a number of prisons. We have a potential powder keg in

prisons due to overcrowding and this is a matter of great alarm in most prisons. We should discuss this issue urgently.

**Labhrás Ó Murchú:** I support Senator White's call for a debate on human rights. We have had such a debate before but I am not sure whether we had one during this term. I have always found such debates exceptional, particularly because of issues that generally come to the fore during the Order of Business. One can appreciate that it is exceptionally difficult to have any type of informed debate on the Order of Business — this is not its purpose. However, several issues need to be debated, some of which apply to Ireland and others to other countries. Wherever Irish citizens are involved, we should not reduce the debate to slogans or satire.

**Mr. Norris:** Hear, hear.

**Labhrás Ó Murchú:** Whatever the pros and cons of the issue — I include Colombia in this regard — it is particularly important that we are very careful in the contributions we make. Again, I compliment Senator White on the steadfast manner in which she has approached this issue. She is a credit to the House for having done so.

**Ms O'Rourke:** The Leader of the Opposition, Senator Brian Hayes, referred to an issue that arose last night. It is a matter of saying, "Lads and lassies, we lost that vote; we should have won it — role reversal. We will move on from that."

**Mr. B. Hayes:** So the section remains.

**Ms O'Rourke:** I am saying no more. I am quite cognisant of the fact that the Cathaoirleach might axe me down. I am very careful because he is the boss. The legislative process will take its due course.

**Mr. B. Hayes:** Will it not be axed down?

**Ms O'Rourke:** That is a nice sentence which was given to me to say in case Members think that I have suddenly become erudite; I have not. Senator Hayes also asked for a debate on sentencing policy. Yesterday there was an embryonic type of debate on custodial places for young people under a certain age. We are trying to marry those issues and decide on a debate time. About two hours outside time for legislation will be available next week. That is being finalised.

Senator O'Toole spoke about the "Big Three". I was struck by that and by BBC 2 last night and various other programmes. I am equally struck by the fact that the Taoiseach seems to have taken it rather calmly and he is particularly friendly with the British Prime Minister. Perhaps it was an attempt to get over the frisson that arose over Iraq and to have a debate. However, I did not like it. I felt the three of them were meeting and in effect saying:

11 o'clock

[Ms O'Rourke.]

"We are the big boys. We are going to guide and deal with everything that is happening here and the rest of you stand back." There was a large amount of showmanship and grandstanding about it. There is something ironic about the UK claiming to be at the heart of Europe and every time one goes there, one has to change one's currency, with all the bother that entails. That is only one example. We can trust the Taoiseach's judgment in matters such as this and the way he is reacting.

Senator O'Meara echoed the concern over dormant accounts. We are looking at that issue to see whether the Minister for Community, Rural and Gaeltacht Affairs, Deputy Ó Cuív, might be persuaded to explain to the House what is happening. We are also considering a debate on the Competition Authority's report. There is only one debating slot next week and we will see what arises.

The Senator also asked when the legislation on electronic voting will be introduced. What a change there has been in a week. Now there is an independent board and there will be legislation. I will find out when the Bill will be introduced.

Senator Leyden asked about the Competition Authority's report, which has just been published. If the Cathaoirleach will indulge me, by telephoning around and not using a broker, I got the cost of my car insurance policy reduced by 200.

**Mr. Leyden:** Congratulations.

**Mr. Coghlan:** Is that all? The Leader would want to take it up with Senator Leyden.

**An Cathaoirleach:** The House will come to order.

**Ms O'Rourke:** Senator Coghlan wants an audit of what has happened in the State inventory. I will inquire.

**Mr. Coghlan:** I wonder where it is at.

**Ms O'Rourke:** I will inquire and report back to him. He asked about next week's business and that will take its due course.

Senator Norris asked about Burma and foreign affairs policy in general. We will endeavour to get answers. The Minister for Foreign Affairs, Deputy Cowen, was here but every time one wakes up he is in another country. He is extremely busy. I will inquire whether the Minister of State in the Department of Foreign Affairs, Deputy Kitt, can address the House.

Senator Daly supports Senator O'Toole on the subject of the "Big Three". Whatever they meant to achieve, the underlying theme coming across to people is, in effect: "We are the big boys. We are going to be in a two-speed Europe."

Senator Bannon spoke about farmers. The nitrates directive is a matter for the Department of the Environment, Heritage and Local Government, not the Department of Agriculture and Food. He asked when Report Stage of the European Parliament Elections (Amendment) Bill 2003 will be taken. I said at the start that we would monitor what was happening on Committee Stage and if the leaders thought Report Stage could be dealt with adequately, we would then take it. I will monitor the situation.

**Mr. B. Hayes:** I do not think there will be any agreement on taking Report Stage today.

**Ms O'Rourke:** The Senator does not want it, even if the Committee Stage ends in half an hour?

**Mr. B. Hayes:** No.

**Ms O'Rourke:** That is fine. I thought it was something that might be accommodated.

**Mr. B. Hayes:** It will go until 1 o'clock.

**Ms O'Rourke:** Senator White asked for a debate on human rights. We are endeavouring to arrange that debate. Senator Ross supported his colleague, Senator O'Toole, in a limited way and Senator Daly in a more general way. He also raised the insurance matter. I will talk to him privately.

Senator Lydon asked for a debate on pornography. Senator Feighan referred to the overcrowding of prisons which he believes will lead to great difficulty. Senator Ó Murchú asked that every endeavour is made to have a human rights debate and he praised Senator White's input in this regard.

I bring to the House's attention the fact that the Public Service Superannuation (Miscellaneous Provisions) Bill 2004 — the pensions Bill — has been published this morning.

**Mr. O'Toole:** It is a Bill I hope every politician will reject.

**Ms O'Rourke:** That is beside the point. We are debating it next Tuesday evening. Lest Members all tear away, as we all do on a Thursday, and then say blithely to me on Tuesday that they never got the Bill, it is in their pigeon holes this morning and it will be debated next week.

Order of Business agreed to.

**European Parliament Elections (Amendment)  
Bill 2003: Committee Stage.**

NEW SECTION.

**An Cathaoirleach:** Amendments Nos. 1 and 5

are consequential and may be discussed together by agreement.

**Mr. B. Hayes:** I move amendment No. 1:

In page 3, before section 1, to insert the following new section:

“1.—In this Act, save where the context otherwise requires—

‘Act of 1992’ means Electoral Act 1992

‘Act of 1997’ means European Parliament Elections Act 1997

‘Minister’ means Minister for the Environment, Heritage and Local Government’.”

Both amendments Nos. 1 and 5, in my name and in the name of Senator Bannon, seek to achieve something novel in Irish electoral law. I would be interested to hear the comments of the Minister of State at the Department of the Environment, Heritage and Local Government, Deputy Gallagher, on this matter. Every time the people go to vote at local, European, general or any other elections the ballot paper is presented in alphabet form, from A to Z. Candidates at the top of the ballot are listed under A, B, C, D, E, F, G, etc, and candidates at the bottom are listed accordingly.

We should look at this issue. There is considerable international and domestic evidence to show there is an advantage for candidates at the top of the ballot. Some people just mark 1, 2, 3, 4, 5, etc, along the line. There would be merit in changing that, in the context of this European election, to see if we could introduce a system that is fairer to all candidates where voters would have to look at all the names. The advantage here is that for the first time ever in a European elections Bill, the name, picture and party affiliation will be attached. That was not the case before 2002.

There is no reason that we should continue to go for the alphabet format, which we have relied on for so many years. The evidence as regards those elected to the Dáil is that there is a considerable advantage for people whose surnames begin with the letters B, C and D. The Minister of State, on Second Stage, referred to a situation in the first European election he fought where there were three people with his surname on the ballot. That can lead to considerable confusion. Mixing the names up and having a random selection would ensure greater concentration of the voter on the process of for whom he or she will vote.

Amendments Nos. 1 and 5 introduce a new section which would allow for this random process. The suggestion in amendment No. 5 is that when the returning officer finds out the names of all the candidates, he or she will call in their agents or themselves and select from a hat or

whatever where they should appear on the ballot. The implied advantage that currently exists would cease as a result. I am interested to hear the Minister of State's views on this issue. Given that it will apply only to European elections, we should implement it on a trial basis.

