

SEANAD ÉIREANN

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Dé Céadaoin, 7 Iúil 2004.
Wednesday, 7 July 2004.
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Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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Paidir.
Prayer.
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Business of Seanad.

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

The urgent need for the Minister for Communications, Marine and Natural Resources to ensure that Mogul of Ireland fulfils its responsibilities to the families living adjacent to the Tailings Pond and other abandoned mine sites near Silvermines, County Tipperary, and to make plans for a long-term sustainable agreed plan for the rehabilitation of the mine sites in the Silvermines area.

I have also received notice from Senator Morrissey of the following matter:

The need for the Minister for Transport to report on his plans for further development and upgrading of the Maynooth line to Clonee, taking into account the need to develop the town end of the line at Spencer Dock station.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment and they will be taken at the conclusion of business.

Order of Business.

Ms O'Rourke: The Order of Business is No. 1, motion re Electoral Act 1997 (section 53) Order 2004 and the Presidential Election (Reimbursement of Expenses) Regulations 2004; No. 2, Education for Persons with Special Educational Needs Bill 2003 — Committee Stage (resumed), to be taken on the conclusion of the Order of Business and to conclude no later than 12 p.m.; No. 3, Commissions of Investigation Bill 2003 — Report and Final Stages, to be taken at 12 p.m. and to conclude at 1 p.m.; No. 4, statements on the Barron report, to be taken at 2 p.m. and to conclude at 4 p.m., with the contributions of spokespersons not to exceed ten minutes and those of other Senators not to exceed eight minutes; No. 5, National Monuments (Amendment) Bill 2004 — Report and Final

Stages, to be taken at 4 p.m. and to conclude no later than 5 p.m.; No. 6, Dormant Accounts (Amendment) Bill 2004 — Committee Stage, to be taken at 7 p.m. and to conclude at 8.30 p.m.; No. 7, Equality Bill 2004 [*Seanad Bill amended by the Dáil*] — Report and Final Stages, to be taken at 8.30 p.m. and to conclude at 9.15 p.m.; No. 8, International Development Association (Amendment) Bill 2003 — Second Stage, to be taken at 9.15 p.m. and to conclude at 10.15 p.m., with the contributions of spokespersons not to exceed eight minutes and those of other Senators not to exceed five minutes and the Minister to be called upon to reply no later than five minutes before the conclusion of Second Stage; and No. 24, motion No. 18, to be taken from 5 p.m. to 7 p.m. There will be a sos from 1 p.m. to 2 p.m.

No. 1 concerns an order and regulations in respect of the expenditure limits for presidential elections in the same manner as for Dáil elections, as provided for under the Electoral Act. Where limits are proposed to be introduced, it is required that a draft order be laid before each House of the Oireachtas for positive resolution. As any presidential election, if held, would take place in October and the election period would commence before the Houses resume after the summer recess, this approval needs to be obtained before the summer recess. The amounts are based on the constituency amounts. A note on the matter will be made available to Senators. There is a tradition that we do not discuss presidential matters in either House.

With the permission of the Cathaoirleach, I will make a short statement on No. 8 and another matter. No. 8, the International Development Association (Amendment) Bill 2003, is a Bill from the Department of Finance to enable Ireland to contribute advance loans to the poorest developing countries at an interest rate of 0% , to be paid back over a long period of 35 to 40 years. The Bill is a very fine measure and is approximately four pages long. Bearing in mind its purpose, we have spoken to the leaders of each group about it. Ireland makes a contribution to the fund in question, as do all the countries in the developed world.

I will not take up too much of the House's time raising the second matter. We were requested to take a Bill at 10 p.m. tonight, which I would not do. Apart from the need for us to have a sense of reason, it would be very unfair on staff to take it at that hour. We did it once and it did not work out. I made a sort of promise to myself thereafter that we would not engage in this late night caper. It is not a good idea to take a major Bill of 39 pages at 10 p.m. and process it within another hour the next day. I was receiving conflicting messages on this matter so I went to see the Taoiseach yesterday. I waylaid him when he came out of the House and spoke with him at considerable length. I have learned many matters which are very interesting.

I want Senators to know that the Minister for Transport never contacted me. He never tele-

[Ms O'Rourke.]
 phoned me. I prefer to be straightforward and I want to tell the tale as it happened because one hears different versions. There is a huge amount of spinning at present. I prefer to be straightforward and honest about the matter. If someone wants to take up the issue on the Order of Business, that is fine. I never received a telephone call or any communication from the Minister for Transport. His office was in contact with my office — Senators know who that was. I regard those interchanges as undesirable.

Be that as it may, I spoke with the Taoiseach and we had a very good discussion. He agreed that it would be ridiculous to rush the Bill through at 10 o'clock tonight and again tomorrow. We will take it next week. I apologise to you, a Cathaoirleach, and through you to the House and to the staff. We had thought that summer was here and we could go on our way. That is not so.

For many years this House was railroaded and regarded as a place where legislation was rubber-stamped. It was thought that Senators were not up to much. I thank Senators for their forbearance in the matter. It is a mark of our sense of authority that we would not allow the Bill to be taken tonight. I do not intend, on my watch, that kind of behaviour to be——

Mr. Norris: Well done.

Ms O'Rourke: I am not looking for praise. I am just saying I do not intend to allow that to happen.

Mr. B. Hayes: On behalf of this side of the House, I congratulate the Leader——

Ms O'Rourke: I do not want that.

Mr. B. Hayes: ——on standing up to the Minister for Transport, who showed unbelievable neck, cheek and arrogance in thinking that a Bill of this magnitude could be brought to the House tonight, to be rubber-stamped tomorrow and the entire matter put in place within 24 hours. This act of bullying was stopped by the Leader and she is to be congratulated on her actions in this regard.

We find ourselves in an exceptional situation. We are being brought back next week to debate what is, in the Government's mind, emergency legislation. Why is this Bill now being pushed through the House against the express wishes of the vast majority of Fianna Fáil backbenchers and of people with considerable experience in this House? I refer in this regard to Senators Daly and Dooley, the Leader, a former Minister, and even, God help and protect us, Senator Leyden. All of these people have expressed opposition to this measure.

(Interruptions.)

An Cathaoirleach: Order, please.

Ms White: That is ignorant. Senator Hayes should withdraw that remark.

Mr. Leyden: Senator Hayes has no manners whatsoever. I resent that remark very much. He has never sat in a Minister's seat. He was never a Minister and never sat in Cabinet. How dare he?

Mr. B. Hayes: A Chathaoirligh, I am being interrupted.

An Cathaoirleach: Order, please.

Mr. Leyden: When he has served in Government, then he can talk. I resent Senator Hayes's remark and I ask him to withdraw it.

(Interruptions.)

Mr. Leyden: I ask for the same protection from him which he demands from others.

An Cathaoirleach: I will be forced to adjourn the House.

Mr. Leyden: I do not care if the House is adjourned, I want an apology from that man.

An Cathaoirleach: Senator Leyden should resume his seat.

Mr. Leyden: I want an apology.

An Cathaoirleach: The House stands adjourned for five minutes.

Sitting suspended at 10.45 a.m. and resumed at 10.50 a.m.

An Cathaoirleach: There will be no further discussion of next week's business. We will discuss today's Order of Business.

Mr. Leyden: I request that the Cathaoirleach demand the withdrawal of a snide and demeaning comment directed at me personally by Senator Brian Hayes.

Mr. Norris: Rubbish.

An Cathaoirleach: It is improper to refer to personalities in this House and I will not tolerate it. We will now proceed with today's business.

Mr. Leyden: I requested the protection of the Chair against a snide and demeaning comment made by another Member of this House.

Mr. Norris: Rubbish.

Mr. Leyden: Whether he withdraws it or not is a matter for the Chair, but I am requesting protection as an elected Member of this House. It is not right or proper that another Senator can make a demeaning and snide remark and the Cathaoirleach allows it to pass without asking him to withdraw it.

An Cathaoirleach: The Senator has made his point. To restore order to the House, I ask Senator Brian Hayes to withdraw the remark.

Mr. B. Hayes: Withdraw what remark?

An Cathaoirleach: There was a reference that definitely offended Senator Leyden.

Mr. B. Hayes: To be clear about this, does Senator Leyden have a difficulty with the fact that he is being grouped with other colleagues who have expressed opposition to the Minister for Transport's plans?

Mr. Norris: He objects to being grouped with God.

An Cathaoirleach: Will I have to adjourn the House again? I am trying to restore order and I would like Senators to co-operate with me. Senator Brian Hayes said "God help us" with regard to Senator Leyden.

Mr. B. Hayes: On the basis that I might offend the good Lord almighty, I will withdraw the comment.

An Cathaoirleach: That is not a proper withdrawal.

Mr. B. Hayes: To take lectures from that Senator on issues of integrity and probity is a bridge too far.

Mr. Leyden: The Senator is going deeper now.

An Cathaoirleach: The Senator should withdraw the remark please.

Mr. B. Hayes: I said what I have said, Sir. On today's Order of Business, the point I was making is that when the matter is debated in the House next week——

An Cathaoirleach: We must deal with the Order of Business for today.

Mr. B. Hayes:——how can we possibly amend the Bill in question given that if an amendment was passed, the Bill would have to go back to the Dáil and that cannot happen?

An Cathaoirleach: It can go back to the House in September.

Mr. B. Hayes: The Minister for Transport may not be in his job by then.

An Cathaoirleach: That is completely irrelevant.

Mr. B. Hayes: This is a matter for today and I put it to the Cathaoirleach and the Leader that the way in which the Government has dealt with this issue is appalling. It shows no respect for the Houses of the Oireachtas to handle it in this way.

We are talking about people's livelihoods in different regions.

An Cathaoirleach: That is a matter for next week.

Mr. B. Hayes: In congratulating the Leader on dealing with this issue in the manner she has, I call on the Minister for Transport to consider his position because he has gone over all our heads.

Mr. O'Toole: Issues have been raised by the Leader and responded to by the leader of Fine Gael in the House so I will expect some latitude on this issue on the basis that I have raised it time and again on the Order of Business for the past two weeks. It is an absolute charade. I share Senator Brian Hayes's view that the Leader of the House did her absolute best and defended the integrity of the House, but the reality is that we have finished up, following the intervention of the Taoiseach, with a charade next week where we will debate a Bill that we cannot change.

An Cathaoirleach: It can be changed.

Mr. O'Toole: We must decide if we order our own business or if others effectively pull the strings elsewhere and order us to do it. The rights of the travelling public, SFADCo workers, people in the Shannon area and union members have all been disregarded in this charade of Bill, the purpose of which no one can understand. Fair play to Michael O'Leary, his advertisements have worked. Whatever impact he had on the Government, it has conceded so it can get free rides into Shannon Airport on Ryanair. That is the outcome.

An Cathaoirleach: The Senator should not mention names. I have ruled in that regard.

Mr. O'Toole: It is not that I reject the authority of the Chair but this issue has been raised. What we are doing is wrong and we should look carefully at how we are doing business. The Taoiseach has stated that he wants us to deal with the Bill. I do not understand why because it will upset everyone everywhere. No one is in favour of it and it is completely wrong. I will hold what I have to say until next week, despite the fact that it will cost me a lot of money to be here. Like other Members of the House, I had taken out the bucket and spade and now will have to put them back in the cabinet.

Regarding the exchange earlier, I agree with the points Senator Leyden made about Aer Lingus, but he made very serious accusations against Fine Gael yesterday of selling off the national airline. He raised the hare himself.

An Cathaoirleach: We are not discussing that now and I did not hear those remarks.

Mr. O'Toole: Members praised how well the Irish Presidency was served by senior civil ser-

[Mr. O'Toole.]

vants. It is absolutely disgraceful, therefore, that our senior civil servants are being deprived of the normal review of their salaries to which they are entitled. As much as I admire the Minister for Finance, Deputy McCreevy, in many ways, this review should go ahead. The senior civil servants are entitled to it. They work hard and represent and defend the State in many ways. I ask the Leader to bring my remarks to the attention of the Minister for Finance.

Regarding Private Members' business tonight, I notice that Senator Brennan's name is third on the list under the Fianna Fáil motion. Has there been another change? Are we to welcome Senator Brennan back into the fold? Has the gene pool finally taken—

Mr. Dardis: All of his colleagues assent to the motion.

Mr. Ryan: While I understand the Cathaoirleach's concern for order in the House, I trust that he will not prevent me from responding to what the Leader said when introducing the Order of Business. For reasons that are far more significant and important to me than holidays, I will not be here next week because something is happening that requires me to stay at home. That is not what I want to talk about, however.

Mr. Norris: Ah go on.

An Cathaoirleach: Order, please.

Mr. Ryan: That remark was misplaced but I do not want to embarrass Senator Norris. Which Minister will take the Bill next week? Will the Minister who is driving it be on holiday while Seanad Éireann is being forced to take it or will he be in the House for the first or second time in two years? What exactly did the Leader learn? She tantalisingly said that she learned a number of things and perhaps she will share them with the House. She could explain matters to the House and tell us what she knows about the spinning that has been going on. In today's *The Irish Times*, the Minister yet again suggested that Cork and Shannon Airports, in their present position, would be perpetually coming to Dublin asking for money. I do not believe infrastructural investment in the regions should be confused with some sort of begging bowl. It is important to point out that Shannon and Cork Airports will be precluded from further State aid or investment under these proposals. Dublin Airport will be burdened with enormous debt and Cork and Shannon Airports will be burdened with an impossible business position. These are significant issues. How is it that having had electronic voting bulldozed through the two Houses in the teeth of common sense objections, we ended up with the debacle from which nobody learned any lessons? Yet again we are about to be subjected to what will clearly be a debacle for Shannon and Cork Air-

ports for reasons nobody can explain nor has explained to the House. That is next week's business but I did not raise it; the Leader raised it correctly on the Order of Business and as a leader of a group I feel entitled to ask what is going on. I hope the Leader will elaborate in her response.

On today's Order of Business, the allocation of an hour and a half from 7 p.m. to 8.30 p.m. to the Committee Stage of what all of us on this side of the House would call the Fianna Fáil slush fund Bill suggests a deliberate attempt to get rid of it quickly to avoid the considerable embarrassment that will arise from the effective theft of money from bank accounts by the Government to fund Fianna Fáil's next attempt at buying an election in two years time.

Mr. Dooley: That is rubbish.

Mr. Finucane: I am a member of the Joint Committee on Communications, Marine and Natural Resources which has been discussing energy policy recently. Senior officials from the ESB have appeared before the committee. The Minister has made a definitive announcement that there is no case for privatisation of the ESB. It is therefore very difficult for people to appreciate what is happening. A proposed industrial dispute is due to start next Monday. The workers are looking for 20% equity in the company and an 18.5% increase over three years. One particular union group has decided to go ahead with the strike. The intervention by Mr. David Begg is critical. The seriousness of the situation does not seem to be appreciated. I spoke to people in the ESB yesterday and I know it is a serious situation. A major industrial dispute could start next Monday morning and the whole country could be blacked out. The Minister will say it is not for him to intervene but considering that strike action was first proposed on 4 May 2004, I ask him to make a statement on this issue and show his concern, rather than the faceless people within his Department making statements on his behalf. There is no sense of urgency and concern on this issue and that should be expressed now or we could face a very critical situation after the weekend.

Mr. Norris: I congratulate the Leader on taking a firm stand. She has enhanced the dignity of the House by so doing and has the support of all Members from the various groups. I will not dwell on any of the contentious material that surrounded the subsequent part of that little discussion. I hope the focus will not be blurred because the banter that took place subsequently could have that effect. Something very important happened here today; the Leader had the courage to stand up for the dignity and independence of the House and that will be welcomed and supported by all Members.

The House will be sitting next week. I asked yesterday if time could be arranged for a debate on the Middle East, in particular on Iraq. The Leader reasonably said that since the House was

only sitting today and tomorrow, there would probably not be time for that debate. As the House is now meeting next week, I ask the Leader if it would be possible to have that debate or even a short period for statements in the light of the worsening situation. The Government, of whatever legitimacy, of Iraq, yesterday came under mortar fire in its enclosed compound. That does not suggest it is very stable.

I regard Ms Lara Marlowe as a very balanced reporter. In yesterday's *The Irish Times* she described how the American soldiers spat at her because she was dressed in Iraqi traditional clothing:

Soldiers spitting at Iraqi cars and prisoners being tortured are symptomatic of the same danger, an arrogant, selfish, deaf, blind, but vociferous, US Administration that acts with impunity over the world.

It is important that this is recognised. As people who have the privilege to live in a comparatively safe and comfortable environment, we must put on the record our feelings for people in the rest of the world who are much more vulnerable than we are.

I join with Senator Ryan in saying the Leader was very tantalising, almost as tantalising as Senator Ryan himself about his reasons for staying in Cork, when she said that very interesting comments were made to her. I hope she will be able to share those with the House.

I support Senator O'Toole's comments about senior civil servants. We have secured our pay increase to which we are perfectly entitled and which I intend to accept. It is wrong, however, that senior civil servants should be cut out, especially when there have been warnings that we might face a brain drain if the Civil Service, which as Senator O'Toole said is excellent and did us proud during the EU Presidency, is faced with the situation that people with similar talents get twice or four times the amount of money in the private sector. That would be a pity.

Mr. Coghlan: In the light of events unfolding, when does the Leader believe operational control will commence with regard to the business to which I cannot refer, No. 21 on the Order Paper, because it is not due until next week? What will be the status of the existing board when that Bill is enacted? What will happen to the Great Southern Hotels group?

Mr. Finucane: The Senator's favourite hotel.

Mr. Coghlan: It is not mentioned in the Bill and I wonder what will happen to the group. Will the hotels be sold off piecemeal?

An Cathaoirleach: I suggest the Senator raise the matter during the debate next week.

Mr. Coghlan: I will do so and I am very grateful to the Cathaoirleach. Will the Leader reply on the main items, the operational control and the

board and when the other boards are to come into being? They are in place already like shadow boards. I look forward to the Leader's reply.

Mr. Kitt: I welcome the International Development Association (Amendment) Bill 2003, No. 8 on today's Order Paper. The subject matter of the Bill is the advancement of loans to developing countries and is welcome. I also welcome the initiative taken by Superquinn in respect of fair trade coffee and tea and perhaps other products. I hope the fair return to producers will happen and that other supermarkets and stores will consider similar action. The Houses of the Oireachtas use fair trade coffee. It should be a more widespread practice.

Mr. Quinn: I add my voice to the words of congratulation to the Leader for the stand she took yesterday. I believe it has enhanced the reputation of the House and its standing in the eyes of the public. I ask her to reply to the questions about what will happen next week. Will this be a *fait accompli* and will it not be possible to make amendments? Will Committee Stage consist merely of a debate? I ask the Leader to answer those questions in order to enhance once again the reputation of the House.

It would be remiss of this House not to recognise that tomorrow, a former Member of this House, Mr. Michael O'Kennedy, will be the first former Irish Government Minister to receive an order of merit from the British monarch. It is called the Companion in the Most Distinguished Order of Saint Michael and Saint George, the CMG. It is said that in Whitehall one is warned not to refer to it as "Call me God". The honour was bestowed on him because of our improving relationship with Britain, the work he has done in the British-Irish Interparliamentary Body and, as Senator Brian Hayes stated yesterday, in recognition of developments and improved relationships in the North.

Mr. Norris: Hear, hear.

Mr. McHugh: As it is the height of the tourism season, it is too late to debate the current season but I ask for a general debate on tourism in advance of next year's season. The tourism season in County Donegal is not materialising and we are relying on the Northern Ireland market to keep us going. The hundreds of thousands of euro being pumped into marketing are not working.

County Donegal has a quality tourism product on the ground with quality landscapes and scenery. While people speak with goodwill about how great and nice the county is, tourists are not coming. We need an all-Ireland marketing strategy. Fáilte Ireland is the all-Ireland marketing body. Why are tourism figures in Derry, just a few miles across the Border, at an all-time high, when nothing is happening on the Donegal side of the Border? We need a serious debate on the issue.

An Cathaoirleach: The Senator may make those points in the debate.

Mr. McHugh: County Donegal has an infrastructure deficit as regards marinas. There are quality marinas from Cahirciveen in County Kerry, to Kilrush in County Clare, the Aran Islands in County Galway and up to County Sligo. County Donegal, however, does not have a single marina or marina infrastructure or facilities. This is one aspect of the major debate we need in the House.

An Cathaoirleach: The Senator has made his point. We cannot have a debate on the Order of Business.

Mr. McHugh: I thank the Cathaoirleach for his indulgence.

Mr. Daly: I share Senator Finucane's concern about the possibility of a dispute in the ESB and its potential to seriously damage power supplies and the power network. Long-established procedures for dealing with such circumstances should be applied immediately to avert a dispute. It appears a small group of people, a maverick outfit, intends to disrupt power supplies. While I am not sure what Ministers can do in this regard, agreed procedures are in place in the ESB group of unions to deal with such matters. Every effort should be made to avoid a dispute which would create power difficulties at a time when we cannot afford them.

The debate on the State Airports Bill should help to clarify matters and allay the fears of many people in the regions, especially Shannon, about the proposed changes and their future employment. Irrespective of our views on the detail of the Bill, it will be useful to debate it in the House because there is serious anxiety in Shannon about the impact not only of the legislation but also of changes I raised yesterday with regard to SFADCo. The opportunity to debate the legislation in the House may allay people's fears about the future.

Mr. Browne: Yesterday's newspapers featured an item on a reduction in alcohol sales. While that appears to be good news, I ask the Leader to invite the relevant Minister to the House for a debate on domestic violence in the autumn. I am concerned we may have an increase in domestic violence as a result of the smoking ban which has led to more people drinking at home. It has been brought to my attention that a pub is at least a controlled environment but the home is not. We should examine this issue in the autumn.

It is amazing that the Fianna Fáil Party, one of whose former Senators is a lord, will have another member receive an order of merit from the British Crown. I understand a system of awards is still in place in this country. We should consider resurrecting it as we should be mature enough to have a system of awarding people for

making positive contributions. I ask the Leader to look into the matter.

Senators protested yesterday when the House was described as a rubber-stamping Chamber. One must suspect this to be the case, however, given that we are returning next week to debate the State Airports Bill, for which no business plan has been produced. There have been no developments in the Dáil and it is more than likely that no amendments will be accepted in this House. I hope I will be proved wrong.

An Cathaoirleach: Amendments can be accepted.

Ms O'Rourke: The Leader of the Opposition, Senator Brian Hayes, raised the question of whether the State Airports Bill can be amended. The Cathaoirleach's interpretation is correct. A Bill is brought before the House and amendments can be tabled and either accepted or rejected. That is the business of the House on Committee Stage, as the Cathaoirleach has confirmed. The Senator made his points strongly. Senator Browne should note that the Bill will at least be debated in the House, having initially been ordered to be disposed of in five minutes.