**Mr. McCarthy:** I support the salient point made by Senator Hayes. This amendment has been well thought out. There have been times when candidates benefited from the order in which their names were placed on the ballot paper. I know of a candidate whose surname begins with the letters O'C and who, for the purposes of positioning on the ballot paper at election time, drops the letter O. That same person would be highly offended if anyone omitted the letter O when referring to his name. This illustrates that some people wish to obtain a position of seniority on the ballot paper. I am open to suggestions on how the situation can be remedied. I support this worthwhile amendment.

**Mr. Bannon:** This is an embarrassing day for the Minister for the Environment, Heritage and Local Government. It appears he did not listen to the expert advice, professional opinions or to the Opposition during the discussion on the Bill at the joint committee.

**An Cathaoirleach:** Discussions on the Bill in committee are not a matter for this House.

**Mr. Bannon:** On the last occasion we discussed the electoral Bill—

**An Cathaoirleach:** We are taking Committee Stage of the Bill now, not Second Stage. The Senator should speak to the amendment.

**Mr. Bannon:** We were promised time for a question and answer session but we did not get it.

**An Cathaoirleach:** Senator Bannon, please speak to the amendment before the House.

**Mr. Bannon:** I support the amendment which the Minister should consider taking on board. Given that the first letters of my surname are Ba, my name has always been listed at the top of the ballot paper. I did not realise there was benefit to be gained in that regard. However, many people believe the listing of names alphabetically puts candidates at the top of the list at an advantage. In the interests of fairness, the necessary changes should be made. Perhaps the proposed random system should be considered.

**Mr. Brennan:** I oppose this amendment. The Opposition suggested voting is as simple as A, B, C yet they are seeking to change the manner in which names are listed when we are only a few months away from the local and European

[Mr. Brennan.]  
elections. Returning officers will only accept nominations from candidates in the name by which they are commonly known.

**Mr. McCarthy:** Senator Brennan has occupied a high position on the ballot paper for many years. Perhaps his contribution would differ if his name was Senator Vaughan.

**Minister of State at the Department of the Environment, Heritage and Local Government**

**(Mr. Gallagher):** Amendment No. 1 seeks to define ‘Act of 1992’, ‘Act of 1997’ and ‘Minister’. The amendment is unnecessary as the Minister is defined in section 2 of the Electoral Act 1992 and in section 2 of the 1997 Act, which is being amended. The addition of the words “Electoral Act 1992” is unnecessary as section 6 the Bill is cited together with the European Parliament Elections Act 1992-2003 and they will be read as one. I ask Senators to withdraw the amendment as what they are seeking is already provided for in section 2.

Last week, Senator Brian Hayes flagged his intention to table amendment No. 5 which deals with the advantages gained by those whose names are listed at the top of the ballot paper. I understand the reasoning behind the amendment. This matter is constantly discussed by candidates and elected representatives, especially before elections. There is no perfect method of listing candidates’ names on a ballot paper. Adoption of the system advocated would not ensure other candidates were happy with their positioning on the ballot paper. I recently heard public candidates say that candidates on the lower half of the ballot paper to be used on the voting machines will be better placed than those on the top half. There is no exact science on this; it is a matter of which system one prefers.

The following is an extract from the O’Reilly case High Court judgment by Mr. Justice Murphy on 21 March 1986:

It would seem, therefore, that what is described as a bias in favour of the candidates whose names appear at the top of the ballot paper is not so much a defect in the system itself as a defect or a want of care or a want of interest by the electorate. Under the existing system the essential information is provided for the electorate and every voter is free to vote or not to vote at all or to exercise his voting right fully or partially. In addition it seems to me that the voter has the right and the facility to make his preferences between the candidates in a logical or careful fashion but that he is equally entitled, if he thinks fit, to choose some random procedure for selecting the candidates of his choice. In my view there is nothing unreasonable about legislation which has the effect of reflecting in one way or another the

measure to which the electorate or some part of it is indifferent to the effect of the manner in which their votes are cast.

On the other hand the existing system possesses the practical advantage — particularly in a constituency where a number of candidates present themselves — that the voter can quickly find any particular candidate. In addition, alphabetical listing is — apart from any practical advantage — an established procedure in so many fields that it is seen as being a reasonable practical solution to selecting or preparing any list of names. Any departure from the alphabetical system would require to be explained in principle and justified in practice.

I am left with the belief that the alphabetical system of listing candidates as provided for under the 1963 Act constitutes a reasonable regulation of elections to Dáil Éireann.

I believe the current system, while it may be advantageous to some, has served us well. Senator Hayes referred to people changing their names. It is not possible to do so any more. It would have been advantageous for me to use “Cope” on the ballot paper in that people would have been able to locate my name more readily. However, the people of Connacht-Ulster were discerning enough to differentiate between “Cope” and “Gallagher” and found my name. I tried to have my name listed under “Cope” but the Returning Officer informed me I must use the name registered on my birth certificate and I accepted that.

I assumed when I read the amendment that Senator Hayes wished the new order to be used at next June’s European and local elections but that is not what is stated in the amendment. It refers to the Act of 1992, which is the Dáil elections Act. Local elections are dealt with in the 2001 Act; the European elections are dealt with in the 1997 Act and the presidential election is dealt with in the 1993 Act.

I do not propose to accept the amendment bearing in mind the judgment of Mr. Justice Murphy dated 21 March 1986 and the fact that it would not address Senators Hayes’s and Bannon’s concerns. This matter requires considerable debate and consensus of Members of both Houses. Senator Bannon may have allowed his heart to rule his head in adding his name to the amendment. I would not support such an amendment if my name were Bannon.

This matter requires further debate between and consensus among Members of both Houses. I do not believe it can be resolved in this short Bill, which is narrow in its scope. The matter has not been considered by Government and I cannot accept the amendment. I appreciate the point raised by the Senator. It has been discussed on many occasions at political meetings across the country. Senator Brian Hayes’s name would, like

mine, possibly appear midway down the ballot paper and it is difficult to know whether that is beneficial.

Amendment No. 5 refers to the Act of 1992 and this would not address the issue of local or European elections. Even if the amendment were submitted with reference to the 1997 or 2001 Acts, I would still oppose it on principle.

**Mr. B. Hayes:** I thank the Minister of State for his interesting reply. He said that the way to proceed on this matter would be to bring all of the parties together and if a consensus could be reached, the Government might perhaps consider it at that point. If a principle applies for changing the order of the candidates on a ballot paper, the same principle should apply in respect of electronic voting. I agree with the Minister of State that consensus is important.

Would the Minister of State initiate a review within his Department in respect of this issue? This could be done together with the Joint Committee on the Environment and Local Government and the various spokespeople and could consider the long-term position. A considerable body of domestic evidence points to an advantage at Dáil elections. I will withdraw the amendment if the Minister will give a commitment that his Department will review the issue in consultation with all of the parties in both Houses to see if it can be considered further.

Senator McCarthy raised a serious matter, namely, that some candidates feel they have a right to change their names on ballot papers in order to give themselves an advantage. That some people would do so gives the public the implication that there is an advantage to having one's name at the top of the ballot paper. That is a serious issue. The Minister of State referred to the 1986 O'Reilly High Court case. That case did not go to the Supreme Court and it only referred to Dáil elections; it did not deal with European elections. The advantage of using the random selection system suggested in the amendment for European elections is due to the fact that the number of votes is considerably greater. The advantage given by the alphabetic system currently in place could be much greater than the random system I propose.

While I fully recognise the 1986 court case, I must point out that it only referred to Dáil elections and was never tested in the Supreme Court which ultimately tests our constitutional position in respect of matters of this nature. I appreciate that the amendment in my name is defective but I am a humble Senator with humble resources who must deal with the massive entity that is the Department of the Environment, Heritage and Local Government. Is the Minister of State suggesting that this could be done by order? As I understand it, an amendment of the 1997 Act is required. If that is the case, will the

Minister of State at least agree to take the matter further and discuss it with all of the parties — in consultation with the experts in his Department who have built up considerable independent knowledge and experience, for which they are greatly respected, concerning our electoral law — in light of the considerable body of evidence that has grown up on foot of academic work on this issue? If he gives a commitment to review the matter, I would be happy to accept that.

I am of the opinion that one has an advantage if one's name appears at the top of the ballot paper. That advantage should not exist. Having a random selection means that people, even the 1% or 2% who might merely mark it one to eight in alphabetical order, will be forced to look at the ballot paper. Thanks to the decisions taken before the 2002 election, pictures, party affiliations and names are included on the ballot paper. There is, therefore, no reason that people should not concentrate on the ballot paper and make their choice accordingly.