Senator O'Toole described the State Airports Bill as a charade and asked who was lurking in the wings. That is the interesting question. The Senator has shown he is a fine trade union representative in taking up the case of senior civil servants whose pay increases will be delayed until 2007. That is a matter for the Minister for Finance, Deputy McCreevy, who, I understand, will come before the House to take the International Development Association (Amendment) Bill 2003 tonight, after which we may have a word with him.

Senator Brennan is welcome in the House in whichever guise.

Mr. B. Hayes: All is forgiven.

Ms O'Rourke: His decision was never contentious. Senator Ryan asked which Minister will take the Bill next week. I understand it will be Mr. Brennan.

Mr. Dardis: Which Mr. Brennan?

Ms O'Rourke: The Minister for Transport, Deputy Brennan, will take the Bill.

Mr. Ryan: They are both Progressive Democrats.

Ms O'Rourke: The Taoiseach was extremely courteous in providing me with information on this matter and I found our meeting extremely helpful. Senator Ryan also raised Cork and Shannon airports and cited the Minister's remarks in the other House yesterday. I hope we will be able to have a decent debate on the matter next week.

As regards the Dormant Accounts (Amendment) Bill, we debated Second Stage of

the Bill between 7 p.m. and 9 p.m. last Tuesday. Speakers barely filled the allocated slots and no one who wished to speak was prevented from doing so.

Senator Finucane raised the ESB and the potential dangers of a dispute. I believe moves are taking place in that regard.

Senator Norris requested a debate on the Middle East. I will make inquiries and get back to him.

Mr. Norris: I would be satisfied with statements without a Minister present.

Ms O'Rourke: The Senator also raised an article by Lara Marlowe in *The Irish Times*. The item made awful reading. Ms Marlowe is a fine journalist.

As regards Senator Coghlan's question, I understand that the board and its subsidiary boards will remain in place until the end of September.

Senator Kitt raised the International Development Association (Amendment) Bill. It is fine legislation and I hope he will be able to speak on it tonight. He also congratulated Supervalu — I made a note to do likewise — on its decision on Fair Trade goods.

Mr. Ryan: It is Superquinn.

Mr. Norris: One gets super value in Superquinn.

An Cathaoirleach: Order, please. Allow the Leader to continue without interruption.

Ms O'Rourke: Well done to Senator Quinn, whose nice son I heard speaking on the issue this morning.

Mr. B. Hayes: The Leader is back on the Senator's Christmas card list.

Ms O'Rourke: It is a great development. Senator Quinn raised the status of the debate ordered for next week. We will have plenty of time to tease out issues. He also referred to Mr. O'Kennedy receiving an award, which I understand was made in recognition of his work in developing relationships as joint chair of the British-Irish Interparliamentary Body. I am rather ambivalent about receiving honours from another country.

Mr. Bradford: Perhaps that is jealousy.

Ms O'Rourke: I would have the sense not to take it, Members can be sure of that.

Mr. Norris: Hear, hear.

Ms O'Rourke: I have my own mind, thank God.

Regarding the tourism industry in County Donegal, I was unaware it was in the dire situa-

tion of which Senator McHugh speaks. Fáilte Ireland is an all-Ireland tourism marketing body so perhaps the Senator should consult it on this matter.

I agree with Senator Daly that a debate on the ESB would be helpful if it helped to allay people's concerns. Senator Browne spoke about the possibility of a reduction in drinking leading to increased domestic violence. I am not sure if this is the case.

Ms White: No.

Ms O'Rourke: It is a strange one. One can go out and get drunk and then return home and engage in violence if one is so inclined. I do not see the connection.

The matter of the awards system was also raised and if it were an Irish system it would be a different matter. I am merely conveying my own view on this and do not wish to belittle the honour Mr. O'Kennedy is to receive.

Mr. Bradford: It is a well-deserved award.

Ms O'Rourke: Yes, he has put a lot of effort into his political life. People have different views on the matter of honours.

This House was laudatory yesterday about the contributions of Senators Ross and O'Toole regarding the review of auctioneering which has been established following input from them and from Senator Scanlon. I thank the Senators for their insistence that such a review be established.

Order of Business agreed to.

Electoral Act 1997: Motion.

Ms O'Rourke: I move:

That Seanad Éireann approves the Electoral Act 1997 (section 53) Order 2004 and the Presidential Election (Reimbursement of Expenses) Regulations 2004, copies of which, in draft, were laid before Seanad Éireann on 6th July, 2004.

Question put and agreed to.

Business of Seanad.

Mr. U. Burke: As the Order of Business has only now been agreed, is it possible that the time allocated for the resumed Committee Stage of the Education for Persons with Special Educational Needs Bill 2003 can be extended?

An Cathaoirleach: That is not in my power at all.

Mr. U. Burke: In view of the delays and disruptions that took place during the Order of Business, can the Leader consider extending the time allocated for resumed Committee Stage?

Ms O'Rourke: I will see if something can be done about that.

Mr. O'Toole: I was going to make the same point. An hour is the minimum that should be allocated for such debates.

Ms O'Rourke: I shall make inquiries and return to the House with an answer on that point.

Education for Persons with Special Educational Needs Bill 2003: Committee Stage (Resumed).

SECTION 4.

Debate resumed on amendment No. 15:

I leathanach 10, fo-alt (6), líne 18, tar éis “potential”, “and shall take account of the child’s cultural background and linguistic needs” a chur isteach.

—(Senator O'Toole).

An Cathaoirleach: It was agreed by the House that amendments Nos. 15, 16, 20, 24 and 25 would be discussed together.

Mr. O'Toole: Cuirim fáilte roimh an Aire Stáit go dtí an Tigh. Is é atá idir lámha againn an tábhacht a bhaineann le cúlra cultúrtha an linbh a chur san áireamh maraon leis na deacrachtaí a bheadh aige nó aici ó thaobh cursaí teanga de. In addressing the educational plan it is crucially important that there be a reference to and an understanding of the child’s cultural background.

I was trying to make this point last night. The Acting Chairman may have felt I was overly long-winded but I needed to put my remarks in context. As a teacher — and I know Senator Fitzgerald did the same — we were inclined to use Ladybird books because they were very useful for learning techniques. Nonetheless, the Department of Education had its face absolutely set against using them because they were culturally incorrect. Peter and Jane did not fit the backgrounds of the children of Dublin. Bheadh sé sin thar a bheith tábhachtach ó thaobh cursaí Gaoluinne de. Ní bheadh aon ghaol ag leanaí Gaeltachta leis na Peters and Janes of Great Britain. It is hugely important that we keep that in mind. Similarly, there were perfectly good stay safe programmes in use in Britain and we looked at them very carefully. The British programmes followed the required steps but they did not come out of the children’s cultural background. The same thing happened in dealing with remediation. Is cuimhin liom, go mórmhór in áiteanna Gaeltachta in gCiarraí, i gCondae na Gaillimhe agus i gCondae Mhuigheo, go raibh deacrachtaí ag na múinteoirí ó thaobh na ceisteanna bhí á gcur ar na leanaí toisc nach rabhadar préamhaithe ina gcultúr féin. I heard a recent example of this difficulty from a psychologist who was working in Irish and who had moved briefly from Gaoth Dobhair to Gaeltacht Chiarraí. Bhí an siceolaí seo ag cur teist ar leanbh agus dúirt sí leis, “Druid an doras”. The child did not know what she was

saying because he used, “Dún an doras”. This is a very simple example which everyone would understand. Idioms, cadences, inflexions and the way we speak in different parts of the country, even in English, can be important. When one includes daoine ins na Gaeltachtaí it is even more important. In looking at a child’s potential, how we can best find it and give the child support we must take these factors into consideration.

I must say a word in praise of the eagrais Gaoluinne. The Minister of State is aware that I have spent much of my life fighting with the eagrais Gaoluinne because, although I agree with their objectives, I do not always agree with their approach they have taken. I have discussed these amendments with Comhdháil Náisiúnta na Gaeilge, in particular, and I commend the breadth of vision and progressive nature of its response on this issue. None of the amendments under discussion is focused on Gaoluinn. I am focusing on Gaoluinn in my remarks but these measures will be equally important to children coming from other cultures in a multicultural Ireland. This will be particularly so in the Minister of State’s own constituency. In Ennis recently, I met Sister Betty from the primary school which probably has the biggest proportion of foreign nationals of any school in Ireland. It is years since I was in the school but I know it is superbly run. I asked her about this issue. She made the case for maintaining a reference to the children’s background. Tá sé tábhachtach go gcuirfear seo san áireamh i bpleananna agus i bpolasaithe a cuirfear le chéile ar son na leanaí seo.

Roinnt blianta ó shin nuair a bhí ath-bhreithniú á dhéanamh ar remediation, cuireadh an cheist, “Cad mar gheall ar remediation ins na Gaeltachtaí?” Chuir Muintearas, eagrais atá lonnaithe i Leitir Mór, feachtas ar bun chun scrúdú agus iniúchadh a dhéanamh ar remediation agus foilsíodh tuarascáil ar an méid a fuarthas amach. Bhí an Roinn an-thógtha leis and supported it very much. The report examined the psychological and remediation service, taking into consideration the child’s background. The amendments follow the thinking in that report. They make reasonable points and should be accepted.

I accept that the chances of changing the Bill are slim but I put the proposals on the record in an attempt to address the issue.

Ms Tuffy: We have co-sponsored the amendments, although Senator O'Toole is more proficient than me in the Irish language. The purpose of amendment No. 16 is to ensure the necessary resources are more likely to be provided if they are identified.

Mr. U. Burke: I support the amendments. Is the Minister of State confident the Departments of Health and Children, Education and Science and Finance have the professional personnel to adequately perform the duties required under the amendments? Would they create difficulties? If so, what action will the Minister take to address

these difficulties, given that this serious issue has been highlighted by many support groups?

Minister of State at the Department of Education and Science (Miss de Valera): I thank the Senators who tabled amendments. I respect Senator O'Toole's great knowledge and feel for these issues, particularly those relating to the Irish language. As a teacher and leading member of the INTO for many years, he has a tremendous background in this area. I understand where he is coming from. He wants to ensure that those who would prefer to do business through the Irish language at all times can do so as easily as possible and, therefore, that the assessment can be seamlessly carried out in Irish or English.

The section recognises the linguistic needs of children with special education needs must be taken into account in carrying out an assessment and the development of their education plans. It is inevitable that this issue will arise in the assessment process and it is a matter, therefore, for the national council to address the components of the assessment and the plan.

The Senator will be well aware through his own work and through his great interest in cultural issues of the Education Act 1998 and Official Languages Act 2003. The Education Act 1998 provides that it is a function of a school to promote the development of the Irish language and that schools located in a Gaeltacht area must contribute to the maintenance of Irish as the primary community language. The Official Languages Act 2003 will place an obligation on a number of education bodies, including the National Council for Special Education, to provide these services through Irish.

An objective of the education partners under the Education Act 1998 is to promote the language and cultural needs of students, having regard to the choices of their parents. Public bodies must take adequate account of a person's cultural background. Failure to do so would not respect the principles of diversity and equality, which are enshrined in our laws under the Equal Status Act 2000.

Senator O'Toole also referred to children whose first language is not English. There is much greater cultural diversity in Ireland today and that should be welcomed. I am conscious of this and, within my own area of responsibility in the Department, courses are provided for those in the education system whose first language is not English so that they have equal access to the system.

Regarding amendment No. 16, this matter was raised in the other House. The Minister stated the word "services" rather than "resources" is more appropriate because the provision of services automatically requires and implies the provision of resources. However, a person qualified to carry out an assessment might not necessarily be in a

position to quantify the financial resources required. I am inclined, therefore, to agree with this view and I do not propose to accept the amendment.

Mr. O'Toole: I thank the Minister of State for her comprehensive reply. I agree with her comments on cultural background and the importance of language. However, a distinction must be made, although it will not be addressed in this legislation. I am here long enough to know that. My amendments relate to other matters in addition to doing business through Gaeilge or whatever language but I appreciate that is important. I refer to the test instruments. For example, a psychologist may conduct the assessment through Gaeilge in a Gaeltacht school but the test instrument used for the assessment will be English-based. I am trying to ensure the test instrument should be fine tuned and proofed.

The issues mentioned by the Minister of State are important and I was delighted by her comments on them. However, when the rule is run over a child with special needs, the test instrument should be proofed against any wobbles if a child's background is different. Since the Minister of State cannot make an amendment, will she give a commitment that the Department will bring this issue to the attention of the council when the legislation comes into operation? The council should be informed that in all cases involving children with different cultural backgrounds, care should be taken. Changes will have to be made to the assessment but the psychologist can do that to ensure the test instrument is fine tuned to distinguish between children of different cultural backgrounds and to ensure the testing reflects that. The assessment must be proofed against wobbles or differences that could emerge through an English-based instrument that disregards cultural background, an *cúlra speisialta sna Gaeltachtaí agus pé cúlra speisialta a bheadh ag aon leanbh. Dá mba rud é go ndéanfaí sin, bheadh tuiscint ag muintir na nGaeltachtaí agus an heagraisí Gaelainne go bhfuil seans acu brú a chur ar an mbord amach anseo le bheith cinnte go bhfuil sin déanta.*

The Minister will understand this issue better than myself, given her academic background and studies.

Miss de Valera: I thank the Senator. He referred to the test instrument and materials and I acknowledge the difficulties involved. I do not know how we will go about putting that to rights because the measurement of those tests would necessitate a great deal of research. It is an important issue, which I will bring to the attention of the Department. It may take a long time to put it to rights but the issue needs to be addressed.

Amendment, by leave, withdrawn.

Amendment No. 16 not moved.

Ms Tuffy: I move amendment No. 17:

In page 10, between lines 18 and 19, to insert the following subsection:

“(7) Where an assessment carried out in accordance with this section establishes that the child concerned has an educational disability, the Health Board or Council as the case may be shall, within one month from the preparation of the assessment, cause a plan to be prepared for the appropriate education of the child (in this Act referred to as an ‘education plan’).”.

In section 3(5), if an assessment is carried out which indicates that an education plan is required, it then provides for that. However, there is no corresponding requirement in section 4 and the amendment seeks to address this. We want to provide that the health board or council, within a month of the preparation of the assessment, will cause a plan to be prepared for the appropriate education of the child.

Miss de Valera: Section 8(2) now includes a deadline for the preparation of an education plan by the council or the health board. These plans must accommodate children with more complex needs and this will take more time. The time limit is therefore one month in which to commence the plan and a further two months for its completion. The one month suggested here is not feasible and I do not propose to accept the amendment.

Ms Tuffy: The Minister of State’s reply relates to time but I do not see anything in the section requiring the education plan itself to be carried out. Perhaps I am mistaken but I have read through this and it does not appear to be a requirement in the same way as in section 3(5).

Miss de Valera: Section 8(1) provides that the council, on being informed by a health board or the principal of a relevant school that a child has special educational needs shall, unless an education plan has been or is being prepared under section 3 in respect of the child, direct the relevant special educational needs organiser to cause to be prepared a plan for the appropriate education of the child. The Bill also refers to it as the educational plan, so that covers the issue raised by the Senator.

Amendment, by leave, withdrawn.

Section 4 agreed to.

SECTION 5.

Ms Tuffy: I move amendment No. 18:

In page 10, subsection (1), lines 32 and 33, after “persons” to insert “shall include the parents of the child and an independent advocate for the child and”.

This amendment is similar to others we have tabled. It seeks to ensure that the parents are involved at all stages and that there should be an independent advocacy service for children with educational disabilities. This is lacking in the legislation as it stands, in that parents are consulted but are not centrally involved in the different stages, such as the preparation of education plans.

Miss de Valera: Throughout the Bill we have made numerous points to ensure that parents have an essential role in dealing with this issue. Parents are very much involved and are part of the team which draws up the educational plan. The comhairle will address the question of advocacy services for both children and adults with a disability.

Amendment, by leave, withdrawn.

Mr. U. Burke: I move amendment No. 19:

In page 10, subsection (1), line 33, to delete “may” and substitute “shall”.

At present the legislation states that an assessment under section 4 shall be carried out with the assistance of persons with experience and the necessary qualifications. However, the legislation states that this may include a psychologist, a medical practitioner, the principal of the school or someone appointed in their place — a qualified social worker, etc. The persons listed are clearly the key personnel in evaluating the educational needs of the child and for that reason the amendment seeks to replace “may” with “shall” to ensure that the expertise of at least one of those persons is utilised in assessing the needs of a particular child. I put down the amendment to ensure that that is the case.

Miss de Valera: I have looked at this amendment, which was raised by Deputies Stanton and Enright when the Bill was before the Dáil, where it was well considered. Looking at the provision again in the context of the amendment I am still happy that the phrasing in section 5(1) is correct. It is a drafting issue and we have been told by the Parliamentary Counsel that this is the correct phrasing.

Mr. U. Burke: I emphasis again to the Minister of State that “may” is a weak term in that it is possible that it may not be essential for one of the experts listed to be involved. They may be but it is not an absolute requirement that they should, which is the thinking behind the amendment. In the absence of the amendment, the assessment could take place without the expertise required in section 4.

Miss de Valera: I understand what the Senator is trying to convey. He sees this as a weakness, with “shall” rather than “may” strengthening the provision, and from a lay person’s point of view

I would agree. However, we have been advised otherwise by the Parliamentary Counsel.

Amendment, by leave, withdrawn.

Progress reported; Committee to sit again.

Business of Seanad.

Ms O'Rourke: Some Senators have requested extra time for this debate. That is a matter for the House, if it is willing to amend Standing Orders, but the Minister of State has kindly said she will work through from 1 p.m. to 2 p.m. and I hope the officials will do the same if the House agrees. We are dealing with a Bill at 12 p.m. which hopefully will provide a sos if it does not last an hour. I propose that we use the sos, from 1 to 2 p.m., to finish Committee Stage.

An Cathaoirleach: Is that agreed? Agreed.

Education for Persons with Special Educational Needs Bill 2003: Committee Stage (Resumed).

SECTION 5.

Amendment No. 20 not moved.

Section 5 agreed to.

Section 6 agreed to.

SECTION 7.

Ms Tuffy: I move amendment No. 21:

In page 12, subsection (1), line 9, after "education" to insert "within one month from the assessment".

The amendment provides for a time limit for the provision of services after the assessment. That is not in the section as it stands and we feel it is important that services are provided within a timely period, which is why we suggest one month from the assessment.

Minister of State at the Department of Education and Science (Miss de Valera): Section 7(7) provides that the services of the council or the health board must be made available as soon as practicable. This was introduced on Report Stage in the Lower House when we took on board the issues there. For this reason, I consider that the amendment is unnecessary.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendments Nos. 22 and 60 are related and may be discussed together by agreement.

Ms Tuffy: I move amendment No. 22:

I leathanach 12, idir línte 20 and 21, an fo-alt seo a leanas a chur isteach:

"(4) In the case of a child whose home language is not English, the Council shall ensure that services will be provided in the home language of that child and account shall be taken of the child's cultural background."

This amendment is similar to the amendments that have already been discussed, including those proposed by Senator O'Toole. The amendment seeks to ensure that a child's cultural and linguistic background will be taken into account as regards services to be provided and that those services will be provided in the home language of the child. The amendment seeks to cover the fact that so many of our children have various cultural and linguistic backgrounds, which should be provided for within the terms of the legislation.

Mr. U. Burke: I support the amendment. Does the Minister of State's Department have the personnel, resources and expertise to provide such services? If not, will this involve an additional charge arising from the implementation of the Bill to provide the necessary linguistic expertise? Psychologists and other professionals who do not have access to translators or interpreters may not be competent to deliver the required assessments.

Mr. Fitzgerald: When Senator O'Toole and Senator Tuffy raised the issue previously it was unclear to me what they meant. However, the Minister of State and Senator Tuffy have now clarified that they were referring specifically to instruments of measurement. I take it that the Minister of State is dealing with that matter. This amendment relates to the wider issue of children's cultural and linguistic backgrounds. The Minister of State referred to the Official Languages Act, the Education Act and the Equal Status Act, but am I correct in understanding that they are targeted towards promoting a multicultural ethos within the education sector? Are the Minister of State and her Government colleagues statutorily obliged to respond to such requirements, or not?

Miss de Valera: The Senator is correct that a person's cultural background must be respected. That is already the case in legislation, including the Education Act and the Official Languages Act. That is why I cannot accept these amendments. It goes back to the point that was raised before and has already been accepted by Senator O'Toole.

Mr. U. Burke: Will the Minister of State assure the House that the persons referred to in the Bill will have such linguistic competency?

Miss de Valera: The amendment refers specifically to a person's cultural background and, although Senator Burke's point is a separate one, I will deal with it. He is naturally concerned as to whether there will be expertise to deal with these particular issues. I believe that there is and I also believe that there will be definite references to

[Miss de Valera.]
further teacher training, whether inservice or in teacher training colleges, with respect to educational plans to provide the most up-to-date information available. In that way, we will be able to deal in full with the issues that arise on behalf of any particular student or pupil.

Mr. U. Burke: I thank the Minister of State for her reply.

Amendment, by leave, withdrawn.

Section 7 agreed to.

SECTION 8.

Ms Tuffy: I move amendment No. 23:

In page 13, subsection (1), lines 1 and 2, to delete all words from and including “The” in line 1 down to and including “school” in line 2 and substitute “Where an assessment is prepared in relation to a child, the person causing the assessment to be prepared, shall inform the Council of the preparation of the assessment, and upon the Council being informed”.

The purpose of this amendment is to ensure that no child will fall through a gap in the system. As the section is currently drafted, it seems entirely up to a health board or school principal to decide whether to inform the council about the existence of a child with special educational needs. The amendment attempts to ensure that all such children will be subject to an educational plan.

Miss de Valera: The amendment is unnecessary. Principals must request the council to prepare an educational plan where one cannot be prepared by the school. Equally, under section 5(8), a health board must make available the statement of findings to anyone involved in the education of the child to ensure that they are informed of the child’s educational needs. Therefore, I do not consider that this amendment adds to the situation. The issues about which the Senator has genuine concerns are dealt with specifically in this regard.

Amendment, by leave, withdrawn.

Section 8 agreed to.

SECTION 9.

Amendments Nos. 24 and 25 not moved.

An Cathaoirleach: Amendment No. 26 is out of order.

Amendment No. 26 not moved.

Amendment No. 27 not moved.

Question proposed: “That section 9 stand part of the Bill.”

Mr. U. Burke: I know that you have ruled it out of order, a Chathaoirleach, but——

An Cathaoirleach: We cannot discuss matters that have been ruled out of order.