I ask the Minister of State to consider initiating a review on foot of the amendment I have tabled. I appreciate that amendment No. 5 refers to the 2002 Act which it is not legally possible to change. However, the issue is more important than the advent of the upcoming European elections.

**Mr. Gallagher:** I am sure everyone thought about the possibility of changing name by deed poll from time to time in order that they might appear further up the ballot paper. That is just not possible. I tried to have the returning officer in Connacht-Ulster accept my name as Cope Gallagher but he did not do so. I appreciated his decision because my name appears as Gallagher on my birth certificate. Even if a person changes his or her name at the last minute, all the returning officer has to do is look at the register of electors. Returning officers have discretion in respect of the changing of names and act responsibly at all times.

I would be happy, as Senator Brian Hayes suggested, to consider this matter. However, I do not believe that he expects me to give a commitment as to what we might do. The respective parties or others who are interested in this matter may wish to make a case to the franchise section of the Department, to me or to the Minister, Deputy Cullen, based on the contribution made by the Senator in respect of his amendment. Senator Hayes asked a fair question and although I will not give a commitment, I would be unreasonable if I did not indicate that I will look at the matter.

The Senator will appreciate that there are time constraints involved. Even if we were to consider the matter and commit ourselves to a review, we could not put it in place immediately. We have some primary legislation to introduce in respect of other matters and the staff of the franchise

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section already have a great deal of work on hand and are extremely busy at present.

This matter goes beyond one election. Perhaps we should all begin by putting our own houses in order. It may not be my job but I propose that Senator Bannon might take the initiative and make a suggestion for the next Seanad election. Perhaps we should start at that point with a new system.

**Mr. B. Hayes:** I thank the Minister of State for his constructive response. The matter of the Seanad elections is interesting. The ballot paper for those elections is considerable in length and sometimes includes 50 or 60 names. However, the electorate, that canny group comprising just over 1,000 people, is the most politically attuned entity in the country and its members utilise every preference. The advantage implied on a Seanad election is not as real as it is in European elections where hundreds of thousands vote.

The Minister of State said that the amendments represent an opportunity for us to ventilate these issues in the House. I have seen a considerable body of domestic academic documentation which points to this advantage. Our objective in electoral law is to always present the fairest option to the people in terms the presentation of ballot papers, accessibility of voting and the order in which people's names appear on ballot papers. Even if there is an implied advantage of 1% or 2% by virtue of the vagaries of the current alphabetic system we should try to change that. If the Minister of State is saying that he will reconsider this matter in consensus with other parties, I will take him up on that.

**Mr. Moylan:** The system of using alphabetical order is tried and trusted and I agree with it. The Minister of State referred to surnames on ballot papers and the fact that a surname can change if a female marries and takes her spouse's surname. If we do not work on the basis of the alphabetic system, people will say that there is something wrong with the computer that places names in whatever order they are drawn—

**Mr. McCarthy:** That depends on which machine is used.

**Mr. Moylan:** —or that someone is operating the system unfairly. The tried and trusted method is the use of alphabetical order and the Minister of State indicated that the name on the birth certificate should be used.

**Mr. Bannon:** I welcome the fact that the Minister of State will consider this issue and that he hopes to bring about some form of consensus between political parties and Independents in respect thereof. If the same approach had been adopted to electronic voting, the Government

would not have undermined public confidence to the extent it has.

**An Cathaoirleach:** We are not discussing electronic voting, we are discussing the European Parliament Elections (Amendment) Bill.

**Mr. Bannon:** I belong to a political party as does the Cathaoirleach.

**Mr. Moylan:** He is an independent man.

**Mr. Bannon:** If an independent candidate wishes to have his or her name included on the ballot paper, he or she must bring some 30 people to a returning officer to sign a declaration. That must be examined in serious detail.

**An Cathaoirleach:** That is not relevant to the amendment. The Senator should stick to the amendment.

**Mr. Bannon:** We must consider how these issues affect all democrats. They are entitled to put their names on ballot papers and they should not have to go through the current rigmarole to do so.

**Mr. B. Hayes:** To answer Senator Moynihan's point, which was a fair one, our amendment suggests the ballot paper should include the names and a description of the candidate standing with the names arranged randomly as determined by lot by the returning officer. We all know who the returning officers are. Once the candidates emerge, their names could be included in a large hat. I am not suggesting that the hot names should be first on the ballot paper. In the case of an athletics race, each person's starting point is selected by lot. As an election is like an athletics race in many respects, the analogy is relevant in terms of the ordering of names on a ballot paper. Random selection is fairer than alphabetical selection. Even if the latter implies an advantage of only 1% or 2%, it can sometimes distort a result.

According to an academic study, 24% of the entire membership of the Dáil and Seanad have surnames which begin with one of the first six letters of the alphabet. This is not in keeping with the way in which names emerge in other areas. It is through the Electoral Acts that we should reduce the unfair advantage which exists. I accept the Minister of State's point that the issue cannot be addressed without consensus. I ask him to honour his commitment to examine the matter with his Department in consultation with the political parties. This measure should be introduced, particularly for Dáil elections. There have been excellent developments in the inclusion on ballot papers of candidates' names, party affiliations and photographs. There is long-term merit in this proposal also.

**Mr. Brennan:** While we will oppose the amendment, it is quite open for the parties to engage in discussions on the matter at a later stage.

**Mr. Gallagher:** We will examine the matter but without making a commitment on it. Senator Brian Hayes knows what I mean by that. If parties or individuals wish to make submissions to me, I will gladly consider them. I was being somewhat facetious when I referred to the Seanad election and Senator Brian Hayes used the word “discerning” about the electorate. I am sure no Senator would tell me in all honesty who their third, fourth, fifth and sixth preferences were on the five panels in the last election. Of course, we will never know. It is like the secret vote.

**Mr. B. Hayes:** I can tell the Minister who the first preferences were.

**Mr. Gallagher:** The Senator might tell me the first preference, but he would not go down the list.

Within the relevant constituency, a candidate must have the signatures of 60 people to take part in a European election, 30 for the Dáil and 15 for a local election. That is the provision in law. I will not say much about it because, as Senators probably know, the Cian Cooney case is before the courts.

Amendment, by leave, withdrawn.

Section 1 agreed to.

#### NEW SECTIONS.

**An Leas-Chathaoirleach:** Amendments Nos. 2 and 10 are related and may be discussed together, by agreement.

**Mr. McCarthy:** I move amendment No. 2:

In page 3, before section 2, to insert the following new section:

2.—Section 48 of the Electoral (Amendment) Act 2001 shall not apply to European Parliament elections held in the year 2004.”.

Section 48 of the Electoral (Amendment) Act 2001 allows the Minister to apply, by order, electronic voting to European elections. The Minister is provided with the power to amend the European Parliament Acts for that purpose although I do not think the order has yet been made. If the order has not been made, when will it be introduced? There is a question as to its constitutionality in the context of the Carrickmines case. The judgment in that case was that the Act cannot be modified by order. Events of recent days may have implications for the

response of the Minister of State, which I am interested to hear.

**Mr. Bannon:** In the interests of Irish democracy, I ask that the Minister answer, even at this late stage, the 41 questions on the electronic voting system. We were told last week that we would have an opportunity at the end of statements on electronic voting to engage in a questions and answers session, but it did not happen. The Minister stated that the system had been verified in the UK and Germany. Within the past week, I have checked on the status of the system in these countries. Following two pilot programmes in the UK, the electoral commission decided the electronic system was not safe and agreed to abandon it for the moment. I visited the province of Bavaria, Germany, three weeks ago and discussed electronic voting with mayors and other elected politicians. The Minister spoke about the testing of the system in Germany, but the Germans do not use it in their regional elections or in the election of mayors. I saw a sample ballot paper from the last mayoral election.

The Germans do not use the system because they do not trust the counting software. This is of great concern to us. We do not want to become the Florida of Europe.

**Ms White:** There is no fear of that.

**Mr. Bannon:** We must be extremely careful on this issue. Several computer professionals have found it impossible to get details of the system from the Department. There was a letter in one of the newspapers yesterday which stated that a person had sought information under the Freedom of Information Act and paid in the region of 1,500 for very little. Seemingly, the Department does not have many facts on the system. Furthermore, the machines it is proposed to use in the elections are only under warranty until 2007. They cannot be repaired after ten years despite the Minister’s contention that they will last for 20 years. The claim is simply not true.

As I said last week, Fine Gael agrees with the principle of electronic voting, but it has serious concerns about the software and the availability of the system’s source code. The Minister should consider withdrawing electronic voting even at this late stage. There are serious concerns about its security. I would appreciate the further consideration of the matter and of amendment No. 10.

**Mr. Moylan:** I was here with the Minister when this matter was last discussed. Dozens of questions were put to the Minister who replied to them in great detail, which is why I am not sure from where the idea of the 41 questions to which Senator Bannon refers comes. In a newspaper today, a former leader of Fine Gael was very

[Mr. Moylan.]  
much upbeat and in favour of electronic voting.  
That is a turnaround.

**Mr. McCarthy:** Regarding the amendment tabled by Senator Bannon, we had a very good debate on electronic voting in this House last week. However, the Minister's period of reply was just 15 minutes, and if he were here for 15 hours he might not have answered all the questions put to him.

The famous 41 questions came from the Joint Committee on Environment and Local Government, and were put to the Minister for the Environment, Heritage and Local Government, Deputy Cullen, prior to his launch of the electronic voting plans. I did not attend the committee this week because I have been in the House, but I do not think those questions have yet been answered. Regarding the pilot areas where electronic voting took place in the general election, it is too simple to say that since it worked well on that occasion, we should now proceed with it. While pilot projects took place in a number of constituencies, the vast majority continued to use the manual system. The nature of politics is that one campaigns in one's constituency and looks at how matters are proceeding there. With electronic voting, there was not so much emphasis on these individual areas. Electronic voting covered the results, but not the finer details.

There remains a number of unanswered questions. We do not want a situation such as occurred in the United States in the last presidential election when the candidate with the most votes was not deemed elected. The Florida Governor, Jeb Bush, brother of the now infamous victor in the presidential campaign, might well qualify for a seat on the new independent board which the Minister is introducing to review the accuracy of the electronic system. Can the Minister of State say who will be on the board, from where will they be drawn and how many members there will be? I assume they will have some experience in this area.

Another issue raised last week was that of the Nedap machines. If people have shares in the company that produces them, that could raise conflicts of interests. For example, in the 1996 and 2002 Senate elections in the United States, a Senator was returned successfully on both occasions in one area. It then transpired that the Senator had shares in the company which counted his votes. There was no suggestion of impropriety but that was a major conflict of interests. For the sake of transparency we deserve to know if such an issue might arise with the Nedap machines.

Regarding the software to be used, I have yet to be convinced that it is capable of counting votes on proportional representation using the

single transferable vote. We are the only country in Europe using multi-seat constituencies and using proportional representation based on the single transferable vote. In terms of counting votes and distributing surpluses, it is a complicated system which even politicians may not fully understand. Can the software handle it? We must be convinced that the distribution of surpluses can be done accurately. Can we be assured that votes will be transferred?

Regarding developments this week, a level of common sense has prevailed in this House. It must be perplexing for the Government when everyone says they have no disagreement in principle with electronic voting. I have no disagreement either. Electronic voting is a good thing if we are guaranteed that our votes will be cast and counted.

A major opportunity was missed in the context of the U-turn this week when it became clear that there was no verifiable audit trail. Such a trail would guarantee that my vote was cast and counted. A number of computer experts have given their opinions on this matter. I would not go to an ATM to withdraw cash without getting a receipt. I become very suspicious when I cannot get a receipt, though this can happen if the ATM does not match the bank which issued the card. I always check statements to see if transactions have been accurately recorded. With electronic voting, there is no similar checking method. One cannot put a price on democracy, for which many people have paid with their life's blood. We owe it to democracy to ensure there is a checking method.

**Mr. Brennan:** Much has been said about the system of electronic voting used in the United States. It is quite clear that the system proposed in Ireland is completely different, and I am surprised that comparisons are still being made.

Regarding the paper trail, if one used that system with the existing ballot paper, where everyone had a duplicate paper, privacy would disappear, and it would be unconstitutional, with people saying they had voted for A, B and C in that order. What is being sought is legally impossible under the Constitution.

**Mr. McCarthy:** We must look at systems used internationally and at countries where these machines are in operation. We have a unique situation in this country. The UK, for example, does not have multi-seat constituencies, nor does it use PR, other than for European elections.

Senator Brennan also raised a good point on the issue of duplication. I do not think the secrecy of the ballot will be spoiled. A system can be put in place so that once an elector has cast a vote, the receipt can be seen through the screen. That gives assurance that vote is cast, but does not

identify the voter. Accordingly the secrecy of the ballot is protected. That system is in operation.

**Mr. Bannon:** Senator Brennan referred to the fact that the former leader of Fine Gael said he was in favour of e-voting. We are all in favour of it. Fine Gael is on the record of both Houses in favour of this process, but we want reliability and a secure system. That is what is at issue and what has been the bone of contention since the concept of e-voting was first proposed.

The Minister did not listen to the concerns of the other political parties, or those expressed by computer experts. As I said before, the actions of the Government are undermining public confidence in the system. At this late stage this needs to be addressed. I call on the Minister of State to withdraw the system and revert back to the old system until the necessary safeguards are put in place. As Senator McCarthy said, there are serious concerns about the software to be used. We have been misled. We were told initially that six companies vetted the system, and last week we found out that only two companies vetted it. There is a huge contradiction in this area. Public confidence is undermined, which is not good for Irish democracy.

**Mr. Brennan:** Regarding what is proposed before one casts a vote, what happens to the paper trail that Senator McCarthy is proposing? Regarding the transfer of votes, the case could be made that the proposed system is much fairer to candidates than the old system, whereby a bundle of votes was pulled out of one section of a ballot box. One could make the case that the PR system being used in electronic voting is much fairer to candidates and provides a truer picture of the votes cast.

**Mr. Gallagher:** I will deal first with the contribution of Senator McCarthy regarding section 48. I said, and I still believe, that the Minister has the power to extend the voting system to all the other electoral codes, whether they be local, European or Presidential, by order under section 48 of the Electoral Amendment Act. The matter was raised by Deputy Gilmore, the spokesperson on this issue for Senator McCarthy's party. I checked that and the advice was that section 48 will not be necessary but in view of the Carrickmines situation and the concerns of the House, we gave an assurance this week when the Government decided that we would introduce primary legislation on electronic voting. I believe that deals with Senator McCarthy's amendment. Section 48 will not now be necessary. Primary legislation will be introduced, and I hope Senator McCarthy will accept that.

As for the debate on electronic voting, Members will appreciate that I abide by the rules of the House at all times. I came in here and we

had a two hour debate in which numerous questions were raised. Time limits may have constrained me from answering all of them but I believe I answered the principal questions raised.

I want to put something to rest for once and for all, because it is causing confusion. Senator Bannon is drawing comparisons with the system in Florida but our system and that in place there are as different as chalk and cheese. Senator Bannon is aware that the system in Florida was based on 1960 punch cards. It has no relevance whatsoever to the type of electronic voting to which we refer. This system has been tried and tested for a considerable number of years in Holland, areas of Germany and pilot areas in the United Kingdom. Where better to have tested it than in our own country? The system worked extremely well in Dublin North, Dublin West and Meath.

Senator Moylan is quite right. Governments must be responsible. We cannot, in Government, afford the luxury of dining *à la carte* but Senator Bannon's party obviously can, as did a former leader of his party. A flier was sent out for Deputies Bruton, English and Farrelly to the effect that electronic voting was as easy as one, two, three. That is a fact and there is little point in us trying to hide it.

Also in reference to that, the current leader of Senator Bannon's party is requesting a paper record but there are two issues to this, and this was accepted by Senator McCarthy when the point was made by Senator Brennan. If one votes electronically there is then a paper trail, even if that is not taken from the polling station. I should say that problems can arise with printers, and we are aware the confusion that can cause. Which outcome is the real result? Is it the result of the electronic voting or the ballot papers in the ballot box because they can produce two different results? I do not have to tell people in this House how votes are counted. One thing we can be sure of is the number one vote, which should be identical, but after that when surpluses begin to be distributed, it could cause problems. We recall Limerick West in the last general election when the difference in the count was one vote, and there have been many other such situations. In the last general election there were 20,000 spoiled votes. A small percentage of those would have been deliberately spoiled but 18,000 people genuinely wanted to vote. When one sees how the new electronic voting system operates, they will realise that very few mistakes will be made.