Mr. U. Burke: I appreciate that and I will be guided by your direction, a Chathaoirleach. Yesterday, we mentioned the issue of trained teachers in the context of the Bill. Currently, the Department of Education and Science is training no more than 35 teachers per annum at Mary Immaculate College in Limerick to work with children with special needs. Given that throughput, can the Minister of State explain how we will have enough adequately trained teachers to implement the legislation? Difficulties will arise because, while we will have pooled school resources, there will be a shortfall. There will be shortcomings in implementing the legislation, including delays that were highlighted in the debate yesterday. The Minister of State will appreciate that such delays can be crucial for those people. Something must be done, therefore, to fast-track the training of specialised teachers.

Inservice training is not the answer because we know that the Department of Education and Science’s inservice programmes have many shortcomings. I do not wish to be over
12 o’clock critical of the Department but there are huge shortcomings in the provision of inservice training at primary and secondary levels, including the lack of time available and the provision of replacement teachers. With an annual throughput of only 35 teachers to work with children with special educational needs, there will be serious difficulties in implementing the legislation.

Ms Tuffy: Section 9(3) states that “the council may prepare guidelines”. I am sure it was discussed in the Lower House but surely the council should have been obliged to publish guidelines. It would strengthen the Bill to include such a provision.

An Cathaoirleach: In accordance with an amendment to the Order of Business today, the debate will be adjourned until 1 p.m.

Progress reported; Committee to sit again.

Commissions of Investigation Bill 2003: Report and Final Stages.

An Cathaoirleach: Before we commence, I remind Senators that they may speak only once on Report Stage, except for the proposer of an amendment who may reply to discussion on the amendment. On Report Stage, each amendment must be seconded.

Amendment No. 1 is in the name of Senator Brian Hayes. Amendments Nos. 2 to 7, inclusive, 10 to 15, inclusive, and 17 to 25, inclusive, are related and may be discussed together. Is that agreed? Agreed.

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

In page 6, line 32, to delete "Government" and substitute "Houses of the Oireachtas".

I welcome the Minister of State, Deputy O'Dea, to the House. We had a good discussion on this Bill on Committee Stage yesterday. The only amendments Fine Gael has re-tabled relate to the issue of ownership concerning the commission itself, who it reports to, who staffs it and to whom it is ultimately responsible. There is one net issue in all these amendments which we wish to raise again. I acknowledge there was substantial debate on this issue on Committee and Report Stages in the Lower House and I know the Government's position on these matters. Nonetheless, I wish to make the case, even at this late stage.

There is cross-party consensus on the importance of the Bill and the role it will play in terms of investigating matters of public concern. It is important that the House has not been divided on the matter to date. Possibly one of the few advantages of the tribunals to date is that they have had the imprimatur of both Houses of the Oireachtas. However, that will be severed by the new commission structure in that the establishment, appointment of members, setting of the terms of reference, amending such terms of reference and the issue of reporting will all now come under the direction of the Minister who is launching the investigation under the Bill.

Fine Gael believes that the Government should have held the view that an all-party committee or a committee of both Houses of the Oireachtas should be ultimately accountable for the commission once it is established. For example, if an allegation is made against a Minister on a television programme, he or she will have to face a commission if that is so determined. In such a case, is it appropriate or normal that a commission be established by the Government or the Minister him or herself to investigate what might be grievous allegations against a named politician?

Given the politically sensitive nature of the matters before the current tribunals, Fine Gael believes it is wise that the Houses of the Oireachtas should take onto themselves the responsibility of establishing and staffing the commission and ensuring its reporting. The Minister of State might agree that it is most strange that when a report is published by a commission it will come in the first instance to the Minister rather than the Clerks of both Houses. All the interim reports and reports issued by tribunals since the early 1920s have come to the Clerks of the Houses who place them in the Oireachtas Library for Members. Therefore, the provisions in the Bill are a radical departure from this position.

For the first time ever, a report is to be given to a Minister who will make the matter public in his or her own good time, notwithstanding the provision in the Bill that the report be published "as soon as is practicable". The Government

should take a final look at this, although I suspect my limited persuasive techniques will not change its view at this late stage. Nevertheless, the point must be made that this new structure should fall within the remit of the Oireachtas and not the Minister or the Government because matters of public concern are for everyone and not just the Minister of the Government as a whole.

There is also a fundamental question concerning the separation of powers. Our Constitution makes it clear exactly who does what in terms of the courts, the Executive and Oireachtas. Now that we are establishing what is a quasi-judicial institution to examine matters of public concern, Fine Gael believes it would be more consistent for the commission to fall within the remit of the Houses of the Oireachtas. Although the point has already been made, I make a final appeal to the Government to accept these amendments on the basis of cross-party consensus and spirit which has been entered into since the Bill was first launched by the Minister for Justice, Equality and Law Reform. We wish the commission well as well as the separate commissions it will establish.

I acknowledge that the Minister of State is particularly active in the Department of Justice, Equality and Law Reform. Through him, I ask the Government to give consideration to the proposal that the very first commission to be established under this legislation will examine the matter of sexual abuse in the Dublin diocese. The Minister of State knows that when this matter came to public attention some years ago, the Government told the victims of clerical child abuse in the Dublin diocese that when this new structure was established, it would ask the commission to investigate the issue. If it did so, it would be a great sign of intent on the part of the Government to keep its commitment to those people who have been so badly treated by our society to date. Will a commitment be given in the House today or as soon as possible that the first commission to be established will be a commission to inquire into clerical child sex abuse in the Dublin diocese so that the Government can honour its commitment to those victims and, most importantly, that the commission can get on with its work, whose effect we can see.

It may well be the case that at some point we will have to revisit the Act to ensure it is updated and, if certain individuals try to drive a coach and horses through the legislation in the High Court, we may well have to amend it, which is fine. People should not underestimate that possibility.

Ms Tuffy: I second the amendment. I support the group of amendments and Senator Hayes's comments.

There would be more faith in the outcome of the commissions of investigation if they had a mandate from both sides of the House not just through adopting resolutions put by the Government, but by having an input into the terms of reference and the setting up of the commissions.

Minister of State at the Department of Justice, Equality and Law Reform (Mr. O’Dea): I wish to make two points in response to Senator Hayes. On the issue of clerical sexual abuse against children in Dublin, I am informed that the television programme which highlighted that issue prompted the Bill. The Senator suggested that this be the first item to be considered by one of the new commissions. I shall convey that to the appropriate people.

On the question of Ministers being the subject of allegations, I am informed that another Minister in the Government may appoint the members of the commission and may establish the commission. This would create distance between the Minister who is accused and the commission.

In regard to the amendments, I have listened carefully to what Senator Hayes said. Everything he said would be correct if we were talking about tribunals or a new form of tribunals. The Bill is not concerned with tribunals; it proposes to establish a totally different mechanism. The procedure is different. It includes taking evidence in private, limited cross-examination and so on. Its purpose is to establish facts, rather than draw conclusions. In the example the Senator has given of a serious allegation against a Minister, if a commission is set up and finds facts which appear to give some substance to that allegation I have no doubt that would be followed by a tribunal which would have to be established by the Oireachtas.

The consequences of establishment of facts by a commission would be different from the conclusions of a tribunal. I argue there is less risk of damage to reputation and so on. The whole idea of setting up the commission, as an alternative to tribunals in some cases or an addition in others, is to establish a procedure that is faster, flexible and more narrowly focused. When one listens to people outside speak about tribunals, all the discussion focuses on the length of time they take, the costs and the alleged enrichment of members of the legal profession, all of which tends to obscure the undoubted good work which they are doing. The reason we have got into this quagmire is that bona fides mistakes were made in the way the tribunals were set up. There are constitutional aspects arising from the Haughey judgment whereby certain procedures have to be followed and people have to be given the right to cross-examine and access to teams of lawyers and so on. In establishing the legislation for the setting up of tribunals the Government could be accused of erring too much on one side. If we err on this occasion I would prefer if it was on the other side because the purpose is different and we are dealing with a different type of procedure.

The Fine Gael amendment seeks to change the roles proposed for the Government and the specified Minister in regard to the establishment of commissions, the setting of terms of reference, the appointment of commissions and receipt of reports. It is proposed that these roles be assigned to the Houses of the Oireachtas. This is a differ-

ent mechanism from tribunals. It is different in its purpose, its procedures and its consequences. Also it needs to be faster, flexible and more narrowly focused. These matters are being highlighted in the legislation because it is on those grounds that the current arrangements are proving unsuitable. The public would not be impressed if we merely repeated all the mistakes of the past by replicating the procedures and controls that have attracted such criticism and that are causing the public to lose confidence in tribunals as a means of addressing major public concerns and scandals.

The arrangements being proposed for commissions of investigation are not unique. In many respects they are akin to those that apply to investigations carried out under company law. As with company law procedures, the commissions established under the legislation will be required to observe fair procedures and to respect natural justice. Senators will agree that, by and large, company law investigations have been successful and, generally speaking, have delivered clear and precise results. There is one difference between this procedure and the company law procedure, namely, the procedure here is subject to judicial review.

The Oireachtas will also have a substantial input. Following a proposal to establish a commission it has to be debated by both Houses of the Oireachtas. At the conclusion of that debate people will have a good idea of the terms of reference of the commission. In addition, when a commission draws up its findings of fact there is nothing to stop any Member of the Oireachtas from initiating a debate, either by asking that time be taken to debate the report, or having it referred to a committee of the House, as in the case of the Barron report, or by raising it on the Adjournment or asking questions about it.

While I understand the purpose and the thinking behind the amendments, we will maintain the correct balance if we allow the proposals in the legislation to stand. The first commission has not yet been established but I have no doubt when the legislation becomes law commissions will be established quickly and we will see how they operate in practice. We had better err on this side in view of the experience we have had with the tribunals to date.

Mr. B. Hayes: The Bill is attempting to create a totally new animal. While I accept what the Minister said, the delays in the tribunals to date have not arisen from the involvement of Members of the Oireachtas or in the way in which those reports are given to them. One could argue that the terms of reference put in place by the Members of the Oireachtas initially led to the delays because it led to the tribunals having to go down every cul-de-sac before they could come to a judgment. The latest report from the Mahon tribunal is a cry for help with regard to the terms of reference. Be that as it may, it is not logically incorrect to say that the Members of the

Oireachtas could not establish these commissions and ensure they are properly staffed. Some complaints have been made by the tribunals in respect of the staffing and resources given to them by the Government during the past five or six years. The Government would help itself if certain matters were to be diverted to a joint committee of the Oireachtas rather than a Minister having to defend why he did or did not provide the resources the tribunal or commission required.

There are many practical reasons for tabling our amendments but the Government has chosen not to support them. We appreciate this is a new body and wish all the commissions well. The establishment and running of the commissions would have made more sense if they had the mandate and the imprimatur of the Oireachtas rather than of the Minister. While a resolution has to be put to each House it does not give the same sense of ownership. It sometimes grates to hear Ministers, not necessarily the Minister of State, say they established the tribunals. The Oireachtas established them. It is a matter of concern to all Members of the Oireachtas and not exclusively the Government. That should be the case here. The delays to date have not been the fault of the Oireachtas.

Amendment, by leave, withdrawn.

Amendments Nos. 2 to 7, inclusive, not moved.

Ms Tuffy: I move amendment No. 8:

In page 12, line 34, after “evidence” to insert “and, where evidence adverse to the good name of such a person is disclosed under *subsection (1)*, the commission shall not rely on or disclose such evidence in a report unless the person concerned has had an opportunity to challenge such evidence by cross-examination and by presenting contrary evidence whether written or oral”.

We discussed this amendment yesterday and it was debated also in the other House. I have tabled it again to give the Minister of State and the Government an opportunity to reconsider the issue. We feel it would provide for a fairness of procedures which is lacking in the legislation as it stands. The amendment would avoid the possibility of a constitutional challenge on the basis of fairness of procedures.

Mr. B. Hayes: I second the amendment.

Mr. O’Dea: Amendment No. 8 seeks to amend section 12(3), the provisions of which must be considered in the context of the whole section, as must the amendment. Section 12(1) provides that a witness must be informed about any evidence received by a commission which may be relevant to him or her or to the evidence he or she is about to give. Under section 12(2), a commission is not required to reveal the source of the information to another witness but may do so where it is in the interests of fair procedures and the investigation

generally. Section 12(3) provides that a person informed under section 12(1) of evidence already available to a commission shall have the right to comment on it, etc.

The amendment refers to evidence adverse to a person. It should be recalled that evidence will generally be taken in private. Section 12 introduces a mechanism whereby a commission can inform a person about whom it has received evidence of this development and give that person the chance to reply in writing or orally. However, throughout the process, the evidence in question will remain private and a commission will not be able to disclose it beyond the requirement of letting the affected person know about it. A person can only be informed to the extent that it is necessary. The emphasis on private hearings ensures that the possibility of damaging anybody’s good name is very much reduced.

The primary purpose of the section is to ensure that persons against whom matters have been claimed have an opportunity to answer those claims. We must also take account of the protections against the disclosure of damaging information at any other stage of an investigation. I refer in particular to the disclosure of material in reports which amendment No. 8 also considers. There are already clear requirements that all affected persons are to be given prior notice if they are to be identified in or identifiable from material in a report. Remedies are also being provided by allowing for alterations to be made. These remedies are adequately covered in sections 34 and 35.

Section 34 provides for a person to be informed while section 35 provides two alternative remedies. A person can approach the commission which can refer the matter to the court or, alternatively, the person about whom something has been said can approach the court directly to prevent mention of their name in a report. I am satisfied at the range of safeguards being put in place, particularly those of sections 34 and 35 which give due and proper protection to a person’s good name. While I understand the thinking behind the amendment, I will allow the provision to stand.

Amendment, by leave, withdrawn.

Amendments Nos. 9 to 15, inclusive, not moved.

Ms Tuffy: I move amendment No. 16:

In page 25, to delete lines 31 to 36 and substitute the following:

“(a) inform the person that it intends to amend the report, including by omitting any part of the report based on evidence received without observing fair procedures, and give the person an opportunity, if desired, to apply to the Court pursuant to *subsection (1)(b)*,

(b) apply to the Court for directions, or

[Ms Tuffy.]

(c) inform the person that it proposes to submit the report to the specified Minister without making any amendments, and give the person an opportunity, if desired, to apply to the Court under *subsection (1)(b)*.”

I move this amendment to give the Government the opportunity to re-examine the issue. While I said yesterday that I was not sure our wording was the most suitable way to deal with the problem, there is a lack of clarity in the legislation as it stands. If a person is unhappy with the fact that he or she has been mentioned in a report or with its content, he or she has the choice to seek an amendment or go directly to court. Under the legislation, a person will not have a second chance to go to court if he or she is unhappy with the commission's review. If the person goes to court, it may involve a great deal of litigation. We have therefore tried to make it clear that a person will have the opportunity to go to court if he or she is unhappy with the outcome of a request for an amendment to a report. Has the Government reconsidered the proposal?

Mr. B. Hayes: I second the amendment.

Mr. O’Dea: The arrangements in section 35, to which I have just referred, are designed to ensure that fair procedures and natural justice are respected. Persons who are to be named in reports are to be notified and given an opportunity to have changes or corrections made where they believe fair procedures were not respected. Persons may seek an order from the High Court to require changes to or the deletion of certain material. It is important to stress that failure to observe fair procedures is the basis for seeking changes. Changes may not be sought merely because a named person does not like the details of a report even where those details are supported by the evidence. A report may give details about a named person where to do so is in accordance with evidence and where fair procedures are respected.

Section 35 seeks to find a balance between the need to respect fair procedures and the need to ensure that investigations are completed in a timely fashion. As Senator Tuffy said, there are two options. Section 35 seeks to ensure that the publication of reports is not delayed unreasonably by persons who do not like the conclusions reached even where those are justified by the evidence. While section 35 gives a person the right — which we cannot limit in legislation like this where a person's constitutional right to his or her good name may be at stake — to bring a matter before the High Court, we must be careful to remember that in this Bill we are attempting to reduce recourse to legal avenues. Well intentioned though it is, the amendment seeks to introduce a new opportunity to bring a matter to the High Court and creates the potential for further delay and, perhaps, obstruction.

I am sure this is not Senator Tuffy's intention, but the amendment if accepted would serve to tip the balance in favour of those with an interest in delaying the work of a commission and preventing the publication of its report. I am not in a position, therefore, to accept the amendment.

Amendment, by leave, withdrawn.

Amendments Nos. 17 to 25, inclusive, not moved.

Bill reported without amendment and received for final consideration.

Question proposed: “That the Bill do now pass.”

Minister of State at the Department of Justice, Equality and Law Reform (Mr. O’Dea): I thank Senators for their valuable contributions and acknowledge the contributions of Deputies in the Lower House also. Despite the fact that I could not accept any amendments today, the final shape of the Bill reflects substantially the contributions made by the Opposition. Many of the amendments suggested by Fine Gael and Labour Party Members have been taken on board, sometimes in their totality or in some form or other by the Minister. There is no doubt that these amendments have improved the Bill.

I thank Members of the Opposition for the valuable input they have had to what will be very important legislation to enable us to get the tribunal process back on track realistically with the support and approval of the public. We must get the public back on side regarding tribunals which are doing work of immense value. Where the mechanism of a commission of investigation leads on to a tribunal, much of the current criticism of the tribunal process will be negated. Again, I thank everybody for their valuable input which has resulted in a better Bill.

Mr. B. Hayes: I thank the Minister of State and, in particular, his officials for the work they put into the Bill. The legislation that came to the Seanad was better than the Bill initially published. That is as a result of a fair degree of cross-party consensus. As the Minister of State rightly said, amendments from my party and the Labour Party were accepted in the other House which made our work easier in this House. As the Minister of State is aware, one specific amendment concerning the tendering of works to be done by lawyers and barristers in the future was accepted. That will enhance the Bill.

When matters of public concern come to our attention, we all have a responsibility to ensure that a speedy, cost effective and fair procedure is put in place to ensure that those allegations are considered and a resolution reached as soon as possible. The commissions that ultimately will be established under this legislation have the potential to ensure that a great deal of good work is done and to reintroduce fairness for all parties.

Too often the immediate knee-jerk response of politicians to date has been to call for a tribunal of inquiry to be established on foot of every allegation. That is simply not tenable, particularly when one considers that currently in excess of €120 million worth of taxpayers' money is funding the tribunals. Four acute hospitals in Dublin could be built for that amount of money.

We have a responsibility to reconstruct an investigative model that is fair, transparent, cost efficient and accountable. This Bill is a better one because of the amendments made to it during its passage through the Oireachtas. It is an important Bill for the future, possibly one of the most important Bills to come before the House this session.

Ms Tuffy: I thank the Minister of State and his officials for dealing with the legislation. It introduces an important measure. I ask the Government to be open to amending the legislation, if necessary, if we find there are problems regarding its implementation down the line.

Ms Feeney: I also thank the Minister of State and his colleague, the Minister of State, Deputy Roche, for coming to the House yesterday. I also thank his hardworking officials who present matters very well for us.

As other Senators said, this is an important Bill. It will give us the tools we need to ensure a speedy, cost effective process in this regard. It is in everyone's interest and for the good of everyone involved, regardless of from where they are coming.

As the Minister of State said, it might give some credibility to and put the tribunals back on track and raise confidence among members of the public in them, given that they seem to have heard of nothing but tribunals day in and day out. At this stage, the legislation might even give some solace to those people at the Mahon tribunal to whom Senator Brian Hayes alluded yesterday. We will wait and see, but one never knows.

Question put and agreed to.

Sitting suspended at 12.35 p.m. and resumed at 1 p.m.

Business of Seanad.

Ms O'Rourke: I thank all those concerned for working through the sos and for giving permission to do so. At 2 p.m. a question will be put from the Chair to conclude Committee Stage of the Education for Persons with Special Educational Needs Bill 2003.

Acting Chairman (Mr. Mooney): Is that agreed? Agreed.

Mr. U. Burke: We do not have a choice.

Education for Persons with Special Educational Needs Bill 2003: Committee Stage (Resumed).

SECTION 9.

Question again proposed: "That section 9 stand part of the Bill."

Mr. U. Burke: We are awaiting a reply from the Minister of State on section 9.

Minister of State at the Department of Education and Science (Miss de Valera): Senator Burke referred to those who emerge from teacher training colleges and do in-career training. The position in this regard is evolving not only because of the responsibilities the legislation will impose, but also because of general concerns about special education. I agree with the Senator that we need to examine in-career training and courses in teacher training colleges to equip teachers to deal with developments regarding special educational needs. We appreciate and recognise this in the Department and we propose to increase funding for training. In doing so, we must take into account not only those who are now entering teacher training colleges, but also those already in the system who have not had the opportunity to learn extra skills through inservice training. It is not enough to state this; we must also ensure the necessary funding is in place to enable it to happen. The Department is committed to doing so.

Mr. Fitzgerald: On section 9, specifically section 9(7), I am sympathetic to the sentiments expressed by Senator Ulick Burke and the Minister of State has responded to them cogently. On Second Stage, it was remiss of me not to acknowledge the considerable input of Senator O'Toole to section 9(7). I was not aware of his input but was aware that an amendment had been tabled on this section in the Dáil. I agree with the view expressed by the Senator on Second Stage that section 9(7) significantly enhances the provisions of the Bill.

Question put and agreed to.

SECTION 10.

Mr. McCarthy: I move amendment No. 28:

In page 15, subsection (1)(a), line 29, after "volition" to insert " , but with the consent of the parents of the child concerned."

This amendment is necessary for constitutional reasons. The choice of a school is primarily a matter for the parents. Accordingly, the council should have the consent of the parents when designating the school their child should attend.

Mr. O'Toole: With great reluctance I disagree with this amendment. The idea of the parent's being the primary educator is completely misunderstood and abused. This is a question of

[Mr. O'Toole.]

whether parents should have a choice to accept the designated school. With great respect to the Minister of State's grandfather, I believe it is unfortunate that the Constitution made parents the primary educators of their children. As an educator, I have never understood why a person who happens to be a parent is also the primary educator. I recognise all the responsibilities that exist but I am sure the idea of making a child's education the responsibility of somebody who may have no educational background was never intended. However, this is how the Constitution has been interpreted.

That the Constitution makes the parent the primary educator means parents can decide to educate their children themselves. There are certain restrictions on this process under the education Acts and other regulations. Parents can choose not to educate their child themselves and choose instead to trust the State or educational system to educate him or her. One cannot have it both ways. One cannot say one wants the State to educate one's child and simultaneously make decisions that impinge upon this process. This has occurred on many occasions.