We carried out a survey in seven constituencies after the referendum and in three constituencies after the general election and there was the utmost satisfaction with that system. I understand 87% of voters said they would prefer the new system and 80% said they had no difficulty with it. I realise that does not answer some of the questions raised but we should also look at the

[Mr. Gallagher.]

big picture throughout Europe. These cast buttons have been pressed about 70 million times and the system has worked quite well. Senator Bannon said he has spoken to the experts but who are these experts? The people we are speaking to are experts in this field but there are many so-called experts now and some members of the Opposition are listening to them more than those who have long experience in this area.

I am aware of the 41 questions to which the Senator referred but in excess of 100 questions were raised at that time. The current status of the reply is that we have circulated those questions and the documentation to a number of companies. The question of integrity arises in that we want to make sure the answers are formulated and in order. We had to send them out to a number of companies and we hope to have those fairly soon. I reiterate it was not just 41 questions but well in excess of 100.

On the question of the receipt, if the receipt is to be a copy of the ballot paper I suggest to Senators that this would turn back the clock to a period we sometimes like to forget. If I or any of the Members were an employer and insisted that those working with us, or indeed members of our families, should vote in a particular way, when they came home and presented the copy it could lead to confusion or, more important, to corruption. That would take from the secrecy of the ballot paper and we do not want to return to that.

As for the paper trail, when we left the polling station the ballot paper went into the box, and that was the last we saw of it but with this new system — I am sure Members have seen it — our preferences appear at the top of the screen so we know we are voting for Senators Hayes, Bannon, Brennan or whoever it may be. When we are satisfied that we have selected our preferences, whether it is the local, European or the town council elections, we press the button and the machine indicates that our vote has been stored. There is a bleep which is audible to the voter and that is the confirmation that the vote has been cast and stored.

Senator Bannon talked about going to Germany and meeting various people. If he intends to travel to Germany again, he should make contact with PTB in Germany. That is the German institute of science and technology which checked all the software and confirmed that the software accurately records the votes cast. It is important to know that. He should also check with TNO in Holland, the Dutch electronics products and services company which has tested the voting machine hardware. It has examined and certified the physical components of the machine, all of which are in line with international standards and accredited by the European Union.

Here in Ireland, Nathean's Technologies has done an architectural code review of the election software and confirmed that the code does not contain elements that can be corrupted. It has also confirmed the correct running of the software. Senator McCarthy referred to the difficult system of PRSTV but we consulted with the Electoral Reform Society in the UK, not to be confused with the electoral commission. I am not aware if the UK politicians have raised questions on the electoral commission but that is a matter of judgment for each individual. In an interview given by a director of policy in the electoral commission in the UK, she said the commission had difficulties with electronic voting but also have difficulties with digital voting, text voting and Internet voting.

I remind Senator Bannon that it is not that long ago since the leader of his party suggested we should have Internet voting. We would be totally opposed to that because Internet voting could be subject to hacking. There were serious problems in that regard. The Senator's party takes the view we should abandon electronic voting while at the same time supporting Internet voting.

It is important to try to visualise this machine. This stand-alone machine is not connected to any other machine, the Internet or any other system.

I do not profess to be an expert in this field but from the knowledge and advice I have got — I thank Senator Hayes for his comments about the officials in the franchise section of the Department — I have every confidence in these people to administer these elections in conjunction with the returning officer.

I wish to refer again to the Electoral Reform Society which tested the PRSTV count rules. It has a database for 400 STV type elections and has decades of experience. I doubt very much, if all of these people, whether it is Nathean, PTB, TNO or the Electoral Reform Society, would be supportive of the system if they did not have this experience. I am confident when we come back after the elections — I am not saying individuals will change their views completely — people will say we have shown the way and led once more on the world stage.

Members will be aware that I am not making any reference to the UK. The systems are totally different. We are not in favour of making it easier for the voter to vote at home through digital systems. That would exert more pressure. If there is a young family with a father who wants the family to vote in a particular way, if they are voting on a digital screen it takes away the privacy of the vote. I appreciate the intention of Senator McCarthy's amendment, but the point has been dealt with in the primary legislation.

Amendment No. 10 is defective. It does not specify what is an electoral commission. There is no such body and there is not sufficient time to have such legislation proposed and enacted before the polls. Is it the intention that the

electoral commission would be all embracing? If it were to take over the franchise responsibilities of my Department, responsibility for the boundary commission, standards in public office and responsibilities of the returning officer, it would be much too broad.

Already there are reports from independent bodies on the reliability, security, integrity and verifiability of the system. Reports from all these international experts, to whom I have referred, have been sent to the Oireachtas Library and are posted on the website *www.electronic.ie*. For the reasons outlined and the announcement by the Government on Tuesday, I hope this will deal with the concerns raised.

Senator McCarthy asked a straightforward question about the establishment of the independent panel to verify the secrecy and accuracy of arrangements proposed for electronic voting. I confirm that this panel will be appointed in advance of the enactment of the primary legislation. The Government has yet to decide on the formation of this panel. I assure the House — I will suggest it to the Minister who is abroad on official business and I apologise for his inability to attend — that we look at all the sectors that should be appointed to this independent panel.

**Mr. Bannon:** The defence the Minister of State put forward is not good enough. We have heard from computer experts that security considerations require the system to be radically modified. The Minister of State referred to the fact that while I was in Germany I should have visited certain companies there who are in the business of manufacturing. The proof of the pudding is in the eating. That is a phrase used in my county and in his county. The parliaments of those countries are not using the system because they consider it flawed in its current format. I have spoken to political leaders in Bavaria, Duisburg and other southern German states and they are not using the system. They abide by the traditional system of balloting.

It is important we revert to that system until a system that is foolproof and reliable is in place which the electorate can trust. Irish democracy will be undermined if we proceed with electronic voting at this stage. I ask the Minister of State at this late stage to revert to the old system for the European and local elections in June. People are confused about the new system of voting. Given all that has been put into the public domain on this issue, people will be fearful of coming out to vote on the day.

The Minister referred to Deputy John Bruton earlier. Deputy Bruton clarified the position on “Today with Pat Kenny”. He wrote to the Taoiseach six months before the last general election saying he was not happy with the system at that particular time. That letter is in the public domain. I ask the Minister of State not to use that as a scapegoat to get over other serious problems. The Government is embarrassed; it had to back down on this issue. It has done a half U-turn but

I invite it to go the whole hog. I ask the Minister of State to revert to the old system which would instil confidence in the electorate. At the end of the day the electorate will have respect for the Government if it reverts to the old system. At present there is no public confidence. The first thing one needs in any democracy is confidence in the system and confidence in the Government. The Government has lost that confidence.

**Mr. McCarthy:** I have noted the Minister’s reply to amendment No. 2 and I agree to withdraw it.

**Mr. Gallagher:** It is wrong to say that the system has not been used. Holland, which has a population of 15 million, has been using the system for years.

On the matter of the former Leader of Fine Gael writing to the Taoiseach, the fact of the matter is that the leaflet is in the public domain stating that electronic voting is like one, two, three. I rest my case there. We are not in favour of Internet voting which appears to be Fine Gael policy. Deputy Kenny said Fine Gael was considering Internet voting. That would lead to corruption.

Electronic voting and counting will improve the efficiency, speed, accuracy and user friendliness of elections. It will eliminate the democratic wastage of spoilt votes. It is a desirable modernisation of the electoral system and I look forward to its successful implementation in the June polls of 2004.

**Mr. Bannon:** Who owns this design or code? How many people have seen the code? These are simple questions that need to be answered. Returning officers throughout the land are confused with the system. I am listening to poll clerks who have presided at past elections and they have not been issued with any guidelines to date. There will be total confusion. We are less than four months away from the European and local elections. There is confusion out there. These are important people who administer the system on the day and they are confused. I plead with the Minister of State at this late stage to withdraw e-voting for the forthcoming European and local elections.

Amendment, by leave, withdrawn.

**Mr. McCarthy:** I move amendment No. 3:

In page 3, before section 2, to insert the following new section:

2.—Section 6 of the Act of 1997 is amended—

(a) in subsections (1)(b) and (2) by the deletion of ‘statutory declaration’ and the substitution therefor of ‘statement pursuant to this section’;

[Mr. McCarthy.]

(b) in subsection (2) by the deletion of 'said declaration' and the substitution therefor of 'said statement':

(c) by the insertion of the following subsection after subsection (4):

'(5) A person who furnishes a statement pursuant to this section which is false or misleading in a material particular shall be guilty of an offence and on summary conviction shall be liable to a fine of not more than 3,000 or imprisonment for a period of not more than 12 months or to both such fine and such imprisonment.'"

Under section 6, a European national who wants to be on the register in Ireland has to furnish a statutory declaration in that he or she has to go to a solicitor to confirm that he or she is not in a position to vote abroad. This is extremely inconvenient and goes beyond the EU directive which requires only a formal statement to that effect. This amendment allows for a more convenient form of statement, pursuant to the subsection, which would not have to be witnessed by a solicitor and could be incorporated in the voter registration form.

I presume the Minister of State has advice from the Attorney General on this matter and, if so, I would be interested to hear his reply.

**Mr. Gallagher:** The EU directive which sets down the requirements in this area specifies that resident EU citizens wishing to vote in their member states of residence must certify their nationality, address and any other details required. The EU directive states they must do this by way of a formal declaration which, if inaccurate, makes the person concerned liable to penalties in accordance with the new national law applicable. Senator McCarthy recognises this in his amendment and also recognises that if the details are not in order or in accordance with the regulation, there can be a fine of 3,000 or 12 months in prison.

We have such a formal declaration in place since 1938 when the Statutory Declarations Act was enacted. This procedure has been used extensively since then in all types of elections. Electoral law already provides for such declarations to remove any doubt in the case of registering individuals as electors. I do not see any point in duplicating an electoral law — a system which has been used for over 60 years. The procedure is exactly what the EU requires and has not presented any difficulties in other EU member states where similar arrangements apply. I do not accept it represents a problem for EU citizens who wish to exercise their franchise in this country.

I also bring to the attention of the House the example of an Irish elector who would wish to secure a postal vote because the nature of his or her business meant he or she could not attend a

polling station on election day. Such an elector would have to submit a statutory declaration to the returning officer, which must be signed. I gave some thought to this issue when it was first raised in the Dáil. I felt that requiring a statutory declaration to be signed by a commissioner of oaths could be somewhat expensive. However, such a declaration can be signed by a peace commissioner, notary public or a commissioner of oaths. If any of our people require and apply for a postal vote, the application must be signed because it is a statutory declaration.

This is a question of even-handedness. If another EU citizen requires to be included in the register, the rules which are applicable in other places where there are similar arrangements are applicable in this country in exactly the same manner. A peace commissioner may sign such declarations.

Amendment, by leave, withdrawn.

## SECTION 2.

**Mr. McCarthy:** I move amendment No. 4:

In paragraph (c), in page 4, to delete lines 39 to 47 and in page 5, to delete lines 1 to 18.

It is totally illogical to ban the dual mandate for those who relinquished council seats last year while not leading by example and applying the same practice to Dáil Members who will be elected to the European Parliament in June, if that is the case. It is very convenient for the Government of the day if there are no by-elections. While I realise that such Members will have to give up their seats at the next general election, there may be three years up to that election during which they can occupy seats in both the Oireachtas and the European Parliament. This is illogical and inconsistent with Government policy regarding the dual mandate in so far as it affects members of the local authorities who are also Oireachtas Members.

The then Minister for the Environment and Local Government, Deputy Dempsey, first attempted to introduce the abolition of the dual mandate during the tenure of the last Government, but was unsuccessful because the Independents held the Government in ransom. The current Minister, Deputy Cullen, went ahead and introduced legislation, the Local Government Act, which finally paved the way for Oireachtas Members to leave councils. Despite the controversy at the time, most Members have vacated their council seats, with very few exceptions. The current situation is illogical and inconsistent with Government policy. It is unfair to introduce reform at one level while not completing the roll-out in regard to Oireachtas Members who go to Brussels. I am particularly interested to hear the Minister's reply.

**Mr. Bannon:** I support the amendment. Current policy adds insult to injury in that one

law is applied to one forum and another to the Houses of the Oireachtas. The Minister's party has some of its local authority members running for Europe and corporations and county councils. This is not a sensible approach and contradicts previous legislation. People need conformity in regard to legislation and this is hypocritical, to say the least.

It highlights the first sign of cracks in the Government. If Members were forced to resign from Parliament, the Government would not be confident of winning the resulting by-elections. I ask the Minister to give the system continuity.

**Mr. Gallagher:** I take it the Senator is outlining Fine Gael policy. If Senator Bannon takes this view, I presume it is also the view of Senator Higgins, Ms Madeleine Taylor-Quinn and Deputy Coveney. However, the formulation of Fine Gael policy is not a matter for me.

**Mr. Bannon:** We are not afraid of elections.

**Mr. Gallagher:** If that is the Senator's view, so be it. As I stated last week, the effect of this amendment would be that the temporary derogation for Members of the Oireachtas who stand as candidates in the European Parliament elections next June to hold a dual mandate until the next general election to both Houses would not apply. The derogation negotiated during discussions from 1998 to 2002 allowed for a rolling derogation because of the requirement in this country for by-elections to fill vacancies. If a Member of this House was elected or became an MEP by virtue of being a replacement candidate, there would have to be a by-election. Senators old enough to remember should refer back to 1979.

**Mr. McCarthy:** We are all old enough.

**Mr. Gallagher:** At that time, 13 of the 15 Members elected had a dual mandate. Many of those Members were returned in June 1981 to serve in Government — a majority of those may have been from the Labour Party but I am simply making a point. While we have come a long way since then, I do not think anybody in this House would suggest that to have Members running for Europe would necessarily destabilise a Government. A minority Government or one with a small majority might lead in some cases not just to by-elections, but to a general election which could create uncertainty. In the unlikely event that the parties opposite were in a minority Government after the next general election, they might appreciate the point I make.

The Government has now decided that the derogation will apply only to this year's election and for the short period up to the next general election in 2007. Any change to this arrangement would require new legislation. We should remember that the provisions which permitted the dual mandate are set out in European law. It

was only in September 2002 that agreement was reached on ending the dual mandate for Members of the national Parliament and the European Parliament.

Reference has been made to the position concerning the dual mandate with local authorities. The ending of that dual mandate has been on the domestic agenda for many years and was flagged many years ago. The directives of June and September 2002 are relatively recent, including the derogation agreed at EU level. As I said, this derogation will only last until the next general election in 2007. While I can appreciate the political points made by Senators Bannon and McCarthy, I add that these are more commitments of the heart than the head. If the Senators were currently in a minority Government or one with a slim majority, they would be the first to agree with me, although I appreciate they have to make these political points. However, I ask Members on the Opposition benches to appreciate that the Government has taken this decision. We are serious about it. As far as the Government is concerned, if there are to be further derogations it would require legislation.

**Mr. McCarthy:** I am not aware of Fine Gael policy in this area. The leader of our group in this House gave a commitment when the issue was debated on Second Stage last week that he would resign his Seanad seat if elected to the European Parliament. That is the only implication for Oireachtas Members of our party contesting the European elections.

On the direct elections in 1979, the whole project was so unusual that it was quite obvious candidates of national prominence would get in. I have strong views about this because some of them ended a term in Europe to come back to Cabinet for six months, and the Government subsequently fell. Some of these people were not re-appointed following the third election in the early 1980s when the Government's successor went into office. The policy is inconsistent.

On the Government's majority, the previous Government had a much slimmer majority than this one. All political commentators said it would not last two years, or just three years at the outset. However, it did last, albeit with a very slim majority. I suggest to the Minister of State that the Government has a bigger majority on this occasion and if things do not work out, it has three or four spares in the boot. Obviously it would not suit any Government to have by-elections as a result of elections to the European Parliament. This is probably the basis for the Government's position in terms of this amendment.

As this was supposed to happen in 2007, I thought the Minister of State might be in good form with us this afternoon and that he might, as a result of a good debate, accede to our demand to accept the amendment. That does not appear

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to be the case. Given his reply, I withdraw my amendment.

Amendment, by leave, withdrawn.

Section 2 agreed to.

Section 3 agreed to.

#### SECTION 4.

Amendment No. 5 not moved.