One of the most important changes I have seen in education during my time in the Seanad was an amendment to one of the education Bills that allows a child to be referred for psychological assessment without requiring parental consent. The reality is that the child should be at the core of the issue. One must allow for the fact that a parent, for all the wrong reasons, might not like the best school for his or her child. Let us at least put on record what the correct school is and how it is selected. The parent can decide not to have any part in it but at least the decision will be clear. Parents should not be entitled to ask the authorities to designate a school and then state the schools to which they will agree. The system cannot work this way.

Utter confusion has been caused throughout the education system because of the idea that parents are the primary educators. This idea does not obtain in every country. It is important to us and we must respect it, but it does not mean that parents have to take every decision for the system. They can work outside it. I am sorry to inform Senator McCarthy that I have a very strong view on this issue.

Mr. Fitzgerald: I could not agree more with Senator O'Toole. The idea behind our evolving educational policy is to make the education system more child-centred, not parent-centred. I agree with the Senator on his reference to the Constitution. I mean no disrespect to its author, but it is unfortunate that its wording regarding parents is sometimes misinterpreted — unwittingly, I am sure. To give parents the ultimate call in designating a child's school is tantamount to giving them a veto — I am very reluctant to use this word. For many reasons, outlined by Senator

O'Toole and others, and in the interests of the child, we simply could not go down that road.

It has been articulated clearly by Senator O'Toole that parents might not be the best judges of where a child would be most appropriately placed and it would be a very dangerous precedent to allow them to make such judgments. I urge against it while at the same time warmly endorsing the core principle of the Bill, namely, that of giving parents a central partnership role in meeting special educational needs.

Miss de Valera: It has been suggested that parents should have power to consent to the designation of a school or to appeal a failure or refusal to make such a designation. I favour the latter approach. The Bill already permits parents, in these circumstances, to request the council to designate a school and to appeal if it fails to do this. If a particular school has been sought it will be a party to this appeal. The council will be required to indicate whether, if it were to designate a particular school, it intends to make a recommendation to the Minister for additional resources for that school. This would ensure that all parties have all relevant information to present their case fairly to the appeals board. In no circumstances could a child be enrolled in a particular school without the consent of his or her parents without the intervention of the courts. That would involve reference to Article 42 of the Constitution.

Amendment, by leave, withdrawn.

Mr. McCarthy: I move amendment No. 29:

In page 15, subsection (2), line 38, after "to" to insert "geographical convenience,".

The purpose of this amendment is to encourage the council to think in terms of accommodating the child at the nearest available school, all other things being equal.

Miss de Valera: I do not propose to accept this amendment because in requiring the council to have regard to geographical considerations before making a designation, it ignores the point that it must already have regard to the needs of the child and the wishes of the parents. I do not see what the amendment would add to the mix since the child's needs will, generally, be best served by proximity to the family home.

Mr. O'Toole: I read a sad case in the newspaper yesterday which relates to the issue raised by Senator McCarthy. The mother of an autistic child, who was driving the child to Dublin from south Kilkenny, was involved in a fatal car accident. I do not say this is the basis on which we should make a judgment. Nevertheless, travelling extraordinary distances is disruptive of people's lives and there should be a balance.

One can accept that a particular need can sometimes only be met in one place in the country but this, nevertheless, causes enormous problems for families. There are people who have

become full-time carers of another type because they spend all their time bringing their child who has a special need to some place far away. The geographical issue carries weight in making children feel comfortable and in meeting the needs of families. I am reminded of the issue of medical services and their regional availability. This is the point of the amendment.

Mr. McCarthy: I appeal to the Minister to look at the text of the amendment and to understand it. Inordinately long journeys will be involved in some areas if this amendment is not accepted. Some people may be lucky enough to live in an area where a range of services is available and it is not necessary to travel long distances but it will not be so easy for people living in rural areas. They will be obliged to travel long distances to access a service which is designated by another body. The geographical consideration is as important as others in the welfare of a child. I appeal to the Minister to look at the amendment more favourably.

Miss de Valera: I agree with the Senators when they say that geographical considerations are important. Coming from a rural constituency, I have heard of a number of such cases over the years. However, the proposed legislation already requires the council to have regard to the needs of the child and to the wishes of the parents. When we talk about the needs of the child, we all accept that proximity to the family home is an important issue. This must already be considered in connection with the needs of the child and the wishes of the parents. That is why the amendment is not necessary and I cannot accept it.

Amendment, by leave, withdrawn.

Question proposed: "That section 10 stand part of the Bill."

Mr. O'Toole: In section 9, we agreed that money would be available for principal teachers or for whoever is designated by him or her. I welcome that. Section 10 requires that the burden of proving that a school does not have adequate resources to enable it to meet the needs of the child concerned shall be on the board of management of the school. Resources could be required to do that work and to present that case. This requirement places an additional burden on school principals.

In coming to a decision on designating a school, one would hope the council would be in contact with the board of management, the principal or the designated person before the decision is taken in order to make sure the resources were available. The council should anticipate an appeal by the school. One would hope such contact would take place but it is not required. This is a further duty which is to be placed on the shoulders of the principal, staff and board of management of a school who do not have the resources to meet

it. It is important to recognise that it creates further pressure.

Miss de Valera: Section 10(2) states:

In making a designation under *subsection (1)*, the Council shall have regard to the needs of the child concerned, the wishes of the child's parents and the capacity of the school to accommodate the child and to meet his or her needs, including that capacity when the school has such additional resources made available to it as the Council recommends to the Minister...

Mr. O'Toole: The subsection does not require the council to consult the school. The council could come to a decision on the basis of its own notes or understanding. I accept the Minister of State's point. The reference in the subsection to the additional resources to be made available to the school goes to the core of the operation and management of the school. The principal teacher and board of management should have some contact with the council before the designation is made so that new requirements are not simply lobbed at them. The Department should recognise that this measure places additional responsibilities on principals and staffs of schools.

Question put and declared carried.

SECTION 11.

Acting Chairman: Amendment No. 30 has been ruled out of order as it would involve a potential charge on the Exchequer.

Amendment No. 30 not moved.

Mr. U. Burke: I move amendment No. 31:

In page 17, subsection (8), line 45, after "it" to insert "within one week".

Subsection 11(8) requires the principal of the school to whom the direction is given under subsection 11(7) to comply with the requirements laid down. No timescale is stated. It is accepted that the procedures provide for in the Bill will involve delay. This requirement should not be left open ended, as proposed.

If a principal teacher decides not to accede to a request from a parent to have his or her child's educational plan reviewed, the parent may bring the matter to the attention of the appeals board. In the event of the appeals board agreeing with the parent, the board will give the principal a direction to review the educational plan or to cause it to be reviewed. This is clear from the proposed legislation. However, no time is specified within which the principal must act on the direction of the appeals board. As we have already seen considerable delay in the appeals process it is imperative that we prevent delays where possible. That is the purpose of the amendment.

Miss de Valera: Throughout the debate we have been at pains to ensure there will be no delay in the delivery of services and we have accepted a number of amendments that improve the Bill in the other House. If we were to take this amendment on board, the school would be able to delay its compliance with the direction for a week for no good reason.

By the same token, in some cases carrying out a review may take longer than a week as a team of experts must be convened. The more complex the needs of the child, the more experts will be involved in the plan. The appeals board will have power to ensure a direction is issued and there is no reason that it should not be able to set down a timescale if one is needed. It is better to leave this to the discretion of the board than to set down a hard and fast rule to ensure there is no delay. We are seeking a reasonable length of time to ensure the best possible service is delivered.

Mr. U. Burke: The Minister of State has been inconsistent in that she has admitted there have been amendments to the Bill to avoid delay but she is now leaving it open-ended. Every school principal faces a huge additional work load where there are children with special educational needs but to leave the timescale at the discretion of the board is inconsistent and it would be regrettable if the Minister of State does not recognise the need for some timeframe.

Miss de Valera: I do not accept that. There is no need for a delay in the delivery of service and we have taken a reasonable approach to this within the Bill. In such cases, there will be discussions with a number of experts in the field and they will need time to be able to deliver the service for the child involved. In so doing, we want to ensure that the service is delivered in the quickest possible way and that is why the appeals board will have that discretion — if it feels there is a delay, it can set down a timescale if one is needed. That provision is already catered for in the Bill and the amendment would add nothing to it.

Mr. U. Burke: Does the appeals board have the capacity to set down a timescale?

Miss de Valera: It will have power to issue a direction and there is no reason that it would not be in a position to lay down such a timescale for the case under discussion.

Amendment, by leave, withdrawn.

Section 11 agreed to.

SECTION 12.

Mr. McCarthy: I move amendment No. 32:

In page 18, subsection (1), between lines 2 and 3, to insert the following paragraph:

“(a) the failure to include any particular action or service in an education plan, or”.

Section 12 is restrictively phrased. Parents can appeal the description of their child’s needs or the failure to carry out actions specified in the plan but not the question of whether the action specified in the plan is adequate to meet the needs described in it. Is that a deliberate omission?

Miss de Valera: The amendment is unnecessary given that section 12(1)(a) already permits an appeal against the council or a school principal on the grounds that a statement or description in an education plan is incorrect or inaccurate and section 12(1)(b) permits an appeal against a failure to implement the plan.

Amendment, by leave, withdrawn.

Mr. U. Burke: I move amendment No. 33:

In page 18, subsection (2), line 18, to delete “2 months” and substitute “one month”.

The appeals board shall hear and determine an appeal under this section within two months. A child with special needs could find him or herself in a situation where all of the timescales are used because of disagreements, appeals and processing, leading to serious delays before the process is finalised. Two months in this instance is over-generous when time is of the essence.

Miss de Valera: This amendment cannot be accepted because, as with the other provisions dealing with time limits, this area was examined during the Bill’s passage through the other House. Given the potential complexity in dealing with these matters, I am concerned about reducing the time limit to one month. The Senator might note that section 7(7) ensures that the council or the health board is not absolved from providing services on those aspects of an assessment or education plan that are not in dispute. The other issues should not be held up if there is concern about one issue.

Amendment, by leave, withdrawn.

Section 12 agreed to.

SECTION 13.

Acting Chairman: Amendments Nos. 34 to 36, inclusive, and amendments Nos. 39 and 40 are related and will be discussed together by agreement.

Mr. McCarthy: I move amendment No. 34:

In page 18, subsection (1), line 35, to delete “, with the consent of the Minister for Finance,”.

The current wording is inconsistent with the rights-based nature of the Bill.

Miss de Valera: The consent of the Minister for Finance to public expenditure is a key feature in government accounting and accountability. It is not possible to exclude the Minister from issues relating to public spending. The Minister for Finance sets overall spending limits within which each Minister must operate. This applies to all aspects of government funding and education and health are no exception. I will not accept amendments Nos. 34 or 35 on this basis.

Mr. McCarthy: We are well aware of the Minister for Health and Children's constant battles with the Minister for Finance. It also affects other Ministers and Departments. When one looks at the issue, one cannot be of the same opinion as the Minister of State. There are constraints under which all Ministers operate but to give the Minister for Finance this power of veto is unhelpful and does not augur well for the Cabinet when it is putting together a Book of Estimates. I cannot see this being operable in such important legislation.

Mr. U. Burke: When the Minister of State replied, she may not have understood that we are only seeking a change. The Bill already involves, in addition to the Minister for Finance, the Minister for Education and Science, the Minister for Health and Children and potentially the Minister for Justice, Equality and Law Reform. A situation could arise where consent is required from all four Ministers. A requirement of consultation with the Minister for Finance, rather than consent, would be a fairer way of dealing with this aspect.

Everybody in the country fully understands the grip which the officials in the Department of Finance can and must exert on certain issues. This can lead to serious problems. If it was a matter of consultation with the Minister for Finance, rather than consent, it would be much more acceptable. It would lead to easier negotiations and relations between the various Departments would run smoother. I understand what the Minister of State has said with regard to the provision of finances but when one must seek the consent of the Minister for Finance and knowing the long tradition of the grip of the Department of Finance over the purse strings, the whole ethos of the Bill could easily perish on that issue. The phrase "consultation with" would be preferable.

Mr. O'Toole: During the Second Stage debate and in a number of other discussions on the Bill, it was acknowledged that the legislation would stand or fall on the application of section 13. I agree with the points made by Senator McCarthy on these amendments. It may be a question of syntax but if the amendment is not accepted, the legislation will be at the mercy of an official in the Department of Finance. I disagree with the initial response of the Minister of State. The amendment does not propose that the Minister for Finance should not control the amount of

money that is paid out each year to the Department of Education and Science because that is the Minister's decision and it is his duty.

There may be a problem with the syntax of the section. The Minister for Education and Science receives funding for the year and decides how it should be spent. In this instance, however, the Minister for Health and Children and the Minister for Education and Science must refer to the Minister for Finance for his consent as to how the money is spent. The Minister for Finance is being brought into the operational work of both Departments. That is where the Bill falls down. It was never contemplated nor intended for this to be the case and it is an unnecessary complication.

We have all dealt with the Department of Finance. With due respects to the officials from the Department, they have no experience of dealing with a child with special educational needs nor with the problems of the school. They will never have dealt with the individual education plans. They will simply look at the expenditure because that is their duty. Under this Bill, these officials have the right to intervene and to object on these issues. That is unacceptable. It may not be intended to be so but that is the way it is written in the Bill.

Section 13 makes section 9(7) operative. The oxygen for section 9(7) is the money provided under section 13. If the money is stopped under section 13, section 9(7) does not operate. Section 13(1) states:

The Minister and the Minister for Health and Children shall each, with the consent of the Minister for Finance, out of moneys provided by the Oireachtas, provide such moneys and other resources as are determined by him or her for the purposes of the preparation and implementation of education plans...

It is not decided on the basis of need or demand but on the basis of a decision made by the Department of Finance. The situation will arise where the operation of the Bill will work well and everything will be in place with everybody doing their work, but when it comes to implementation, the Minister for Finance will say, "I have thought about this and for all the work done this year I will allow one cent". He would be in compliance with the Act in that case.

On Second Stage, Senator Fitzgerald made a valid point that this was something quite new. The latter part of section 13 involves the Constitution where it refers to, "the provision of resources by the State in fulfilment of its duties under Article 42 of the Constitution...". There is no pressure on the Minister to make adequate resources available.

My amendment proposes that adequate provision be made out of the moneys provided by the Department of Finance for the full preparation and implementation of the education plans. There should be no interference by the Minister for Finance during that process. That is

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not an unreasonable proposal. I acknowledge all the amendments cannot be accepted but we take the view that the Minister for Finance should not be involved in stopping the availability of money for the preparation of an education plan for a child with special needs. We also propose that in terms of the recognition of Article 42 of the Constitution, the Minister for Finance must make adequate provision to allow for the full preparation and implementation of the education plans.

If the Government does not accept the amendment, it means it is afraid of a commitment to the full preparation and implementation of education plans. Of all the points made to me about this legislation, this issue has been raised by the INTO on a number of occasions. The INTO takes the view that the Bill is good legislation if the money is put up front. That is also the view of principal teachers. Class teachers and teachers in special education hold similar views. Will the money be made available? We may be overly cynical on this matter but the view is that it will not. That scepticism could be scotched by the acceptance of this amendment, by giving a commitment to ensure the full implementation and full preparation of the child's education plan.

Adequate provision is not an absolute. The word "adequate" requires judgment. It implies reasonableness and allows us to see the operation of the Act. As a reasonable person, the Minister of State must be swayed by my arguments. I have no doubt she will agree with the points I make and in all reasonableness will concede that given the extra work to be imposed on boards of management, principal teachers and staff members and acknowledging the greater expectations of parents, the necessary funding should be provided.

Mr. Fitzgerald: I expressed some views on the question of the consent of the Minister for Finance in my contribution on Second Stage. Article 17 of the Constitution requires that the Government be accountable to the Oireachtas for all moneys spent. It has always been the function of the Minister for Finance to organise Government expenditure.

The logic of one of Senator O'Toole's proposals would be for the Minister of Education and Science to have his own Appropriation Act.

Mr. O'Toole: He should have his own budget and decide how he spends it.

Mr. Fitzgerald: The Senator may inform the House of his logic when I am finished.

Mr. U. Burke: Senator Fitzgerald is splitting hairs.

Mr. Fitzgerald: The Government has always conducted its business in this way. On the one hand, Senator O'Toole is saying he acknowledges

and accepts that this approach has worked and that he does not want to disturb it, while, on the other, he is arguing for the removal from the Bill of an element which acknowledges the way in which the Government works. The wording in the Bill does nothing other than acknowledge the system as it operates and as the Constitution requires the Government to operate. I am not accusing Senators of speaking out of both sides of their mouths but I am confused. I ask those who support the amendments to elucidate, clarify and enlighten me as I am not convinced by what I have heard.

As I stated on Second Stage, section 13 is finely balanced by a substantial, revolutionary measure taken by the Minister for Education and Science with the consent, implicit or otherwise, of the Minister for Finance. Senator O'Toole showed considerable sensitivity when I used the word "revolutionary" on a previous occasion, as he is entitled to do, but he is being over-sensitive in this case. The section is revolutionary and the inclusion in legislation of such a provision is certainly unprecedented in my time in the Houses.

Mr. O'Toole: Is it courage on the part of the Fianna Fáil Party Government that——

Mr. Fitzgerald: It is also extremely progressive and significantly enhances the powers of the Minister for Education and Science to make "adequate provision". With the deepest respect to my colleague, Senator O'Toole, the term "adequate provision" is subjective and arbitrary.

Mr. O'Toole: Yes, but it does not interfere with the Minister's rights.

Mr. Fitzgerald: Its use would not, therefore, guarantee that adequate resources would be made available. Nevertheless, I respect the Senator's view and support the general principle involved. His proposal would not, however, definitively result in the objective he seeks being achieved.

I am happy with and encouraged by the substantial improvements made to section 13. As has been stated, its reference to the Minister for Finance is to ensure that where he exercises his constitutional duty to control expenditure, he is reminded of the duty upon the State in Article 42 of the Constitution to make proper provision for the education of all children and to ensure that those who need most help receive it.

Mr. U. Burke: What about the record? For how long must children wait?

Mr. Fitzgerald: Section 13 is unique and unprecedented and will shape the exercise of the Minister for Finance's discretion in a way that has never happened before.

Mr. U. Burke: It is not likely to happen.

Mr. Fitzgerald: It has happened in the Bill, which provides that if the Minister for Finance fails to make adequate provision and resources available to the Minister for Health and Children or the Minister for Education and Science, or both, to discharge their duties under the legislation, those who suffer may have grounds for review of the Minister's failure by the High Court. That is a key advance at the heart of the Bill, which has never before been included in legislation. I commend the Minister of State and the Minister for Education and Science for achieving it.

Mr. U. Burke: The Senator should tell that to parents in counties Donegal or Kerry.

Mr. Fitzgerald: The Minister of State will agree that there is unwarranted concern — I will not call it hysteria — and over-sensitivity regarding the inclusion of a requirement to obtain the consent of the Minister for Finance. This provision merely acknowledges what has always been and will continue to be the case.

Mr. U. Burke: Some 5,000 children have been denied assessment and are still waiting.

Mr. Fitzgerald: Its inclusion does not take from the fact that substantial progress has been made with regard to the rights of the child being vindicated in law within the framework of the National Council for Special Education.

Miss de Valera: We need to recognise that no one can bypass the Minister for Finance. Having served at the Cabinet table for five years, I am aware that when one is fighting for allocations, one has one's priorities and it is up to each Minister to get the allocation he or she regards as necessary to meet their departmental priorities. That is the way of Government. Under the Constitution the Minister for Finance is responsible to the Oireachtas and acts, as it were, as the Accounting Officer of the Government.

Some Senators expressed concern that the position regarding the amount of money available to implement educational plans could retard work on the plans in some way if the amendments were not accepted. The Minister for Education and Science will be in a position to fight for moneys, initially through the usual process of Estimate debates and so forth. When the allocation is made, the Minister will in turn allocate it to the areas of greatest need, including the responsibilities given to the Minister under the Bill. Elsewhere, as Senator Fitzgerald eloquently pointed out, the legislation imposes an obligation on the Minister for Finance to make adequate provision. If parents believe he has not delivered on this obligation, they will have recourse to the courts.

The amendments are not necessary given the constitutional position of the Minister for Finance, his or her obligation under the Constitution,

the constitutional rights of the child under law and in light of other legislation on the Statute Book, namely, the Equality Act. These factors will strengthen the position of children who require the services provided for in the legislation. In many respects, the legislation recognises the need to deliver in the area of special needs for the first time.

Mr. O'Toole: I have listened with interest to the contributions of Senator Fitzgerald and the Minister of State. The Senator referred to the State's requirement to make "proper" provision, whereas the Minister of State referred to the requirement on the Minister to make "adequate" provision. Neither word appears in the legislation nor in the relevant section of the Constitution. This is precisely the point of the amendments. Is it not strange that both the Senator and the Minister of State used the words we are trying to insert in the legislation? The Constitution does not use the term "proper provision" used by Senator Fitzgerald, as he is entitled to do. It should be in the legislation and that is what I am trying to do. The term "adequate provision" to which the Minister of State referred should be included in the legislation.

As regards how the process might work, Senator Fitzgerald is correct that the word "adequate" is subjective. I chose the word carefully because I believe it would be a breach of the Ministers and Secretaries Act of 1924 for Senators to try to restrict or constrain the Minister as regards exercising his judgment, as required, in the provision of money. In other words, I have tried to find a balance by recognising there are two aspects to this job.

If the amendment were accepted, the Minister would make a judgment as to what is adequate provision, about which we can argue. At least, however, he would be required to make adequate provision. There is a major difference between "adequate provision" and "provision" because the latter does not require him to make a judgment and allows him to allocate any amount of money, however small.

The difficulty with the Constitution is the line in Article 42.4 which states: "The State shall provide for free primary education." It was a smart man who included the word "for" in this context because the State has never provided free primary education. The same line as Gaeilge is: "Ní foláir don Stát socrú a dhéanamh chun bunoidreachas a bheith ar fáil in aisce." For some people the words "ar fáil in aisce" effectively mean the Constitution as written. While this was never intended, it is the way it is written.

By qualifying the word "provision" with the word "adequate" or "reasonable" one does not prevent the Minister for Finance from doing his job but requires him to make a judgment on what is "adequate". This is the reason I propose to insert the word.

The second issue concerns the words "out of the moneys available." It is a two stage operation.

[Mr. O'Toole.]

It is the Minister for Finance's judgement as to what constitutes adequate provision for children with special educational needs and he will draw up his Estimates and send the allocated funds to the Departments of Education and Science or the Department of Health and Children. The Minister for Finance should then have no further part in the process. The money has been allocated and it should be at the discretion of the relevant Departments to spend that money as they see fit. They can demand more money but it will still be in the Minister for Finance's gift. This does not interfere with the Minister's ability to do his job as what the Minister of State described as the "Accounting Officer of Government".