**An Leas-Chathaoirleach:** Amendments Nos. 6, 7 and 8 are related and will be discussed together.

**Mr. Bannon:** I move amendment No. 6:

In page 6, line 12, in the first column, to delete "East" and substitute "Leinster".

This relates to the historical provinces in the country and the identifiable regions within the State. These were abandoned unnecessarily in favour of East, North-West and South constituencies. It may have been an oversight on the part of the boundary commission. The ceathair chúige and Meath have been recognised all over the world for centuries. Irish missionaries who went abroad always spoke about the provinces from which they came. As I said earlier, I visited Duisburg. St. Cillian, an Irish saint, founded that city in the eighth century. The plaque over his grave refers to St. Cillian, a native of County Cavan in the province of Ulster. That goes back several centuries.

The provinces should be maintained as far as possible. They are part of our heritage, history and culture. In ancient times each of the provinces had a king. I understand there were more than four provinces and the borders changed from time to time over the centuries, like the European constituencies. Each province had its own flag. Leinster was represented by the harp, Munster by three crowns, Connacht by the sword and we have heard time and time again about the red hand of Ulster. The three counties of Donegal, Monaghan and Cavan are often overshadowed by the Six Counties. However, the Minister of State keeps the flag flying for Donegal and is proud of his strong Ulster connections.

Reinstating the previously long established names would be the correct way to move forward. I compliment the commission on the fine job it has done. However, I believe it erred in removing long established names. Our identity is recognised all over Europe and the world and it is important that it be maintained. We have an opportunity today to correct this. The Minister of State should seriously consider the matter. I am a Nationalist and I am proud to have always recognised the four provinces of the State.

Clare, which is a county, should be given recognition because it has great heritage and culture. I have included it in my amendment

because I believe it should be given recognition. It is natural for Irish people and visitors to identify with the provinces. I hope the Minister of State will not abandon our old Gaelic regions, such as Cúige Laighin, Cúige Mumhan, Cúige Connacht and Cúige Uladh. I would appreciate if he would accept the amendments. It will not make a great difference and it is important to maintain our heritage and culture. It should not be seen as a political issue. We are all proud of Ireland and the provinces. We should try to retain them as far as possible and we will have a unique identify within Europe.

**Mr. McCarthy:** That was an interesting history lesson from Senator Bannon. I support the amendment.

The Minister of State will be more aware than many of us in this House that MEPs get very little publicity. In my opinion, if the European elections were not to be held in conjunction with the local elections, the turnout would be much lower than in general elections, even though that turnout is already very low.

The European project can appear very divorced from people on the ground. This was manifested in terms of the rejection of the first Nice treaty referendum. Very few people become involved in international politics, particularly within Europe. We only react when a directive or a decision from the Commission impinges directly on our lives in terms of how people interpret decisions in the European context. To use the directions when referring to the constituencies is not a good idea. There was far more recognition when the European constituencies were referred to by their provincial names. It is important that a county such as Clare should be given recognition. To include it in the North-West constituency is not a good idea, particularly as Clare is in Munster. It introduces an element of unfamiliarity into the European constituencies and puts a greater distance between people on the ground and the European project as a whole.

On other changes introduced by the commission, there are now two Westmeath constituencies. There is the county of Westmeath, which is in the constituency of Longford-Westmeath, and there is Meath West, which is now a three-seater constituency in the west of County Meath. There are a number of name changes which, to say the least, could cause confusion. The Minister of State will have an opportunity to look again at this issue. I do not know what is the logic behind the decision. I do not believe the name changes serve either the European project or the Members of the European Parliament, not to mention their constituents. The Minister of State has an opportunity on this occasion to react positively to this proposal. It would be good if the Government accepted Senator Bannon's amendment and reverted back to the original situation, particularly in County Clare, which has

been added to a province of which it is not a part and given a name to which it cannot relate.

**Mr. Moylan:** I have no problem with a list of Dublin East, Dublin North East and Dublin South. This is about getting people out to vote. There could be changes in the future to a single seat per constituency. What will they be called? Will there be another battle about that? There have always been revisions in the past and people accept them. People will vote for candidates to represent their area and I have no problems with the constituencies as they are outlined or the names for them. There must be balance to afford proper representation of the numbers in each region. A fair job was done and I compliment those involved.

**Mr. Gallagher:** I have no information about the commission's recommendations other than what was set out in the report. I am in the same position as every other Member. In preparing the Bill, the Government formed the view that the commission's recommendations constituted a package and that we would accept or reject it in its entirety. We have accepted it, as successive Governments have done since the commission was established. It would be inappropriate to cherry-pick the parts of the recommendations we like and expunge the bits we do not. A minor change to the commission's recommendations now could start a process of drift towards a situation where the recommendations of the commission would be implemented selectively. Overturning a recommendation of constituency names would mean abandoning the principle of non-interference with the recommendations of the independent commission. There would be no reason at a future revision to accept a recommendation of the commission on a more fundamental issue about which we are unhappy.

This is not a major issue but I will not set a precedent by accepting these amendments and interfering with the recommendations of the commission. This will be pertinent when the Bill on the recommendations on Dáil constituencies comes before the House later in the year and there will be a similar debate. If I accepted this amendment, the flood gates would open and we would return to the old days where the party political input into constituency revision brought the process into disrepute.

No one expects unanimity on the commission's recommendations but, nonetheless, there has been consensus until now that recommendations should be implemented warts and all. No matter how it is presented, accepting these amendments would be a fundamental change. They are minor amendments and we all like to see the provincial titles in lights, but it would be wrong to interfere, as most Members would agree. The Government will not countenance this and I will not accept the amendments.

In carrying out its functions, the commission was obliged to adhere to the terms of reference

set out in the Electoral Act 1997. Those terms of reference do not refer to adhering to the geographical areas of the provinces or their names when making recommendations concerning the European elections. In 1997 the many changes that would come about may not have been foreseen. If Senators have concerns about this matter, their suggestions can be considered in the review of the Electoral Act 1997, which contains the legislative provisions on the functioning of a constituency commission, which is under way in the Department. Eventually amending legislation will come before the House but I see no problem with retaining these names. The only complaint could come from County Clare but it is part of the Western Development Commission. When the BMW acronym was invented, it was all about money for the west, which even included Offaly.

These amendments would interfere with the recommendations of the commission and I do not want to go down that road. There will be other opportunities to address this issue. In 2009, Irish representation in Europe will be reduced from 13 seats to 12 and, while we will lose a seat, we all support the accession of Bulgaria and Romania to the EU, providing they can meet the economic and democratic criteria set down by the European institutions. If the commission's recommendations have created difficulties with names now, it could be even more difficult in the future. There could be single constituencies, six two seat constituencies or two six seat constituencies.

I appreciate the intentions of the amendments but I ask the Senators to consider the views I have expressed and my fear of interfering with the commission. Since its establishment we have accepted all of its recommendations. The review of the 1997 Act which is being worked on in the Department will come before the Oireachtas in due course and present an opportunity for further consideration.

**Mr. McCarthy:** I presume the Minister of State could accept the amendment if he wanted to and could rename the constituencies. The point was made about the independence of the boundary review commission but I wonder if all its decisions are unanimous.

It was a good idea to remove political input from such decisions — we only need to go back to the infamous Tullymarder which was supposed to favour the outgoing coalition.

**Mr. Brennan:** It backfired.

**Mr. McCarthy:** Political analysts and politicians did not see what was coming and the scale of it. It was important that politicians were removed from the equation because all Governments would act to strengthen their own position and weaken that of the Opposition. The commission's independence is important.

It is, however, also important to remember that the commission should be aware of the distance

[Mr. McCarthy.]

between Ireland and Europe in some areas. The names of these constituencies are cold and unfamiliar. The Minister of State was known as an MEP for Connacht-Ulster, not an MEP for the north west. Constituencies for Dáil elections that have north, south, east and west suffixes will add to the confusion.

I accept from where the Minister of State is coming. I presume the commission will meet again, particularly in view of the accession countries joining and the implications in terms of the loss of another seat at the end of 2009. If the constituencies are renamed at that stage, they will comprise half the north west, part of north west and part of the east, and that would be even more confusing. Good points were made in favour of this amendment.