The allocation decision passes through the Accounting Officers of the Departments before coming to the Minister for Finance and in this way everyone has done their job properly. Provision can be a mere red cent but adequate provision means that the Minister for Finance must be able to account for and explain the allocation he or she has made to the Committee of Public Accounts or any other party which might challenge him or her. Under the terms of this Bill, one can make the argument for a specific allocation but one cannot make the Minister for Finance comply whereas if the word "adequate" is used—

Mr. Fitzgerald: That word invites a subjective interpretation and the matter could still end up in the courts.

Mr. O'Toole: —one can specify the precise number of children with autism or other special needs and so on. The Minister for Finance would be required to prove that he had taken all these facts into consideration before allocating a provision that is adequate. The Bill does not provide any guarantee of such adequacy and allows the Minister for Finance to come up with a figure for special educational needs services which he does not have to justify.

My concerns may be unnecessary and constitute a bottle of smoke. Perhaps I am wrong to present these demands to the Government and I may return to the House in six months time and acknowledge there was no cause for concern and that the Government shovelled money for special educational needs services into schools.

Mr. U. Burke: That is unlikely.

Mr. O'Toole: I am attempting to strengthen Senator Fitzgerald's hand for the next occasion he makes representations to the Department of Education or Science or the Department of Health and Children. He will be pleased that I made it possible for him to demand that adequate provision be made. This is about responding to the needs of children with special educational needs by ensuring that this legislation is implemented in the spirit in which it was

intended. For this we must ensure that adequate funding will be provided.

An Leas-Chathaoirleach: I must warn the House that some Members are entering into the realm of repetition and I ask Senator McCarthy to bear this in mind as he makes his contribution.

Mr. McCarthy: I will. The whole spirit of the Bill will be lost if amendment No. 34 is not accepted.

Mr. O'Toole: Hear, hear.

Mr. McCarthy: The Minister of State has described the Minister for Finance as Accounting Officer but one must observe that there was little accounting done with regard to Punchestown, for example. I do not wish to divert from the matter at hand but where was the accountability in that instance? There was a clear neglect of proper accounting procedures.

An Leas-Chathaoirleach: I must advise Senator McCarthy that he is engaging in speculative comment that has no relevance to the amendment under discussion.

Mr. Fitzgerald: The Senator's comments are extraneous.

Mr. U. Burke: He has given a good example.

Mr. McCarthy: I accept the Leas-Chathaoirleach's ruling.

The decision on the allocation of funds will be taken by the Department of Finance and that decision will be based on economic considerations. It will not focus on welfare and education, which is clearly the concern of this legislation but rather on the resources available to the Department of Education and Science and how much of those resources it can afford to allocate to special educational needs services. This is the situation that will prevail if this amendment is not accepted and Senator O'Toole's words will come back to haunt service providers in the future. I appeal to the Minister of State to accept this amendment and consider that a future Minister for Finance may decide to pull the plug on this funding. This amendment makes provision for such an eventuality, which goes against the spirit of the legislation.

Miss de Valera: One must recognise the constitutional realities that pertain and the manner in which Government business is conducted irrespective of which party is in power.

2 o'clock The Minister for Finance cannot be required through legislation to provide funding in the manner envisaged in these amendments. Resources are allocated at the discretion of the Minister for Finance following consultation with the various Departments. The Minister for Education and Science must have regard to his or her constitutional duties and must

act reasonably in setting resources for the preparation and implementation of educational plans. An unreasonable decision by any Minister in setting the bar too low will be open to challenge as an improper exercise of his or her function. I cannot accept these amendments because it is incorrect to be too prescriptive in this regard.

Mr. U. Burke: There are thousands of children for whom funding for special educational needs is required. Over the years many backbenchers,

Ministers of State and some Ministers in the area of education and in other areas have been crying out for the required funding. As Senators McCarthy and O'Toole said, the Minister for Finance has held the reins tightly, as is his prerogative. The best legislation in the world will not meet the needs of these children unless the resources are provided to provide the necessary educational services.

Question put: "That the words proposed to be deleted stand."

The Seanad divided: Tá, 27; Níl, 16.

Tá

Bohan, Eddie.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Kenneally, Brendan.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.

Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Morrissey, Tom.
Moylan, Pat.
O'Brien, Francis.
Ó Murchú, Labhrás.
O'Rourke, Mary.
Ormonde, Ann.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.

Níl

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Ulick.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.
Finucane, Michael.

Hayes, Brian.
McCarthy, Michael.
McDowell, Derek.
McHugh, Joe.
O'Toole, Joe.
Phelan, John.
Ross, Shane.
Ryan, Brendan.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators U. Burke and McCarthy.

Question declared carried.

tee on the Barron Report. Is that agreed?
Agreed.

Amendment declared lost.

An Cathaoirleach: In accordance with an order of the House, I must put the following question: "That sections 13 to 53, inclusive, Schedules 1 and 2 and the Title are hereby agreed to in Committee and the Bill is reported without amendment."

Minister for Justice, Equality and Law Reform (Mr. M. McDowell): I express the Taoiseach's regret that he is not able to be here today for these statements. He initiated this process following his meeting with the Justice for the Forgotten group on 22 April 1999 and he remains deeply committed to the victims and their families and the search for the truth surrounding these terrible atrocities. As Attorney General at the time, I was centrally involved in these developments.

Question put and declared carried.

An Cathaoirleach: When is it proposed to take Report Stage?

It needs to be stated that the Dublin and Monaghan bombings left an indelible mark on the people of Ireland. The bombings did not simply affect Dublin and Monaghan. Those who were so cruelly taken on that day and many of those who suffered such terrible injuries came from all walks of life and from all over the country. The Independent Commission of Inquiry into the Dublin and Monaghan Bombings, whose sole member was first the former Chief Justice, the late Liam Hamilton, and later Mr. Justice Henry Barron, began its work in early 2000. It was asked to

Ms O'Rourke: Tomorrow.

Report Stage ordered for Thursday, 8 July 2004.

Barron Report: Statements.

Acting Chairman (Mr. U. Burke): It is proposed to allow Senator Jim Walsh to speak for 15 minutes as he was a member of the Sub-Commit-

[Mr. M. McDowell.]

undertake a thorough examination involving fact finding and assessment of all aspects of the Dublin and Monaghan bombings and their sequel, including the facts, circumstances, causes and perpetrators of the bombings; the nature, extent and adequacy of the Garda investigation, including co-operation with the relevant parties in Northern Ireland and the handling of evidence, including the specific analysis of forensic evidence; the reasons no prosecutions took place, including whether and, if so, by whom and to what extent the investigations were impeded; and the issues raised by the "Hidden Hand" television documentary broadcast in 1993.

This was to prove a difficult and time consuming task. The events being examined took place 30 years ago and many of those who were centrally involved at that time are since deceased. Accessing records both inside and outside the jurisdiction proved difficult and in some cases it was simply not possible. In particular, the non-availability of records in Northern Ireland meant the scope of Mr. Justice Barron's report was, as he described it himself, limited as a result.

Mr. Justice Barron drew conclusions relating to the terms of reference given to the commission. I do not propose to go into all of the conclusions in his report in detail, save to say that it sheds a great deal of light on what happened on that day, why it happened, who was responsible and the actions that ensued.

Key among Mr. Justice Barron's conclusions was that the Dublin and Monaghan bombings were carried out by loyalist paramilitaries, most of whom were members of the UVF, primarily as a reaction to the prospect of a greater role for the Irish Government in the administration of Northern Ireland arising from the Sunningdale Agreement. It was also concluded that these loyalist groups were capable of carrying out the bombings without help from any section of the security forces in Northern Ireland, although it is likely that individual members of the UDR and RUC either participated in or were aware of the preparations for the attacks.

Mr. Justice Barron further concluded that the Garda investigation failed to make full use of the information it obtained and that the State was not equipped to conduct an adequate forensic analysis of the explosions, one consequence of which was that potentially vital clues were lost.

As I said at the time of publication of the Barron report, it would not be possible for me to account for the course of a Garda investigation some decades ago, but it is a matter of regret to me that the report found serious inadequacies with the Garda investigation. Since that time there have been profound changes in Garda structures, criminal justice legislation, available technology and co-operation between police services. Nothing is perfect even now but strides have been made since that time. Although obviously there is concern and disappointment about what the Barron report states about the

Garda investigation, we should not lose sight of the fact that in the course of the past 30 years the Garda has proved vital in preserving the security of the State and some of its members have been called on to pay the ultimate sacrifice in that regard.

Mr. Justice Barron found no evidence that any branch of the security forces in Northern Ireland knew in advance that the bombings were about to take place. I put on record my appreciation and the appreciation of the Government for the work carried out by the late Chief Justice, Liam Hamilton, and by Mr. Justice Barron and his team. I also thank Mr. Justice Barron for the assistance he gave to the Oireachtas joint committee. I know the committee greatly appreciated his help.

On 10 December last, Mr. Justice Barron's report into the bombings was referred to the Oireachtas and both Houses of the Oireachtas asked the Joint Committee on Justice, Equality, Defence and Women's Rights to consider whether the report addressed all of the issues covered in its terms of reference; the lessons to be drawn and any actions to be taken in the light of the report, its findings and conclusions; and whether, having regard to the report's findings and following consultations with the inquiry, a further public inquiry into any aspect of the report would be required or fruitful.

The referral of Mr. Justice Barron's report to the joint committee provided a very useful context for detailed consideration of the judge's report and for further submissions by those who contributed to the work of the commission or who were the subject of comment in the report. I am glad so many submissions were received and that many of those who were the subject of the conclusions in the report availed of the opportunity to meet with the committee and put their points of view. The Taoiseach appeared before the joint committee on 25 February last and I appeared before it on 10 February to respond to questions on points of interest.

Anybody who heard the testimony of those who lost loved ones and those who were injured in the bombings — some are still suffering from those horrific injuries to this day — could not fail to have been moved by their harrowing stories. It is true that for those affected by the bombings following 17 May 1974, their lives were never the same again. It is also true that rarely, if ever, have such distressing accounts been heard in these Houses or by any Oireachtas committee.

I am glad that the inquests into the deaths of those who were killed in the bombings have at last been held. The coroner apologised to the families for the delay in holding those inquests. That apology was welcome because I have no doubt that the absence of inquests contributed significantly to the sense of abandonment of the families. At the inquest hearings, the families had a further opportunity to remember their lost loved ones and recall the circumstances of their deaths. I hope in some small way that this has

helped the healing process for those who felt abandoned.

The committee reported back to the Oireachtas on 31 March 2004 and since then Members of the House have had an opportunity to consider its findings. I would like to address some of the issues raised in the committee's report and the conclusions it reached. I would preface my remarks by saying that the Government has not yet considered the report, in advance of the House expressing its views, but the Government will do so in light of the views expressed by Senators in the debate today and in light of the inquest jury's findings.

The committee expressed views on a wide range of issues, as requested in its terms of reference, and each of them requires careful examination. They will be considered by the Government in due course. The committee also considered the difficult questions about whether a public inquiry into any aspect of the report would be required or fruitful. The committee broke down the issues which were of concern to it into internal issues which could be resolved within this jurisdiction, as follows: Why the Garda investigation had been wound down; missing documentation in the Garda organisation; and, what documentation, if any, was missing in my Department.

The committee is of the view that a commission of investigation pursuant to legislation — which, I am glad to note, has now been passed by this House — would be an ideal way to deal with the issues pertaining to this jurisdiction. In particular, such a commission would, hopefully, in the committee's view, resolve those issues in a speedy and effective manner, while fully respecting fair procedures and natural justice.

I know that reservations have been expressed by Justice for the Forgotten about the suitability of this type of inquiry for a matter of this nature. I am sure that Senators will express their own views in the course of our deliberations this afternoon. The Government will make a decision having considered all of those views.

The committee also considered external issues relating to the identity of the perpetrators and whether there was State collusion. Many of the submissions and, indeed, Mr. Justice Barron's statement to the committee, allude to the high level of collusion operating in Northern Ireland at the time, in 1974, and on different occasions before and since.

There is a significant amount of material in the Barron report which could suggest a link between some of those who were suspected of having a role in the bombings and members of the security forces in Northern Ireland. The committee considered this issue at length and received oral and written submissions from representatives of victims' and relatives' groups, legal representatives and other organisations. Most of those submissions relate to the issue of co-operation by the British authorities with Mr. Justice Barron's independent commission and the committee itself.

The Secretary of State for Northern Ireland, Paul Murphy — whom I met today at Farmleigh in a different context — wrote to the committee and gave his personal assurance that information was provided in the fullest possible manner, consistent with his responsibilities to protect national security and the lives of individuals. However, notwithstanding this reply, on the question of whether there should be a further investigation of or inquiry into the identity of the perpetrators and on the issue of collusion, the committee considered that a public tribunal of inquiry in Northern Ireland and/or Britain was requisite, and represented the best possible opportunity to succeed.

Before any inquiry would proceed, however, the committee has recommended that what is required, in the first instance, is a Weston Park-style inquiry of the type carried out by Judge Peter Cory. The House will recall that following agreement reached between the British and Irish Governments at Weston Park in 2001, Judge Cory, a retired Canadian Supreme Court judge, was appointed to undertake a thorough investigation of allegations of collusion between British and Irish security forces and paramilitaries, in six cases. The aim of the process was to determine whether there is sufficient evidence of collusion between state security forces and those responsible for the killings in each case to warrant a public inquiry.

Such a Cory-style investigation, according to the committee, should be conducted on the basis that the judge conducting the investigation should be of international stature; the investigation should have the power to direct witnesses for interview, the power to compel the delivery of documentation and to inspect premises; time limits should be agreed for the commencement, duration and conclusion of the investigation; the judge conducting the investigation could recommend further action, including whether a public inquiry in either jurisdiction should be held; and the relevant government would be obliged to implement any recommendation within a specified time limit.

The Government will consider this recommendation carefully, although it is the case that a Cory-type inquiry would be non-statutory and, thus, would not have powers beyond those available to Mr. Justice Barron.

The question of dealing with the events of the past 30 years of conflict in Northern Ireland is difficult. In this jurisdiction, we have asked Mr. Justice Barron to examine a number of further cases, and he recently sent his report to the Taoiseach on some atrocities that were attempted or perpetrated before 1974. Those include the 1972 and 1973 Dublin bombings, and other bombings and incidents. It is the intention that this report will also be referred to the Oireachtas in the near future, and will be published.

Mr. Justice Barron, for his part, will report later this year on other events perpetrated after 1974, including the Séamus Ludlow case, the Dundalk bombing of 1975, and the Castleblayney

[Mr. M. McDowell.]
bombing of 1976. In carrying out this work, the Government's primary concern has been for the victims of all these outrages and their relatives. The excellent work of the former Tánaiste, John Wilson, in preparing the report of the victims' commission, provided a sound basis for responding to the needs of those who suffered such loss and who, over the years, were largely forgotten.

The Government has established a remembrance fund commission and has provided €9 million to be spent over the next three years to acknowledge the loss people suffered and to provide for the ongoing medical needs of victims. Applications for receipt of funding have recently been invited by that commission. Through the fund, it is also being arranged to make a substantial contribution to the Northern Ireland memorial fund.

There are lessons to be learned. The Government will consider the committee's recommendations carefully and will take account of the contributions that have been made in Dáil Éireann and those that will be made here today. We will take action on foot of what we hear.

I would like to thank all of those who co-operated with Mr. Justice Barron in compiling his report, and with the Sub-Committee on the Barron Report of the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights in its deliberations. They have made a valuable contribution to the search for the truth. The committee itself carried out its work diligently and with great care, and I would like to pay tribute to the members of the committee, in particular to Senator Jim Walsh, for the work they did and the sensitive way in which they conducted the proceedings.

Finally, I would like to pay a special tribute to the work of Justice for the Forgotten, who have so ably represented those who suffered so much as a result of the atrocities perpetrated against them. I know that this has been a difficult and lengthy process for them. I know that personally because I was a backbench Deputy in the Lower House at a time when that organisation was attempting to put in place an all-party group to support its campaign. I was glad to be of assistance to Justice for the Forgotten at that time. I am glad that, over recent years, the Department of Justice, Equality and Law Reform has been able to assist the group financially and that this support will continue under the auspices of the remembrance fund.

In recent years, considerable progress has been made in securing peace and stability on this island of ours. We still have some considerable way to go, but the current position is infinitely better than the dark days of the Troubles when these explosions took place. We are dealing collectively with the legacy of the past. The ongoing work of Mr. Justice Barron helps us substantially to confront and come to terms with that past.

Mr. B. Hayes: In deference to Senator Jim Walsh, I will be happy to allow him to open the debate, given that he was a member of the sub-committee.

Mr. J. Walsh: No. I am quite happy for Senator Brian Hayes to start.

Ms O'Rourke: Senator Jim Walsh was the only Member of this House to sit on the sub-committee and we are delighted about that.

Mr. B. Hayes: I welcome the Minister to the House and welcome this debate. It is important that the debate should take place in both House, particularly in light of the agreement on the recommendations from the sub-committee. I ask the Government to consider why it is that, some months after the publication of the sub-committee's report, one of its most specific and straightforward recommendations, concerning a joint resolution, has not been dealt with. I do not see a particular difficulty with this matter. The Minister says that the Government is still considering all the matters in the report, and I appreciate that. However, I do not see why the Government could not, at the very least, have put a joint resolution before both Houses in recognition of the fact that the sub-committee has reported and that the Government is still concerned with and examining the contents of that report. It could still be done even at this late stage and it would give recognition to the work of the sub-committee, of which Senator Jim Walsh was a member.

It is very important that we never forget the large numbers of people in this and the other jurisdiction who were murdered as a result of terrorist atrocities in the past 35 years. If some small comfort can be given to the victims of the Dublin and Monaghan bombing it is that, at long last, the State is beginning to recognise their plight, the fact that they are all victims and that it is putting in train a process which will give them some measure of comfort. It is also important that we will have an inquest. I acknowledge that the coroner in the case apologised to the victims, which was important.

The Barron report has also been published and the sub-committee has held hearings and made recommendations on an all-party basis all of which, while not giving closure to the families, helps them in some small way to get to the truth. Their situation is unlike other victims. Many people who witnessed, for example, their mothers or fathers being bombed in Northern Ireland or in this jurisdiction have also seen perpetrators charged, placed in custody, brought before the courts and sent to prison. Even if such people were released under the terms of the Good Friday Agreement prisoner release programme, at least there was some public acknowledgement of what happened.

However, no prosecution has ever been brought against any named individual or group in respect of the Dublin and Monaghan bombings.

The great difficulty the families have is that there is a distinction between those who have gone through a legal process which has an ultimate result and those who have never seen a prosecution entered against any group of people.

There is some talk of a re-negotiation of the Good Friday Agreement by various parties concerned with how to get it back up on track. If the Agreement is to be renegotiated in some small measure, will the Minister reconsider the role and place of victims at the centre of it? When we negotiated the Agreement, which was passed with such jubilation, we did not give due recognition to the victims of the conflict over the past 35 years who still have to bear the brunt and pain of that suffering.

The victims commissioner, Mr. Wilson, and his counterpart in Northern Ireland have done a great deal of good work. However, we need to give greater recognition to the role of victims. Having studied the report, I have come to the conclusion that the only way we will deal with these outstanding matters in the long term is to have some form of public truth and reconciliation commission on these islands, in which all of the paramilitary organisations and governments will confront each other with our horrible past. That can only happen with the full support of the paramilitary organisations. However, it is invidious that governments are rightly held up to account for their actions over the past 35 years, whereas the paramilitary organisations seem to have no responsibility whatever.

In that context, it is clear the UVF was responsible for the bombings in Dublin and Monaghan. The UVF has a political representative called the PUP. The party's leader, Mr. David Ervine, is a member of the Northern Ireland Assembly and the party also has councillors. However, we have not heard a word from the PUP since the report was published. Paramilitaries must face up to their grisly past and the atrocities they put the people of Ireland and the UK through for 35 years. It is incredible that they can walk away from their responsibilities while governments are held to account on a daily basis for actions for which they may have been responsible.

We need a truth and reconciliation commission and in that regard I understand the Secretary of State for Northern Ireland has sought consultation with all the parties. We also need the paramilitary organisations to own up and take responsibilities for their atrocities, one of which led to the death of 33 citizens in the Republic of Ireland. Since it is the political arm of that organisation, it falls to the PUP to play its role.

While we want an inquiry in the other jurisdiction concerning the role of the British Government and certain individuals in terms of the atrocity, ultimately, it is for the British Government to decide to hold one. We must be honest about that. It is too easy for us to simply wash our hands of the matter, hand it over to the British Government and expect to do nothing in turn. Therefore, as part of a wider process, we need to develop

some mechanism for dealing with all these outstanding issues on both sides of the Border over the next five to ten years in order to achieve some closure.

I was happy to read the sub-committee's report, in particular because some of Mr. Justice Barron's rather naive comments concerning the Government's reaction in the early 1970s were put to bed once and for all. I do not state that to be critical of Mr. Justice Barron. Nevertheless, fanciful comments were made immediately following the publication of the Barron report last December which were most unfair to former colleagues from Fine Gael and people who had ministerial responsibilities in the 1970s. I am glad to state that, in the course of the sub-committee's work, an opportunity was afforded to people to clear up the matter and have their say in respect of the Barron report. I was also glad to note it emerged that, while at the time the Government was fighting a very difficult situation on two fronts between loyalist and republican paramilitaries, it did its best to overcome those difficulties.

Earlier today the House passed the Commissions of Investigation Bill. It would be wise to establish a commission of investigation to examine the role of the Garda Síochána in the handling of this case, the decision to wind down the operation some years ago and why files on the atrocity went missing. A narrowly confined commission of investigation into that issue could be useful in terms of giving some comfort to the relatives. Time has moved on and the expertise in respect of forensics have changed by comparison to the early 1970s. Nonetheless, a commission of investigation is probably the way to advance these issues. I am sure the Minister will now have a raft of requests for commissions of investigation as a result of the passage of this Bill through the Houses. This might be one and I would support it.

I welcome this debate and congratulate the sub-committee on its work. We are dealing with part of our history, for which we all have to take some responsibility in terms of how we handled matters and helped the victims. There are many other victims in the State who have never seen prosecutions taken. In a funny way there can never be a prosecution in this case because we have all managed to do a deal with the various organisations. The UVF which was responsible for this atrocity is still on ceasefire and there is, in effect, a tacit agreement that no further prosecutions will be taken against this organisation as long as it remains on ceasefire. That is the dilemma. There is a need for some additional mechanism or institution where all these matters concerning victims can be fairly addressed. I ask the Government to address that matter if and when a re-negotiation of the Agreement occurs because the voice of victims has not been adequately addressed to date.

Mr. J. Walsh: I welcome the Minister to the House. History is littered with examples of man's

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inhumanity to man, prime examples of which can be seen in different parts of the world. During the Troubles there were examples of that in Ireland, North and South, and in the neighbouring island. Where paramilitary involvement gives rise to these atrocities it is abominable but there is something extremely insidious if organs of the State become involved in any way in either orchestrating or assisting those. It was my duty to serve on the Sub-Committee on the Barron Report and to hear the harrowing tales from families and victims who suffered not only at the time but during the past 30 years. Part of the suffering has come about not only because of the atrocity but because of the manifest failure of the State to deal adequately with such an atrocity. At the latter stage of the sub-committee's hearings, I remember saying that the State has failed the families and the victims. I still hold that view, a view which would be shared by many of those of participated in and followed the hearings.

In late December when Mr. Justice Barron came before the sub-committee he stated, as part of his submission and report, that the investigation had wound down sometime in August 1974. At the time that seemed incomprehensible. I remember making the analogy with the 11 September World Trade Centre atrocity and considering that it would have been akin to the United States administration winding down its investigation of that atrocity in November or December 2001. It would have been untenable and unacceptable. I shall return to that point later.

We acknowledge, as the Minister has done, the many people who came before the sub-committee and made submissions and oral presentations. Those who did not attend and did not accept the invitation to co-operate are identifiable. There were people from whom we had a right to expect better. I shall return to that point later.

It is extraordinary that the first Taoiseach to recognise and acknowledge the pain and suffering of the families by meeting with them in 1999 was the current Taoiseach. The failure of the State to deal with this issue up to then has aggravated and exacerbated the pain and suffering of all involved. I say that because there is now an opportunity for the Government to attempt to bring some closure, so far as it can, for those involved.

The report deals with many issues, one of which is the adequacy of the Garda investigation. In what may be an understatement, the sub-committee said that certain specific criticisms relating to the Garda investigation were included in the Barron report, and that nothing the sub-committee had heard detracted from these conclusions. The Minister has rightly pointed out that in general the Garda has done the State proud in the past and many have paid the supreme sacrifice in protecting society and individuals within the State. Certainly this was not its finest hour and

would probably be marked as one of its lowest performance levels in the history of the State.

It would have been welcome if somebody on behalf of the Garda Síochána had given an unreserved apology for the failure to adequately pursue some of the issues that arose. The report states that the Garda investigation failed to make full use of the information it obtained, notably regarding lines of inquiry and seeking to interview suspects. The State was not equipped to conduct an adequate forensic analysis of the explosions and vital clues were lost by the failure to act promptly in the collection and preservation of evidence. It would be fair to say the Barron report addressed many of those issues. The report has included and collated areas where greater diligence was required. Certain issues were not followed up. For example, where photographs were obtained and suspects identified the photographs were subsequently lost and are not available. One or two of these are itemised in the report of the sub-committee. On the day, a white van was reported to the Garda as acting suspiciously before the explosions took place. It was subsequently found on Dublin docks with, if I remember correctly, a gun inside. It transpired that it was hired from a company where it was unregistered and was driven by a member of the British security forces. That person was interviewed by the Garda. There is no record of the interview having taken place and no subsequent follow-up. One of the cars was stolen in Belfast where, allegedly, the owner was held hostage in his home while the car was removed. He was held there all day from 10 a.m. until late evening. Subsequent evidence was given that a person who visited that house, on business during the day, disclaimed the notion that the person was being held hostage and that there were a number of people in the House. That was not pursued. There is a list of issues that should have been but were not adequately pursued and brought to a conclusion.

We had a debate on the missing documents. Obviously the Minister had to defend the Department. There is no documentation in the Department of Justice, Equality and Law Reform which deals with what was the single biggest atrocity in the history of the State. I understand there were files on other similar events, but not on this one. It is unsure, from the evidence given, whether there were ever any such files. It is incomprehensible that an event such as that was not documented within a Department which would have had some responsibility for it. Also, documents were missing from the Garda Síochána files. One of the security files highlighted by Mr. Justice Barron could have been of help to him in his investigations.

Senator Hayes has alluded to the role and response of the Government of the day. I would be critical of that Government and subsequent Governments for their failure until recently to try to address this issue in any shape or form. I was disappointed that some of the senior people in that Government failed to attend the hearings of

the Sub-Committee on the Barron Report. That did not help us when members of the British establishment also declined an invitation to attend.

According to the interviews we had and a number of others conducted by Mr. Justice Barron, Mr. Cooney, Minister for Justice at the time, defended strongly the then Government's role as he was entitled to do. Mr. Justin Keating, the then Minister for Industry and Commerce, provided a somewhat different version of events. In considering why the investigation closed down so quickly, which is a critical question for the families and the State, I found Mr. Keating's evidence quite plausible. His argument was that there was a serious threat to the State given the burning of the British Embassy in 1972 and the general level of paramilitary organisation. He put forward the view from his recollections that if the authorities had been successful in bringing people to court to hold them accountable for this crime, some of their evidence might suggest serious collusion from the British forces. The consequences of such evidence could give rise to a serious destabilising of the State. Mr. Keating's evidence to the committee was recorded and can be examined.

While it is up to people to come to their own conclusions as to whether they agree or disagree, my personal view is that the dilution in the sub-committee's report of the emphases and criticisms of Mr. Justice Barron was wrong. Equally, the sub-committee's report is more sceptical of the probability of collusion than was Mr. Justice Barron. The evidence Mr. Justice Barron received might have enabled him to take a stronger approach in that area. These are the key issues for those involved in pursuing the truth.

The matter of the composition of the bombs was extraordinary. Some of the evidence given to the sub-committee contradicted evidence provided to Mr. Justice Barron and recorded in his report. Some evidence was confused. An army witness gave evidence to the sub-committee to the effect that loyalist paramilitaries had the capacity to undertake the bombing without any assistance. He supported his reasoning with reference to a bomb at Clones shortly after the Dublin and Monaghan bombings. It transpired subsequently that the Garda was aware that the bomb at Clones was a republican paramilitary device. This made me uneasy about the manner in which people were prepared to give categorical views which were quickly blown away when analysed. It is indicative of a need for the State apparatus to be more diligent and focused in the way it handles these issues.

The sub-committee considered the Government's role in the Garda investigation as it felt the central tenet of the argument of some former Ministers, particularly former Taoiseach, Dr. FitzGerald, and Mr. Cooney, was that the State should not interfere in them. The former Ministers felt the Garda should be independent, which must be accepted. However, in the context of a major atrocity like the Dublin and Monaghan

bombings it is essential to ensure that where the State apparatus with responsibility to pursue the issue to a satisfactory conclusion is failing, there is a parallel responsibility of the State body to which it is reporting to take some action. That argument was not accepted by the former Ministers or by senior civil servants who also attended to give evidence. We found that this was not a tenable scenario and we are addressing it. The Minister for Justice, Equality and Law Reform has addressed this point in recent legislation, which is to be welcomed.

The sub-committee was informed that the State is still not equipped to carry out forensic science examinations independently in circumstances such as the Dublin and Monaghan bombing. This state of affairs should be examined and we have made a recommendation in that regard.

The issue of collusion had an extreme impact on the sub-committee. Members felt the evidence we heard reconfirmed and emphasised rather than dispelled any doubts they may have held. The issue must be tackled. If we are to have good relations with the neighbouring island, it is important that people come clean. It is essential that old sores are lanced. I was not happy with the response of the Secretary of State for Northern Ireland or anybody else on the British side. Mr. Justice Barron and the sub-committee found in their inquiries that information was forthcoming from the RUC until the Northern Ireland Office became involved, at which stage the flow of information dried up. It looked like an orchestrated attempt to avoid a full investigation. As there is a clear onus on the British Government to co-operate, the sub-committee recommended that an investigation and public inquiry should be held in Northern Ireland preceded by a Weston Park type inquiry. There is a need to accumulate facts and documentation to make any inquiry effective.

While the sub-committee considered that the preferred option would be an inquiry here, such an inquiry would involve a number of difficulties. Justice for the Forgotten and the families were disappointed that we did not make this recommendation. Any inquiry would require access to documentation in British possession which would have to be applied for through British courts while witnesses in their jurisdiction would have to be compelled to attend to give evidence. It would therefore be more satisfactory to conduct an inquiry in Northern Ireland. A major reservation I had with the sub-committee exercise and its report is that nothing to date gives us confidence to believe the British authorities would even remotely co-operate. We have therefore recommended that in the absence of co-operation we should pursue the matter through the European Court of Human Rights. I note in correspondence from Justice for the Forgotten that the group intends to lodge two complaints with the court. The Government will be remiss if the families are forced to pursue matters the State should be pursuing. We owe it to the families and, as Seán

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Donlon said, we owe it to the duty to exercise our sovereignty to ensure nothing like this is attempted in the future. We must take a strong line and pursue these matters to whatever degree is necessary.

If the above process fails, a proposal was made, which did not receive the support of the sub-committee, to hold a public inquiry in Ireland. Support was not forthcoming only because it was felt that such an inquiry would dilute the emphasis on co-operation from the British authorities. I hope the Government, which has taken up the issue, will fulfil the needs of the families and victims who have not seen appropriate action from the State up to now. Matters should be brought to a conclusion to ensure, in the words of Edward Roice who lost a daughter and is now in his 80s, that before they close their eyes, he and his wife are privy to the truth of what happened and an acknowledgement of what went wrong.

Mr. D. McDowell: I join other Members in welcoming the Minister to the House. It is useful to provide time for an expression of views from all sides of the House on what was, before Omagh, the worst single incident in the history of the so-called Troubles.

I commend the work done by Mr. Justice Barron and prior to that by the late Chief Justice, Liam Hamilton. In the 30 years since the bombings there were rumours, counter rumours and reports, some substantiated and some not, about what might have happened. We all were privy to that and a general view formed in the Republic and elsewhere as to what might have happened. It was nonetheless extremely useful for Mr. Justice Barron to examine all those reports, to speak to those witnesses who made themselves available and to come up with the report he prepared.

It is clear from reading the report, and this is confirmed by the sub-committee report that followed its publication, that we know most of the facts. We know most of the individuals who partook in this event. We know most of those who were involved in planning it and those who carried it out. It was primarily, if not exclusively, the responsibility of the UVF, in terms of operational activity, in Belfast and Lisburn.

What is less clear is the extent to which there was collusion of one type or another. There are different levels and types of collusion that could have taken place and none of it is exclusive to each other. It is clear from the evidence of a number of witnesses that there was collusion of a general nature at the time between the RUC, the UDR and some loyalist paramilitaries. Some of the individuals thought to have been involved in the particular incident had contacts or connections of one type or another with the RUC or the UDR. However, the judge was unable to draw the conclusion that individuals within the UDR and the RUC or individuals higher up within the RUC and the UDR, as institutions, were directly

involved in either the planning or the implementation of the act. That is the reason we still have a difficulty in deciding where we go from here.

I will return to the recommendations regarding an inquiry. I was struck by remarks the Taoiseach made in the immediate aftermath of the Madrid bombings a few months ago when he said he knew from his experience — I assume he was referring to his experience in regard to the Dublin and Monaghan bombings — that it was extremely difficult for the relatives of victims or victims who survive to find closure in regard to such incidents. Even in those circumstances where it is possible to determine who carried out such an act and people are prosecuted and convicted, the relatives of those who died and those who survived still find it extremely difficult to determine why it was that their particular relative — their daughter, son, husband or wife — died.

It is in the nature of terrorism at its purest that it is random. Terrorists seek to terrorise a population and the fact that a particular individual or individuals became involved was purely a matter of the awful chance of being on a particular street on a particular day at a particular time. It is in that context that we must consider the issue of closure. I was struck by what Senator Brian Hayes said about the issue of considering even now victims not only of the Dublin and Monaghan bombings, but of other incidents that have taken place over the past 30 years. It is an issue with which I have some difficulty.

I have no problem, in principle, and I am sure nobody else does, with the notion of a victims' forum that would allow for views to be exchanged, a feeling of solidarity among victims to be nurtured, for support, counselling and so on. Something along the lines of Truth and Reconciliation Commission that was held in South Africa requires, as Senator Brian Hayes rightly pointed out, the co-operation of the paramilitary organisations concerned. That will only come to pass and be granted, if at all, in the context of an amnesty, which is what happened in South Africa.

In this context, it is worth examining the South African experience, as that is the experience on which we draw. The response and the result of the Truth and Reconciliation Commission under Archbishop Tutu was mixed. It is true that some victims found out facts they did not previously know or could not previously confirm. A small number of victims were able to find within themselves the forgiveness to move on and the closure which the process offered. However, it is also true that it opened up many wounds for individuals and society there. That was within the context of a process where clearly there was a past, a present and a future process, where black majority rule was in the process of being established and the apartheid era was over. Even in that fairly clean break of a set of circumstances, where a line could be drawn under the past, it seemed to be difficult for victims to find closure. In terms of society there, it probably opened up more

wounds than it closed. It is an experience on which we need to draw in a practical way.

I do not approach this issue with any ideological baggage or prejudice except in so far as we, as a society, can provide closure to individual victims and the circumstances which would allow for greater reconciliation between the two societies in Northern Ireland by virtue of providing such a forum. However, let us not imagine that this is an open and shut, black and white case; it is not. There are two sides to this issue and the experience of the results elsewhere was mixed.

The Minister pointed out that the Barron report and the sub-committee's report basically examined two types of issues — the issues that are internal to this State and those that are external. We need to be clear about the issues that are internal. I find it extremely shocking, as Senator Jim Walsh rightly said, that the report of the investigation of the gardaí into what happened in May 1974 was closed down effectively, or run down, within three months. That is astonishing. I had to look again at the date to see whether I got the year wrong when I first saw it. Even with the benefit of hindsight, that circumstances have changed greatly and that relations between this State and the other authority on this island and this State and the UK are different, it still seems astonishing that could have happened. Even taking into consideration the measure and nature of the atrocities that were happening on a fairly regular basis, it still seems, in whatever context one would want to put it, astonishing that should have happened. We need an explanation in that regard. The recommendation of the sub-committee in regard to the Bill we passed in this House today and that has already been passed in the other House to provide that a commission of inquiry be established must be followed up.

The issue of addressing the lost files is a little more complicated. I read the sub-committee's report and it is not clear from it whether files were lost, whether they ever existed or if they were true copies, full copies or whatever. There is an issue in that regard. There is enough to be concerned about and inasmuch as we will have a commission examining the other issue relating to the Garda inquiry, that issue should also be examined. I note from the sub-committee's report that it suggests that this type of thing is unlikely to happen because of the National Archives Act and the new procedures that have come into place on foot of that, and I take some solace from that fact.

There is an outstanding issue, on which Senator Jim Walsh touched, regarding forensics and how we approach that area. The suggestion from Dr. Willis, the director of the Forensic Science Laboratory, that even now we would not, or might not, be in a position to deal adequately with forensic evidence if an atrocity of that nature were happen again is worrying and it is something the Government must address.

I regret that the time available is short because I have a great deal more to say. I will skip to the

bottom line. There are issues with which we cannot deal in this State. I was confused by an extract in the sub-committee's report quoting what, I presume, was only part of what the Taoiseach said. He appeared to say that, on the one hand, he is satisfied we have got everything the British are willing to give and, on the other, that he thinks there might have been some MI5 or MI6 reports we do not have. One point is clear — we need some clarity on this issue. Such clarity can only come about by virtue of the political process and bilateral contact between the British and Irish Governments. It is incumbent on the Government to bring this to finality by approaching the British Government — I presume it has done this already and, if not, it should do so — and point out that we need co-operation. If the Cory-type report is a better way to go, and it seems that there is a good *prima facie* case made for it, we should go that way. If that in turn produces enough, then we should have a public inquiry in Northern Ireland or in the United Kingdom.

This was a truly horrendous event. In some ways I find what we now know about potential collusion less shocking than perhaps I should because I suppose most of us suspected that all along. What is shocking is the extent to which this State failed in terms of the Garda investigation and to some extent — I am not totally persuaded by the defence that has been put up by Dr. Fitzgerald and Mr. Cooney — at governmental level to pursue this matter as far as one might reasonably have expected, even allowing for everything that has come to light with the benefit of hindsight. That is truly shocking and, on the basis of the one or two details isolated by the sub-committee, deserves further investigation. I trust the Government will soon take a decision to go that route.

Mr. Minihan: I welcome the Minister to the House and compliment Senator Jim Walsh on his most informative contribution, which certainly provided great insight into the workings of the sub-committee and the thought processes that led to its conclusions. I obviously welcome the opportunity to speak on Mr. Justice Barron's report on the Dublin and Monaghan bombings of 1974. Even after 30 years, these bombings have the power to evoke a cocktail of sorrow, frustration and anger. One is sorrowful because people going about their daily business had their lives taken from them so needlessly and cruelly. Consider the O'Brien family. John O'Brien, his wife, Anna, and children, Jacqueline and Anne-Marie, were killed in Parnell Street. One is also sorrowful as one bears in mind the continuing anguish of the families of the victims. As John O'Brien's brother, Thomas, related to the sub-committee, his mother remains heartbroken over the events of that spring evening. What of the unfulfilled hopes and dreams of those who remained? Thomas O'Brien often wonders what the two kids would now be doing. Is it any wonder that even

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after 30 years, people are still dealing with this trauma?

I feel frustrated that after three decades we still do not know the full story of what happened on the day of the bombings and that vital Garda documents, which might have shed light on why gardaí failed to make full use of the information they had obtained and failed to seek assistance from the RUC to interview suspects, have been lost or destroyed in the intervening years. I am particularly frustrated because the investigation was wound up so quickly.

I am also annoyed by the attitude of the British Government which, despite repeated affirmations that it would co-operate with Mr. Justice Barron's inquiry, failed to pass on any relevant files. The paucity of its contribution is highlighted by the 16 page letter from the Northern Ireland Office supplying information deemed to be of relevance. Not one document from the 68,000 or so documents held by the Northern Ireland Office was given to the inquiry. As Mr. Justice Barron stated, if one does not see the original documentation in its context, it is obvious one is not getting the full picture. Contrast this with the British Government's own exhaustive inquiry into the events of Bloody Sunday.

I, along with those who survived these heinous atrocities and the relatives of those who did not, feel angry that the perpetrators remain unpunished. I am also angry that while these events occurred three decades ago there are still elements, both international and domestic, which continue to regard the kinds of atrocities visited upon Dublin and Monaghan as a legitimate extension of the political process.

The report of Mr. Justice Barron and its subsequent analysis by the sub-committee of the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights are to be commended. It was vitally important that the stories of ordinary people from Dublin and Monaghan were told. In telling their stories, I hope the victims of the atrocities have found some relief from the anguish they have suffered for so many years. While listening to the testimonies of the victims, one could hear the anguish and sorrow in their voices. What impressed me most was their need to know why and how the bombings took place, who carried them out and what can be done to bring them to justice. In this regard the sub-committee has made recommendations, some of which I would like to touch upon.

Like the sub-committee, I would also rule out a tribunal of inquiry or any investigation under the commissions of inquiry legislation. The only useful investigation would be one undertaken in the neighbouring jurisdiction. This is most likely where the evidence is to be found and most certainly the location of the perpetrators. I commend the Government on its efforts thus far to secure the co-operation of the British Government, but the time has come to redouble those efforts. I do not harbour great hopes that the British Govern-

ment will acquiesce to any request of ours to set up an inquiry in its own jurisdiction without the threat of more serious action hanging over its head.

One such threat would be to mount a civil suit against the British Government in the European Court of Human Rights. Alternatively, a civil suit initiated in Great Britain or Northern Ireland by individual victims or their relatives may succeed in goading the British Government into action. I have, however, a word of warning for our own Government. Should the latter approach be taken, we must be prepared to fully indemnify those taking the action against legal costs regardless of whether the action has a reasonable chance of success. This should not be seen as a precedent. However, given that those concerned would be taking an action in the interests of the State, they should be supported.

We may never know the full story of what happened in May 1974 but we can at least take measures to ensure that such events never occur again. While Ireland is largely at peace with itself, notwithstanding anxiety over the possibility that subversive groups might again take up arms, the world today is a very dangerous place. Fortunately, or perhaps unfortunately, given that this has been brought about by decades of terrorism, inter-jurisdictional co-operation with our neighbours and other states internationally is now much better than it was when the Dublin and Monaghan bombings took place 30 years ago. I trust that the Government will take on board the recommendations of the sub-committee.

Once again, I commend the work of Mr. Justice Barron and the sub-committee. In particular, I pay tribute to the work of Justice for the Forgotten, which has ensured tirelessly that the victims will not be forgotten and will receive justice in due course.

Mr. Cummins: I, too, welcome the Minister. The date 17 May 1974 proved to be one of the most devastating and darkest days in the history of this country because of the callous and calculated murder of 33 people, including an expectant mother, through bomb explosions in Dublin and Monaghan. As has been stated, 33 people who were going about their daily business had their lives cut short by the cowardly, savage and inhuman actions of people whose motives were as incomprehensible as their actions.

I can only imagine the devastation, trauma and shock endured by the families, relations and loved ones of the victims — our citizens — and the emotions that continue to be felt because of the lack of closure regarding the circumstances surrounding the bombings. We heard clearly in the evidence to the sub-committee on the Barron report that those emotions are still felt.

Questions remain to be answered to satisfy the families of the victims and the nation as a whole. Everything should be done to bring the perpetrators to justice and ascertain the full facts and causes of the bombings.

The Barron inquiry was completed in 2003 and was charged with the task of assessing all aspects of the Dublin and Monaghan bombings, including the nature, adequacy and extent of the Garda investigation, along with co-operation with and from the relevant authorities in Northern Ireland, and the handling of evidence, including scientific analyses of forensic evidence. It was also charged with the task of determining the reasons no prosecutions took place and whether investigations were impeded in any way, and with investigating issues raised by the "Hidden Hand" television documentary in 1993.

The conclusions and Mr. Justice Barron's report have been published, yet there is no finality on the issue. It is true that many questions were addressed and answered in a clear and concise manner. The failure to secure the full co-operation of the British Government has meant that a substantial amount of the vital information was not made available to the inquiry. This was most regrettable. The failure of the Government and of the Taoiseach to secure the full co-operation of the British Government hampered Mr. Justice Barron in his efforts to investigate collusion, as Mr. Justice Barron himself stated in 1999. The inquiry was provided with only selected detail from documents within British control. This was a significant factor in hindering the inquiry. Until such co-operation exists and we see the release of all the original documentation from the UK authorities, it will not be possible to come to a definitive conclusion.