**Mr. Bannon:** What I propose does not interfere with the decision taken by the boundary commission on the boundaries. The names I propose are part of our heritage and culture. When people vote on a referendum on a treaty, we hear it said that we are losing much of our identity to Europe. When politicians return from meetings in Europe and have responsibility for implementing the provisions of a European directive, they blame Europe. People are peeved about the European question. An opportunity is presented here where we could show that at least we retained part of our heritage and culture by retaining the names of the constituencies. I compliment the boundary commission on the great job it did. This amendment proposes only a name change; it is not that serious. I would appreciate if the Minister of State would consider it.

A Dublin treaty may be ratified in a few years time. If this amendment is accepted, at that time we could point to the example of this amendment as evidence of where the Seanad took a decision on retaining the old province names of the constituencies. We hear the terms east coast of America and the deep south. We are Americanising our system. We hear of east Europe, west Europe, northern Europe and southern Europe. We have a unique identity which should be retained on the island of Ireland and I am strongly of that view.

I tabled a motion some years ago at a local authority meeting to a proposal to move the court facilities from a historical building in the centre of Longford town to a greenfield site and that motion was carried by one vote on the day. A colleague, Councillor Séamus Finnan, paid money out of his own pocket to Mr. Shaffrey, an architect, to carry out an audit on the viability of retaining that old structure, and it has been retained. The Minister was in Longford last week and referred to this instance and acknowledged that only for the decision of the local authority, the court facilities in Longford probably would be located on a greenfield site. I am only asking that our culture and heritage be protected. We will

put forward a strong case in this regard and point to the fact that we have retained the old Irish traditional names of the provinces. The provinces are dear to me. I have been interested in history all my life and people in those areas should be able to retain their identities.

**Mr. Brennan:** I thank Senator Bannon for his sentiments which have been noted. I am sure the Minister of State will take them into account at the time of a future review. On that basis, I ask the Senator to withdraw his amendment.

**Mr. Gallagher:** I do not envisage any great difficulty with this proposal, which is a reasonable one. I am sure Members on both sides of the House would like to retain the names of the provinces in the constituencies, but such a proposal must be realistic, practical and take into consideration the terms of reference that were given to the commission in 1997. While it might not be a main issue, if we were to make such a change it would set a precedent. Hopefully, as individuals or political parties, we could make a submission to the commission when it comes to review the European constituencies prior to the 2009 election, which I believe is inevitable.

I thank Senator Bannon for tabling these amendments. I have no difficulty with them in principle. My concern is that in accepting them, I would be cherry-picking the recommendations of the commission.

Question, "That the word proposed to be deleted stand," put and declared carried.

Amendment declared lost.

**Mr. Bannon:** I move amendment No. 7:

In page 6, line 16, in the first column, to delete "North-West" and substitute "Clare Connacht/Ulster".

Question, "That the word proposed to be deleted stand," put and declared carried.

Amendment declared lost.

**Mr. Bannon:** I move amendment No. 8:

In page 6, line 21, in the first column, to delete "South" and substitute "Munster".

Question, "That the word proposed to be deleted stand," put and declared carried.

Amendment declared lost.

Section 4 agreed to.

NEW SECTION.

**Acting Chairman (Mr. J. Walsh):** Amendment No. 11 is related to amendment No. 9 and they may be discussed together by agreement.

**Mr. Bannon:** I move amendment No. 9:

In page 6, before section 5, to insert the following new section:

“5.—The Interpretation Act 1937 is amended by inserting the following into the Schedule of the Act, before the expression ‘Rules of Court’:

25A.—The expression “representative in the European Parliament” shall be construed as a reference to a member of the European Parliament and cognate expressions shall be construed accordingly.’”.

This is a technical amendment. I would like to hear the Minister of State’s response to it.

**Mr. Gallagher:** As I stated on Committee Stage in the Dáil, I consulted the Parliamentary Counsel on the need for this amendment and was advised it is not necessary. In those circumstances, the Senator might consider withdrawing his amendment.

Amendment, by leave, withdrawn.

Section 5 agreed to.

#### NEW SECTION.

**Mr. Bannon:** I move amendment No. 10:

In page 6, before section 6, to insert the following new section:

6.—(1) All aspects of electronic voting shall be inquired into by an Electoral Commission to be established by the House, who shall within six months of the passing of this Act, furnish a Report to this Houses of the Oireachtas, detailing the—

- (i) reliability,
- (ii) security,
- (iii) integrity, and
- (iv) verifiability,

of any electronic voting system which is proposed for adoption by the Minister.

(2) No system of electronic voting may be adopted by the minister for use in elections referred to in *subsection (3)* unless—

- (i) a report under *subsection (1)* has been furnished to the Houses of the Oireachtas, and
- (ii) There is all-Party agreement on the adoption of a particular system of electronic voting.

(3) Nothing in this Act or any other enactment shall permit the trial, implementation or use of electronic voting in any election to—

- (i) the Houses of the Oireachtas,
- (ii) the Office of President,

(iii) the European Parliament, or

(iv) local authorities,

save in accordance with *subsection (2)*.”.

Amendment put and declared lost.

Section 6 agreed to.

Amendment No. 11 not moved.

Title agreed to.

Bill reported without amendment.

**Acting Chairman:** When is it proposed to take Report Stage?

**Ms O’Rourke:** Technically, next Tuesday, but it will be taken next Thursday evening.

Report Stage ordered for Tuesday, 24 February 2004.

**Acting Chairman:** When is it proposed to sit again?

**Ms O’Rourke:** Next Tuesday at 2.30 p.m.

#### Adjournment Matter.

#### Planning Issues.

**Ms Tuffy:** I will not say much about this issue as it is self-explanatory. It is of particular interest to Deputies and Senators because we can no longer make comments about planning issues at council meetings. We are now charged a fee for submissions made in respect of planning applications.

#### Minister of State at the Department of the Environment, Heritage and Local Government

**(Mr. Gallagher):** I thank Senator Tuffy for raising this issue. In August 2000, the European Commission advised Ireland that it had received a complaint that a fee for the making of a submission on a planning application would restrict citizens’ rights to participate in development consent procedures and was contrary to the public participation provisions of the environmental impact assessment directive and contrary to the spirit of the 1998 UNECE Aarhus Convention. In October 2001, the Commission issued a further letter, under Article 226 of the EU treaty, indicating that the environmental impact assessment directive makes no express provision for the payment of a participation fee and suggesting that the submission fee may act as a serious impediment to the expression of opinions and undermine the purpose of the directive. On 23 January 2003, the European Commission issued Ireland with a reasoned opinion to the effect that the 20 fee for

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the making of a submission on a planning application which requires environmental impact assessment is contrary to the public participation provisions of Directive 85/337/EEC on environmental impact assessment.

Ireland has responded to each letter, making a full defence to the matters raised by the Commission. Ireland contends that the participation fee in no way contravenes the terms of the directive. The imposition of a fee for the making of a submission or observation on a planning application must be set against the background of a very open and transparent planning system of which public participation is a key element. Ireland actively provides for third party participation at all stages of the planning process, which includes the development plan, planning application and planning appeal. We are one of the few member states to have a third party appeal system.

The Planning and Development Act 2000 made a number of important changes to primary legislation to confer greater rights on third parties. The long-standing right of public access to planning files free of charge has been continued and enhanced under the new Act. The primary purpose of the fee is to contribute towards the enhanced service — required under the Act and the 2001 regulations — to be provided by planning authorities to persons who make submissions. These statutes, for the first time ever, confer a statutory obligation on the

planning authority to take full account of any objections or submissions. The claim that the introduction of the 20 fee will act as a disincentive to individuals and bodies with genuine concerns about a particular planning application was firmly rejected.

Article 6 of the environmental impact assessment directive, as amended, requires member states to ensure that any request for development consent and any information gathered pursuant to Article 5 — environmental impact statement — are made available to the public within a reasonable time to give the public concerned the opportunity to express an opinion before the development consent is granted. Article 6 also specifies that the detailed arrangements for such information and consultation are a matter for individual member states. It is our contention that Ireland is within its rights to exercise its discretion in this way. The fee of 20 will not deter any person or body who has genuine concerns about a planning application.

On 22 July 2003, the European Commission issued a press release in which it stated its intention to refer the case to the European Court of Justice. No official communication has been received from the Commission to date. There are no proposals to amend the relevant regulations, which reflect an approach recently endorsed by the Oireachtas in the context of the Planning and Development Act 2000.

The Seanad adjourned at 1 p.m. until 2.30 p.m. on Tuesday, 24 February 2004.