Mr. Justice Barron's assertion that he encountered difficulties in locating all the relevant files believed to be in this jurisdiction is a matter of grave concern and one which will have to be resolved. This matter has been addressed by previous speakers. The sub-committee has proposed that a commission of investigation be set up to investigate the identity of the missing files, the reason they are missing, whether they can be located and whether systems have been put in place in the meantime to prevent a recurrence of this problem. This is a most important matter which should be addressed urgently. The sub-committee was correct in its statements in this regard.

Where do we go from here? Inquiring into the identity of the perpetrators of the bombings and the issue of collusion requires further consideration. To do this it would appear that the establishment of a public tribunal of inquiry in Northern Ireland or Great Britain would be necessary as many of the key witnesses reside in those jurisdictions. Access to original documentation in Great Britain and Northern Ireland is vital to the success of any future inquiry. I hope the Government will use every means at its disposal to persuade the British Government that such an inquiry is essential to secure the full facts and the truth behind the bombings.

The failure of the British Government to cooperate in this regard would add force to speculation that it may have something to hide regard-

ing the issue. I support the sub-committee's recommendation that Ireland should take the United Kingdom to the European Court of Human Rights if it fails to put in place an appropriate investigation. I agree that it should not be left to the victims of the bombings to pursue that. We should pursue it as a State.

The families and loved ones of the victims of the bombings deserve the full support of the House in seeking the truth and the full facts and circumstances surrounding the bombings and in bringing the perpetrators to justice. I join the Minister in complimenting the work of the former Tánaiste, Mr. John Wilson, in preparing the report of the Victims Commission and the work of Justice for the Forgotten, which represented those who suffered so much as a result of these atrocities.

It is easy to be wise after the event and 30 years is a long time. I do not join Senator Walsh in his criticism of the Government of that time. The members of that Government came to the sub-committee and gave honest reports of what they felt the situation had been at the time. This is in marked contrast to the selective amnesia of some people who have appeared before tribunals in the last number of years.

We must be concerned with the victims and do everything possible to ensure that they get some closure on this event.

Labhrás Ó Murchú: Fáiltím roimh an Aire. I express my appreciation of the work done to bring about the Barron report and the work of the Sub-Committee on the Barron Report. It is evident that the sub-committee was meticulous and sincere in its approach to a very harrowing matter. All of us who observed at first hand the terrible anguish of the relatives of the victims have come to accept that for them there will be no closure at this time. The atrocities, which must rank among the greatest tragedies of the Troubles, must be fully investigated and those responsible brought to justice.

Justice for the Forgotten, which has made a statement available to Senators, recognises the work done by the sub-committee. Some clarity has been brought to this terrible period in the lives of the members of the group and in the life of the State. This is a step in the right direction. This clarity is particularly necessary because one can only imagine the amount of work done by the group in previous decades to ensure that the forgotten would no longer be forgotten. We are now seeing a step towards closure in this regard.

I support the proposal to hold a public tribunal of inquiry within the State. I say this because the atrocities happened within the State itself. This was the preferred option of the sub-committee but it went on to list the difficulties with that course of action given that the perpetrators, witnesses and information are all outside the jurisdiction of the State. I draw a parallel with the International War Crimes Tribunal which deals with perpetrators, information and witnesses

[Labhrás Ó Murchú.]
from outside the immediate jurisdiction. What is required in such a case is goodwill and co-operation, particularly from states.

As it is now becoming evident that there was collusion by the security forces in the North of Ireland in these atrocities there was, by extension, collusion by the British Government. Collusion does not have to be active involvement in the act itself. It may be prior knowledge that something is to happen or the fact that a structure which would enable it to happen is allowable and acceptable. If one looks at the International War Crimes Tribunal one sees the same logic, legal and otherwise, being applied when states or leaders of states are brought to justice or asked to account for crimes committed in the name of the state or with the collusion of the state or its leadership.

If the families of the victims are requesting a tribunal the first step in setting up such a tribunal should be taken, even though we know there will be difficulties down the road. When we reach those difficulties I propose that we request the British Government to give the same co-operation to an inquiry of this nature, which concerns us so directly as a good neighbour of Britain, as it would give to its demands, involvement and co-operation in international war crimes tribunals. I see no difference. Is Britain prepared to show good neighbourliness, involve itself and interact directly with such a tribunal?

How can that be progressed? We must not be afraid of what is revealed in such a process and not feel that because we are making progress in bringing about normality within the island, it is necessary to be hyper-diplomatic in such a case. That would build progress on a false premise and we would not be living up to our responsibilities to our own citizens who are our immediate concern. We are not just talking about the families of the victims, but about all citizens who want to be sure they enjoy the protection of the State now and in the future. We must be prepared to take that stand irrespective of what is revealed.

It is unbelievable that the investigation into such atrocities could be closed down after three months. Nothing can justify even closing it down after three years or 30 years because over and over we have seen other cases being reactivated by the gardaí and other forces.

The Government of the day has not fully absolved itself in this case. I am not talking about individual Ministers but about the Government's responsibility for leadership within the State. That is another case where we must be careful. We are not being critical of any political grouping. We are talking about the corporate State.

It is vital that the external aspect of these events is recognised. We should not be tempted to believe that by demanding that justice be done and a process set in motion to bring about that justice, we would hinder political progress that has already been made. There have been other cases that do not just involve the relationship

between Ireland and Britain, but between Britain and other countries.

If we are really to respond in a manner that will give Justice for the Forgotten the confidence that we are acting on behalf of the victims and their families, we must listen to them rather than to doubts or expediencies we might believe we should exercise. Perhaps I am at variance with what has been said here but I reiterate that we should not look at the obstacles down the road to a public tribunal of inquiry to be established under the 1921 Act. We should do what is right and then we should demand of our neighbour, Britain, that it also does right.

Mr. Bradford: I welcome the opportunity to speak on this issue. Unfortunately our words will be of little consolation to the families of the people who were murdered in Dublin and Monaghan. The work of Mr. Justice Barron and the Sub-Committee on the Barron Report, however, have been steps in the right direction.

I remember the events of 1974. An aunt of mine came within inches of being a victim herself on that day so I often heard it spoken about at home. We are talking about a search for truth and that search can sometimes be painful because the truth can open many wounds as it is teased out.

As we look back, however, at the actions of the Government of the day, we must put the events of 1974 in context. Hindsight is easy. We talk now about inquiries into child abuse and other such horrors from the pages of Irish history and ask ourselves how Ministers in the 1940s and 1950s were so willing to preside over what was so definitely wrong. That was then, however, and this is now and context is important in this regard.

We must reflect upon the political situation in Ireland in the early 1970s. The dreadful events of May 1974 were the largest individual tragedy on the island but at the time the island was in turmoil and the political spectrum was divided. On one side there was a cross-party coalition of decent men and women led by Liam Cosgrave and Jack Lynch who were doing everything to prevent the island being dragged into outright civil war. On the other side were people who were planting bombs and trying to rip the country apart. As we look back, therefore, at the Government's response to the bombings of 1974, and we reflect on the critical comments of Mr. Justice Barron, I ask that it be put in context.

This was a particularly dangerous time. We are looking back ten years after the 1994 ceasefire but in 1974 this island was on the verge of outright civil war. Any Government had to proceed with extreme caution. By 1974 there had been dozens of dreadful outrages, mainly in Northern Ireland, committed on all sides of the political and sectarian divide. These events brought the horror right to the capital city. The efforts to portray the then Taoiseach and the Ministers for Justice and Foreign Affairs as somehow being inadequate in their response to the atrocity is unfair

and we should bear in mind the political and security considerations of the time.

In an ideal world, every crime would be investigated and every perpetrator would be identified and punished. Sadly, we do not live in a perfect world and there has been violence on this island for generations, with thousands killed. It is said that the truth will set us free but getting to the truth of all of these actions can be difficult. The Government of the time was supported across the floor of Leinster House by the Opposition leader, Jack Lynch, who knew the extent of the crisis and who co-operated fully with the Government, as Liam Cosgrave and Brendan Corish had done when Jack Lynch was Taoiseach.

The recent report recognised that we do not appear to have got the full co-operation of the British authorities. I agree with Senator Ó Murchú that at times we are overly diplomatic. The non-disclosure of facts might solve a problem in the short term but it does not help in the long term. We have reached a stage on these islands where we should be in a position to be more frank and open with each other. The relationship between Ireland and the United Kingdom has improved dramatically since 1974. If that relationship is to be perfected, some issues need to be addressed and questions still require answers. There could have been a more positive flow of information from the British authorities. In 1999, the Taoiseach expressed the hope that there would be full co-operation. It must be noted that co-operation was not as full as it should have been. Despite the Taoiseach's best efforts, he did not achieve the result he desired.

We have not yet reached a stage of maturity in our ability to deal with the past and with our complex relationship with Great Britain. This morning on the Order of Business, some Members congratulated a former Member who is also a former constituency colleague of the Minister for Defence, Deputy Michael Smith, on his receipt of an award from the British establishment. It was a well-deserved award for work well done. I was disappointed with some of the remarks made by Members which seemed to belittle the award to be made to the former Minister, Deputy and Senator, Mr. Michael O'Kennedy. We must clear our mindset of that type of thought in order to ask the hard questions and to provide answers in truth and fairness. It is only when both countries are able to admit to their own failings and offer up all the answers that a final conclusion to these issues will be reached.

Acting Chairman (Mr. Dardis): The Senator has been given considerable time latitude.

Mr. Bradford: I compliment the work of Justice for the Forgotten. Its members have ploughed a lonely furrow on behalf of their forgotten and they deserve all credit. As we inch forward towards political progress, let us hope that we can get answers to the questions they still ask.

Dr. Mansergh: I welcome the Minister for Defence to the House. I congratulate the Taoiseach for commissioning the Barron report which was a very worthwhile exercise. I also congratulate the Sub-Committee on the Barron Report and Senator Jim Walsh, my colleague, on the work in carrying the investigations as far as possible at this time. I echo the respect to the Justice for the Forgotten group for pursuing this matter and not allowing it to rest during what certainly appeared to be long years of either embarrassment or indifference.

I have a very clear recollection of the day the Dublin and Monaghan bombings took place. I was in Tipperary and I saw it on the news that night. The event made a deep impression on me at the time. It was a terrible event and those things never go away during the lifetime of those closest to the victims. Any one of us living in the jurisdiction at that time could have been among the victims.

We need to remember the political context. This happened towards the end of one of the more courageous political initiatives, known as Sunningdale. There was an Executive and there were to have been North-South bodies. The bombs in the South were an attempt to kill off that settlement. There was an Ulster Workers' Council strike going on in the North at the same time, with not very much active resistance from the security forces. The event was clearly an attempt to intimidate, from whatever source, the people of this State from pursuing any initiative of that kind. With the benefit of hindsight and more than 25 years later, it is still not fully in place. We have a settlement that is in certain respects and in respect of the North-South bodies not dissimilar to Sunningdale.

It is necessary to draw some distinctions. There has been some discussion of the actions of the Government of the time. As a junior civil servant in the Department of Foreign Affairs I was in Germany during the following years. I was a little surprised at how quickly the events fell out of the arena of discussion and debate. There are some reasons that happened. The Criminal Law (Jurisdiction) Act was only enacted in 1976. Once the perpetrators escaped back across the Border, there was no extradition arrangement and it would have been too difficult for the Government at that time to have sought extradition. The Government was very focused in a single-minded way on the threat from republican paramilitarism which was very real and perhaps was only secondarily focused on the threat from loyalism. Some criticism is justified.

Senator Ó Murchú referred in his contribution to the fact that some people, mainly Unionists, make the argument that one cannot dredge through these issues without upsetting the peace process and political progress. Like him, I agree that one should not be deterred by that type of consideration any more than one should be deterred from cleaning up rackets along the Bor-

[Dr. Mansergh.]
der for fear of upsetting the peace process. One must do what must be done.

Some distinctions should be drawn between different types of atrocities. The atrocities at Enniskillen and Greysteel, for instance, were dreadful tragedies but relatively straightforward in that the organisations responsible admitted responsibility. Naturally enough, they did not say who precisely had carried them out. There was no suggestion from any other source that questioned or challenged that attribution of responsibility. At least people were clear that in the case of Enniskillen, it was the Provisional IRA which was responsible. I believe this is a slightly different case of collusion or alleged collusion, than in the Finucane case. In that case, it was local forces of various kinds that were involved.

The allegation in the case of the Dublin and Monaghan bombings is that there was assistance, participation or collusion by agents of the British state, by which I do not necessarily mean the local security forces. A person who presented himself to me as a former member of the UDR gave me considerable detail alleging precisely this and I passed a report on the matter to the Sub-Committee on the Barron Report.

As a member of the British-Irish Interparliamentary Body, I had the opportunity of meeting the Secretary of State, Paul Murphy, a few months ago. I put to him strongly that it was in the interests of the British Government to examine this issue and co-operate because serious suggestions have been made that an agent of the British Government who is still in high position in another part of the world was involved. Neither I nor Mr. Justice Barron have any means of knowing whether this allegation is true but it is a very serious one which should be properly investigated.

To return to the political context of the time, a minority Labour Government was in power during a period when the British security services were paranoid about the Wilson Government being semi-communist. This was, of course, pure paranoia. People involved in the security services have gone on record and provided substantial circumstantial evidence of efforts to destabilise the British Government of the time. However bizarre this may sound, part of these efforts involved the Northern Ireland network and part of the aim may have been to wreck relations between Britain and Ireland.

There is no point glossing over that the British Government is deeply reluctant to get involved in inquiries of this kind. While the case of Pat Finucane is a can of worms, the Dublin and Monaghan bombings, of which no politician in office in Britain has any serious recollection, probably go even deeper. If this matter is to be cleared up, it will require much more active participation by the British Government than has been evident thus far.

Minister for Defence (Mr. M. Smith): Tá áthas orm teacht ar ais don Teach seo agus go háirithe deis a bheith agam éisteacht leis an Seanadóir a labhair ar an tuarascáil thábhachtach seo. Gabhaim buíochas faoi leith don Chathaoirleach agus dóibh siúd atá sásta iarracht macánta a dhéanamh chun na fírinne a bhaint amach.

I thank Senators for their considered and thoughtful contributions. The Minister for Justice, Equality and Law Reform, Deputy McDowell, has stated that the Government has not considered the report of the Sub-Committee on the Barron Report in advance of both Houses of the Oireachtas expressing their views on the matter. I assure the House, however, that the Government will give full and careful consideration to the complex issues emanating from the report in light of the views expressed by Deputies and Senators and the findings of the coroner's inquest jury.

The Independent Commission of Inquiry into the Dublin and Monaghan Bombings had a very difficult task to perform, not least because of the lapse of time since those terrible events. Many of the key people involved have since passed away and, as Mr. Justice Barron so graphically describes, the frailty of human memory over such a period can sometimes play havoc with any attempt to get to the bottom of even the most basic events. Nevertheless, the Barron report manages to provide a wealth of information on the Dublin and Monaghan bombings and answers many questions about the preparation, execution and aftermath of those terrible events. We should not underestimate either the comprehensiveness of the results of the inquiry or Mr. Justice Barron's conclusions.

In terms of moving forward from the solid bedrock of information, the Sub-Committee on the Barron Report has done us a major service in clarifying matters. Sensibly, the sub-committee broke down the issues into internal matters which could be resolved in this jurisdiction, that is, issues relating to the Department of Justice, Equality and Law Reform and the Garda Síochána and Garda investigation. The sub-committee is of the view that a commission of investigation, under legislation passed in the House earlier today, would be the best way forward in dealing with the issues pertaining to this jurisdiction.

The sub-committee also considered external issues relating to the identify of the perpetrators and the issue of collusion. On the question of whether there should be a further investigation or inquiry, the sub-committee found that a public tribunal of inquiry in Northern Ireland and-or Britain is required and represents the best opportunity to be successful. Before any inquiry would proceed, however, the sub-committee has recommended that what is required in the first instance is a Weston Park style inquiry of the kind carried out by Judge Peter Cory. The sub-committee then went into some detail on the nature and remit of such a Cory style inquiry. A variety of views has

been expressed on this and other matters this evening and I thank all contributors.

On the question of a joint resolution before both Houses of the Oireachtas, the Government will consider this matter in the context of its overall consideration of the report of the Sub-Committee on the Barron Report. On the question of a truth and reconciliation commission, former Tánaiste, John Wilson, who considered this matter in the report of the Victims Commission concluded that circumstances were not right for this approach as the conflict was not yet sufficiently resolved. The Government will, however, consider Senator Brian Hayes's views in this regard.

I appreciate there is understandably much emotion and heartfelt concern about how we proceed with regard to the report of the Sub-Committee on the Barron Report. The Government is fully committed to this enterprise, which the Taoiseach initiated following a meeting with the Justice for the Forgotten group in 1999. He and the rest of the Government remain deeply committed to the victims, survivors and their families and I assure the House that action will be taken.

National Monuments (Amendment) Bill 2004: Report and Final Stages.

Acting Chairman (Mr. Dardis): I remind Senators that they may speak only once on Report Stage, except for the proposer of an amendment who may reply to the discussion on that amendment. Each amendment on Report Stage must be seconded. Amendments Nos. 1 and 2 are related and may be discussed together by agreement.

Mr. Bannon: I move amendment No. 1:

In page 3, between lines 13 and 14, to insert the following:

“(b) in the definition of ‘national monument’, after the words ‘remains of a monument’ by inserting ‘as designated by the Minister and appearing in the National Monuments Register’.”

I am concerned that under the legislation a site is either a national monument or it is not and there is no provision for grading of sites. In every other country in Europe a status of importance is assigned to national monuments. This legislation provides that the designation as a national monument is the highest designation which a site of historic interest can be granted by the State.

Sites can be designated as historic and in establishing a register in this regard much assistance was provided by various parties interested in historic monuments, such as historical societies. I understand that these sites are of far less significance than national monuments, yet while there is a register for their designation no similar mechanism is available for designating national monuments.

These amendments and my proposal for a new section 5 seek to address this failing and we should take this opportunity to rectify the situation. The decision as to whether a monument is of national, regional or local importance is a matter of subjective interpretation and in view of this, the State should designate a category in respect of monuments of national importance. I have been calling for a register for some time as it would solve many problems in this area. It may be argued that there is nothing to indicate that any particular site is a national monument and that it is a matter of interpretation. My amendment proposes that the Minister will make the decisions as to whether sites are national monuments and those that are should be designated as such and listed in the national monuments register, which I propose should be established.

There is no grading of sites as to their respective importance. There were different opinions as to the importance of the Carrickmines site from academics and others but the Supreme Court ruled last year that it was a national monument and this was not contested by local authorities. It is important that sites should be independently assessed and if the Minister of State accepts this amendment, history will record it as a positive contribution to the protection of our national monuments.

An Cathaoirleach: In the absence of a seconder, amendments Nos. 1 and 2 lapse.

Amendment, by leave, withdrawn.

Amendment No. 2 not moved.

Mr. Bannon: I move amendment No. 3:

In page 4, between lines 41 and 42, to insert the following:

4.—The Principal Act is amended by inserting the following section after section 5—

5A.—(1) The Minister shall cause to be established and maintained a register, to be known as the “National Monuments Register”, of Monuments designated by him or her as being a National Monument (in this section referred to as the “Register”).

(2) The Minister shall maintain the Register in such a form so that it is capable of being used to make a copy of any entry in the register.

(3) The Register shall be kept at such place as may be prescribed by the Minister and, subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance

(a) the Register shall be made available for inspection by a person at such times and in such manner as may be prescribed by the Minister, and

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(i) where a request is made to the Minister for a certified or uncertified copy of, or extract from, an entry in the Register, the Minister shall issue a copy of the entry or extract to the applicant.

(4) The Minister may prescribe by regulations the form and content of the Register.

(5) The information to be prescribed by the Minister under *subsection (4)* shall include the following—

(a) name of the national monument,

(b) location of the monument,

(c) description of the national monument,

(d) name and address of present property owner,

(e) date of first entry to the register.

(6) The Minister may amend or delete an entry in the Register.

(7) As soon as may be after a site or location has been entered into the Register, the Minister shall cause to be published in *Iris Oifigiúil* details of the national monument which has been entered in the Register.

(8) As soon as may be after a site or location has been entered into the Register, notice of registration shall be sent to the last known owner of the property in which the monument is principally situated.’’.

This amendment deals with the establishment of a national monuments register of which I have already spoken and the designation of sites as of national, regional or local importance. This issue is broad and people have differing views on the status of monuments. The purpose of the amendment is to limit the definition of works to be undertaken so it can only extend to work carried out on behalf of the State at local authority level.

The Bill could hardly propose a less balanced approach to resolving the conflict as to whether infrastructure or national monuments should take precedence. There is a battle between these two perspectives and the acceptance of this amendment would provide clarity on this matter.

An Cathaoirleach: In the absence of a second, the amendment lapses.

Amendment, by leave, withdrawn.

Mr. Bannon: I move amendment No. 4:

In page 5, to delete lines 15 to 50, to delete pages 6 to 18 inclusive, and in page 9, to delete lines 1 to 7.

Section 14 attempts to allow the Minister to exercise his or her discretion. This is a retrograde step which removes any constraints on the Minister and represents an attempt to prevent any intervention by the courts regarding ministerial decisions by putting his or her ruling beyond judicial challenge. The criteria to which the Minister must conform are deliberately obscure to the point of being almost unintelligible. The scope of this proposal goes far beyond the Carrickmines situation and seeks to prevent any future challenge in respect of a wide range of national monuments. The Bill is concerned with the removal of both legislative and judicial safeguards.

This section proposes a role for An Bord Pleanála which effectively ties its hands. Directions by the Minister must only be conveyed to An Bord Pleanála by the National Roads Authority, NRA. The process is complicated and An Bord Pleanála is constrained in deciding that any material alterations are likely to have an adverse effect on the environment. It has no role in terms of the national monuments aspect of the Bill. I am not happy with this and propose the deletions as outlined in the amendment to address the issue.

Perhaps the Minister of State will take this on board. I am not happy that many powers are being vested in the Minister for the Environment, Heritage and Local Government who does not have the confidence of the public following the voting and other debacles.

An Cathaoirleach: The Senator should speak on the amendment.

Mr. Bannon: He has let the people down in regard to Trim Castle and other historical sites. He gave conflicting replies to several questions in the Dáil about national monument sites which were not in the interest of our heritage and culture. The legislation does not address the protection of architectural heritage at the outset of the planning process and it does not provide an incentive for local authorities or the National Roads Authority to adopt best practice. It is important that we should get the legislation right from the outset. The Bill provides an incentive not to adopt best practice because when a difficulty presents itself in regard to national monuments, which should be addressed at the outset of the planning process, a path will be beaten to the office of the Minister to resolve difficulties. However, people do not have a great deal of confidence in him.

An Cathaoirleach: The Senator should speak on the amendment.

Mr. Bannon: There will be a conflict between economic progress and our national heritage and the Minister will not come down in favour of our national heritage. That is why I tabled the amendment.

Mr. U. Burke: I second the amendment.

Mr. Brady: I disagree totally because the section is crucial to the legislation. Section 5(2)(d) refers to the Minister considering proposals in the public interest and that is what the legislation is about. The section ensures many monuments and sites of historical and other interest will be maintained well into the future. Fines and other penalties are also outlined and they have been increased considerably. The section is crucial to the legislation and it provides for a resolution of the Carrickmines Castle problem once and for all.

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

(Mr. Gallagher): If the amendment was accepted, section 5 would be deleted. However, the section is at the heart of the legislation, as it contains detailed procedures to be followed in respect of consents and directions, and there is no question of the amendment being accepted.

The Bill does not confer new powers on the Minister for the Environment, Heritage and Local Government. Under section 14(3) of the 1930 Act, it is open to the Minister to grant consent to a wide variety of activities affecting a national monument in the interest of archaeology or for any other reason. The Minister has no additional powers.

When the Oireachtas enacted the national monuments legislation, it envisaged that the Minister of the day could enjoy residual discretion to permit interference with a national monument in cases other than those involving archaeological considerations or issues of public health and safety. This discretion covers matters of public interest, a view that was endorsed by the Supreme Court in the Carrickmines case, which enabled the completion of the south-east motorway while simultaneously providing for the preservation of the archaeological record at the site.

Reference was made to Trim Castle. Development impacts on such sites are dealt with in the normal way through the planning authority and the planning appeals board, as necessary. It would be totally inappropriate of the Minister to interfere with the independence of the planning code. It is open to the Minister to deal with these cases under the National Monuments Acts. With regard to Trim Castle, there was no direct impact on this national monument and, therefore, the question of consent did not arise. The Department is awaiting proposals affecting the site of Clondalkin Round Tower and will make an objective assessment of the merits of the case in due course.

The introduction of this legislation does not necessarily mean the Department has no interest in archaeology. A total of 130 archaeologists were working in the vicinity of Carrickmines Castle at one stage and that is a measure of the Department's commitment. While the Opposition may be critical of the legislation, I have yet to hear one constructive idea as to what could be done.

This is similar to building a bridge from an island to the mainland and making a decision not to complete it. It is that ridiculous.

The legislation is realistic, pragmatic and strikes a delicate balance between the provision of necessary infrastructure, which is a tribute to Government policies over many years, and the preservation of national monuments. If economic conditions were not conducive to investment, there may not have been a necessity for the south-east motorway. However, we must progress and we have struck the proper balance in the legislation to allow works to proceed. Not much of the area will be affected. I am reasonable at times and Senator Bannon made a number of suggestions, to which he is totally committed. However, if I accepted the amendment to abolish the section, the heart would be removed from the legislation and that would not serve the national interest. I do not accept the amendment.

Mr. Bannon: An Bord Pleanála has no role in regard to national monuments other than to have regard to the historical, cultural and archaeological significance of the landscape. The Minister of State referred to Trim Castle. There is a great deal of annoyance in the area. The Minister's officials made it perfectly clear that the application for a multi-storey hotel overlooking the castle should not be approved. The land in the vicinity was of the castle was bought solely to provide parking.

The Minister was not interested in taking the advice of his officials. Will he overrule advice from his officials on future developments? Will he put economic interests ahead of our archaeological heritage? I am disappointed he is not accepting this amendment, or other amendments—

An Cathaoirleach: Senator Bannon may only speak on this amendment. He cannot discuss the others.

Mr. Bannon: Unfortunately, there is no one present to second me.

An Cathaoirleach: The Senator should speak only to amendment No. 4.

Mr. Bannon: I am disappointed the Minister of State is not accepting this, although perhaps he will have second thoughts.

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

Amendment declared lost.

Mr. Bannon: I move amendment No. 5:

In page 19, to delete lines 8 to 23.

We oppose the Bill, and this section in particular. It has consequences for national monuments throughout the country, not just in Carrickmines. It is one thing to bring forward legislation to rectify the problem in Carrickmines, but several

[Mr. Bannon.]
other cases have been brought to our notice in which the Minister was notified of finds but did not bring them to the attention of the National Museum until several months later. This is a matter of great concern. People have made statements about other sites which have appeared in the media but the Minister has removed all the protections which national monuments deserve.

If the Bill merely remedied the situation in Carrickmines, which it does not, we would have favoured it somewhat. The Minister of State should accept our opposition to this section and the preceding section on the grounds that they are a step too far. We could then get some agreement on the Bill. It does not look as if he will do so but I hope he will.

Local authorities are doing great work to protect national monuments and they have put county development plans in place. However, no guidelines are being given by the Minister or his Department on funding for the maintenance or refurbishment of these monuments, although perhaps the Minister will see fit to do so in the near future.

Mr. McCarthy: I second the amendment.

Labhrás Ó Murchú: Tuigim-se cad ina thaobh go bhfuil daoine aireach agus cúramach faoin ár n-oidhreacht náisiúnta. Ach is é an dúshlán atá romhainn go léir ár n-oidhreacht náisiúnta a chothú, ar an dtaobh amháin, agus, ar an dtaobh eile, cinntiú go mbeimid in ann dul chun cinn agus forbairt a dhéanamh ins an tír.

Is reachtaíocht faoi leith é seo agus ní Acht iomlán atá i gceist. Thug an t-Aire le tuiscint don Teach an lá faoi dheireadh go mbeimid ag teacht thar n-ais chuig an cheist seo níos déanaí. Bainneann cuid des na rudaí a ardaíodh ag an Seanadóir Bannon leis an Acht go hiomlán seachas leis an reachtaíocht seo. Ní thógann sin ó na tuairimí atá ag an Seanadóir ach tá sé tábhachtach leanúint ar aghaidh mar tá práinn ag baint leis an reachtaíocht seo.

Bhí foireann mór ar an mbóthar nua in aice le Caiseal Mumhain ag plé le cursaí seandálaíochta. Tá siad fós ag obair ann agus tá an-chuid dul chun cinn déanta acu. Ní féidir a rá nach bhfuilimid cúramach agus nach bhfuil na pearsain ann chun an obair a dhéanamh. Tá siad ann agus tá an obair á dhéanamh. Tá sé tábhachtach gan ligint don samhlaíocht dul thar fóir ins an chás seo.

Ní féidir le héinne samhlú go mbeadh aon Aire sásta dochar a dhéanamh do shéadcomharthaí na tíre seo. Bíonn Aire freagrach don Teach seo agus don Teach eile. Tá ciall i gceist anseo chomh maith le reachtaíocht. Caithfidh cothramaíocht a fháil idir an chiall sin agus an reachtaíocht.

Mr. Gallagher: If we accepted this amendment it would remove section 6 completely. I will give the background to this situation. Section 6 amends the provision in section 22 of the principal Act relating to the discovery of archaeological objects by removing the requirement to report such objects found by a person in pursuance of a consent granted or directions issued by the Mini-

ster under section 14 or in connection with an approved road development. In other words, a procedure will already be in place to deal with archaeological objects which are found in this type of situation. We must differentiate between that and finding an artefact without a consent being granted, which happens regularly when developments are carried out. It happened very recently in my constituency, in Liscooley near Castlefin, where a responsible farmer was carrying out some developments. His son suddenly found some artefacts and bones and, as is their duty, they reported it within three days, although not everyone would necessarily do so. If they had been carrying out excavation works and expected to find artefacts they would possibly have applied for a licence or had a direction issued by the Minister. However, that was not the situation, so we must differentiate.

The intent of section 6 is to prevent overlapping in reporting requirements by removing the necessity to report every single discovery of an archaeological object. It is not possible to accept the amendment without undoing this effort to make the procedure as uncomplicated as possible. If we did that we would be adding another layer of bureaucracy which would create further problems for responsible people who apply for a licence which is not granted. It would mean they would have to report every single artefact as they found it or within a number of days of finding it. This is an all-embracing provision to allow those people to report at the end of the excavation.

If one finds an artefact one has a legal responsibility to report it within three days of finding it. In short, this gives an exemption to the requirement under section 26 for licence holders and extends the provision to those following ministerial directions or conditions of consent.

Senator Bannon's intentions are good. However, it would add a further layer of bureaucracy and would create further difficulties. If the amendment was accepted and every find had to be reported within a matter of days, particularly by those who have consent, it might deter people from doing so. We should not try to do that because the Bill seeks to simplify matters.

I wish to make it clear that the Minister accepts the advice of his officials in the vast majority of cases. However, the buck stops with the Minister who is responsible to the Oireachtas.

Mr. Bannon: The Bill vests in the Minister the power to issue what might be called death warrants for our national monuments.

Mr. Brady: No. It protects them.

Mr. Bannon: The legislation is grossly unfair and amounts to a knee-jerk reaction to the Carrickmines issue. The Bill is not a good one and it is definitely not in the interests of protecting our national monuments.

An Cathaoirleach: The Senator should speak to the amendment, not on the Bill generally.

Mr. Bannon: I am doing so. I have said that I am opposed to the Bill and to this section.

Question put: "That the words proposed to be deleted stand."

The Seanad divided: Tá, 26; Níl, 15.

Tá

Bohan, Eddie.
Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Kitt, Michael P.
Leyden, Terry.

Lydon, Donal J.
Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Moylan, Pat.
O'Brien, Francis.
Ó Murchú, Labhrás.
O'Rourke, Mary.
Ormonde, Ann.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.

Níl

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Ulick.
Coonan, Noel.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.

McCarthy, Michael.
McDowell, Derek.
McHugh, Joe.
O'Meara, Kathleen.
Phelan, John.
Ross, Shane.
Ryan, Brendan.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators Bannon and U. Burke.

An Cathaoirleach: I wish to advise the House that because of the failure of a vote by Senator Ulick Burke to register on the screen, the result has been amended and agreed by the tellers. The result is: Tá, 26; Níl, 15.

Question declared carried.

Amendment declared lost.

Question put: "That the Bill be received for final consideration."

The Seanad divided: Tá, 26; Níl, 15.

Tá

Bohan, Eddie.
Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Kitt, Michael P.
Leyden, Terry.

Lydon, Donal J.
Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Moylan, Pat.
O'Brien, Francis.
Ó Murchú, Labhrás.
O'Rourke, Mary.
Ormonde, Ann.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.

Níl

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Ulick.
Coonan, Noel.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.

McCarthy, Michael.
McDowell, Derek.
McHugh, Joe.
O'Meara, Kathleen.
Phelan, John.
Ross, Shane.
Ryan, Brendan.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators Bannon and U. Burke.

Question declared carried.

Question proposed: "That the Bill do now pass."

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. Gallagher): I thank the House for facilitating the passage of this extremely important and urgent Bill. Once the legislation is enacted, work can continue on the south-eastern motorway. Those who opposed this Bill were saying very clearly that they did not want the two ends of the motorway to be connected or an improvement in our infrastructure. The Bill is required due to the economic atmosphere created by the Government which is conducive to investment, a fact that should be lauded. While we are interested in our archaeological heritage and its protection, we must strike a proper balance between this and the provision of much needed infrastructure in the east.

The Bill addresses the weaknesses identified by the courts in the transfer of functions. Great care will continue to be taken to protect our heritage.

Only approximately 10% of the remaining monument at Carrickmines will be affected and great care will be taken to ensure that any effects are not serious. The legislation will streamline consent procedures. I wish it to be abundantly clear that while it has been suggested that the Bill gives no additional powers to the Minister, the legislation provides new safeguards in that the director of national monuments will for the first time have a role to play. Additionally, the legislation provides for the formal involvement of An Bord Pleanála where approval of a road development is required. We can all take comfort from the knowledge that work will continue in the best interests of the Houses of the Oireachtas and, one might say, in the national interest.

Mr. Brady: On behalf of this side of the House, I thank the Minister of State who has again shown a deep knowledge and interest in this particular subject. I thank him on behalf of those people who have suffered over the past number of years in the immediate vicinity of the Carrickmines development and on behalf of the wider public who will have to use that particular road.

The Bill is welcome and, as the Minister of State has pointed out, there are other consolidation measures to come.

Mr. Bannon: While I thank the Minister of State for coming to the House, I am disappointed at this extremely worrying legislation.

An Cathaoirleach: I remind the Senator that we cannot discuss the Bill now.

Mr. Bannon: The Minister of State commented and I am entitled to do likewise.

An Cathaoirleach: It is not appropriate to discuss the content of the Bill at this point.

Mr. Bannon: I am very disappointed that the Minister of State did not take the opportunity to compile a national register of monuments.

Mr. Brady: The Senator should just thank the Minister of State.

An Cathaoirleach: Discussion is completely out of order at this point. The matter was discussed during consideration of the Bill and we cannot refer to it now.

Mr. Bannon: I thank the Minister of State who will hopefully take on board in the near future many of the points we put to him. During a useful debate, strong arguments were put from this side of the House which must be taken on board in the national interest to protect our national monuments.

Mr. B. Hayes: Hear, hear.

Mr. Gallagher: I will be looking to Senator Bannon for advice.

Mr. McCarthy: I acknowledge the work of the Minister of State and his officials on the Bill and thank him for his presence in the House. There were obvious disagreements on the Bill but that is in the interests of democracy. The Minister for the Environment, Heritage and Local Government will probably have more success with this legislation than he had with the electronic voting legislation we debated at great length earlier this year.

Question put.

The Seanad divided: Tá, 26; Níl, 16.

Tá

Bohan, Eddie.
Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Feeney, Geraldine.
Fitzgerald, Liam.

Glynn, Camillus.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Moylan, Pat.
O'Brien, Francis.
Ó Murchú, Labhrás.

Tá—*continued*

O'Rourke, Mary.
Ormonde, Ann.
Phelan, Kieran.

Scanlon, Eamon.
Walsh, Jim.
White, Mary M.

Níl

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Ulick.
Coonan, Noel.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.

McCarthy, Michael.
McDowell, Derek.
McHugh, Joe.
O'Meara, Kathleen.
O'Toole, Joe.
Phelan, John.
Ross, Shane.
Ryan, Brendan.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators Bannon and U. Burke.

Question declared carried.

EU Presidency: Motion.

Ms Ormonde: I move:

That Seanad Éireann:

Commends the members of the Government on the hugely successful EU Presidency and thanks them for all their efforts which have ensured that the reputation of the country has been greatly enhanced world-wide;

commends the Taoiseach, the Minister for Foreign Affairs, Deputy Cowen, the Minister of State, Deputy Roche, and the team of public servants who ensured that agreement was found on a new EU constitution;

urges the Members of the House to become familiar with the text of the new EU constitution which sets out clearly for citizens the very nature of the European Union, its powers, the limits of those powers, its values and its objectives as a single text incorporating all previous EU treaties will help to make the work of the EU more understandable to all of our citizens;

welcomes the new EU constitution for the manner in which Ireland's concerns in certain areas have been addressed including areas such as preserving total unanimity on tax, maintaining safeguards for our national criminal justice system, ensuring our traditional policy of military neutrality and maintaining the institutional balance in the EU including total equality in the Commission;

calls on the Government to increase its efforts to explain the workings of Europe and, in particular, the new constitution to citizens as Europe has a hugely positive influence in our daily lives;

urges that all Members of each House become engaged in debate in the coming months and years; praises the work of the Government in reinvigorating the Lisbon Agenda to make Europe the most know-

ledge-based economy in the world and urges the Government to use every opportunity to keep the Lisbon Agenda at the top of the European agenda;

and welcomes the nomination by the European Council of José Manuel Durão Barroso with whom we look forward to working as Commission President if he secures the backing of the European Parliament.

I welcome the Minister of State at the Department of Foreign Affairs, Deputy Roche, to the House. Even though I have expressed many congratulations over the last number of months, I am pleased to reiterate and reinforce my feelings on the success of the Taoiseach, the Minister for Foreign Affairs, Deputy Cowen, and the Minister of State, Deputy Roche, and all those senior civil servants who worked to make the Presidency such a triumph.

The programme of the Presidency was ambitious. The Minister of State, Deputy Roche, the Taoiseach and the Minister, Deputy Cowen, came to this Chamber on many occasions to highlight the key areas of focus. It was challenging to hear from the Taoiseach how he proposed to implement the programme, which has been such a success. The highlights of it were the enlargement of the Union, the drawing up and securing final agreement on the draft EU constitution and the appointment of the President of the EU Commission, José Manuel Durão Barroso.

The day marking the enlargement of the Union from 15 members to 25 members was a marvellous one. I congratulate the Taoiseach and all concerned on making it such a great success in terms of the events that took place throughout Ireland and the security in place to ensure they ran smoothly. It was a beautiful day for Ireland to be on the European and international stage.

The agreement on the draft constitution is fair. I have only read the parts of it that were distributed last week by the National Forum on Europe. It incorporates the existing treaties and allows Ireland great flexibility in terms of sovereignty in regard to tax matters and our criminal justice system. At the same time it sets out how to tackle

[Ms Ormonde.]
 crime on an international front without posing any threat to our traditional military neutrality.

The draft constitution sets out clearly for our citizens what it is all about, its powers and their limits, its values and objectives. The Taoiseach had in mind the definite goal that, regardless of the manner in which the treaty would be shaped, it would be understandable and readable and not have attached to it the European lingo that was attached to previous treaties. Success has been achieved in that area.

On the international front, agreement on the draft constitution was successful in reinforcing relationships with partners and in dealing with other areas in which there are zones of conflict. In this regard, the Taoiseach did his best in his tours around Europe and elsewhere to reinforce relationships with the United Nations.

The real debate will have to commence as to how we can fight crime, promote trade, create jobs, protect our environment and promote a peaceful world. We have to engage with our citizens to bring them up to date on every aspect of the proposed treaty. The message in this respect will have to be imparted to people in all walks of life. I acknowledge the contributions of the Minister of State, Deputy Roche, and other members of the Irish delegation who made themselves available over the past six months and who on many occasions attended this Chamber and meetings of the Oireachtas Joint Committee on European Affairs and the National Forum on Europe under the chairmanship of Senator Maurice Hayes. I call on the Minister of State and his team to engage again with our citizens in getting across the message about what this draft constitution is about and to encourage them to engage in debate about aspects of it that will affect their lives.

Now that Ireland is at the heart of Europe, the key areas of focus will be on economic growth and employment creation. Over the past six months the Minister of State highlighted the commitment to advance the Lisbon Agenda and to speed up reforms in areas of economic and environmental protection in regard to employment, education, training and up-skilling. More co-ordination across Departments and greater collaboration with the European institutions is required. In this regard I hope our colleagues in the Netherlands will continue from where the Taoiseach and his team finished.

We secured agreements on several fronts in regard to directives on a financial plan, infrastructure and employment and social inclusion. I was particularly interested in the spring European Council in terms of strategies put forward to eradicate poverty and tackle social exclusion.

The Single Market is at the core of the development of the Union. It will facilitate the movement of people, services and goods. It is central to how we can create employment in member states and to how access to social security entitlements by non-nationals will be made easy.

Considerable work and debate will be involved in regard to the draft constitution. Debate on it will reflect the pulse of the nation for the next few months until we decide when it must be ratified. People want freedom of movement, to acknowledge that they are Europeans but at the same time to retain their identity. This Chamber should be the main venue to deal with these matters while discussions at the Forum on Europe should help open up the debate.

I call on the media to give the Seanad the opportunity to air the debate and to get the message across to the public. The media has a major responsibility to make it easy for the public to understand the issues in the debate and to ensure that we are not cast in the light in which we were in previous debates when members of the public did not understand the issues and blamed public representatives for the downfall of the first Nice referendum.

We have learned major lessons and have had great success over the past six months. The role played by the Taoiseach has been universally acknowledged by all the leaders of the EU member states. The success he achieved and his gift in knowing how to debate and to bring people together, as he brought his team together, won acclaim for Ireland, not only throughout the EU but elsewhere internationally.

We have finally put Ireland on the international map. We are the model country. Ours is a major success story. People will acknowledge this when they understand what this debate is about, how we have achieved such success, benefited greatly from our membership of the Union and how we will maintain our identity in terms of our culture and retain sovereignty over areas such as tax matters and so on.

We have a major responsibility ahead of us but this debate presents us with the opportunity to again congratulate the Minister of State, the Taoiseach, the Minister, Deputy Cowen, and all the senior civil servants concerned who spared no effort during the past months to make Ireland a successful model in terms of our economy and our people. They showed that, even though ours is a small country, we have the strength to survive and to take on challenges in the wider world.

I am delighted the Minister of State was able to come to the Chamber this evening and I thank him again for his work. I ask him to convey to the Taoiseach and the others involved that we were impressed and confident that they would bring us back such a success story. Go raibh míle maith agaibh go léir.

Mr. Mooney: I second the motion. I re-echo all my friend and colleague, Senator Ormonde, said about the outstanding success of the Irish Presidency and pay tribute to the efforts of those involved. The political leaders — the Taoiseach, Deputy Bertie Ahern, the Minister, Deputy Cowen, and the Minister of State, Deputy Roche — carried the flag for Ireland publicly but, as they readily acknowledged in other fora, they were

assisted by an impressive array of Civil Service expertise available to them throughout the Presidency. When one considers the limited resources this country has in comparison to other countries, even those of like size, our Presidency was a remarkable achievement.

Given that the EU will move to a new form of Presidency, with the result that Ireland may never again have the opportunity to head one, this time will be looked on as an historic moment in the development of this country. Although we always use it as a cliché, we are moving closer to Emmet's aspiration about his epitaph being written when we take our place among the nations of the earth. In the context of Emmet's noble aspirations we have not got there yet because of the national question but we are moving towards it internationally.

I am sure the Minister of State has many images of the Presidency. In fact, I look forward to his book. As someone with a great interest in historical record, I hope somebody writes the book and the Minister would be well placed to do so. My enduring image of the Presidency was of the G8 Summit in Georgia where the Taoiseach walked alongside the biggest, strongest, most economically powerful leaders in the free world. While some, full of begrudgery, focused on the Taoiseach's sartorial style, I focused on the people with whom he walked on the strand such as the President of the United States and the Prime Minister of Japan, people who are shaping our lives as we speak. The Taoiseach was there with them as an equal, as somebody whose reputation has been enhanced as a result of the various world leadership fora in which he was involved during the Presidency.

I also pay tribute to the Minister of State, Deputy Roche. Members of this House have known him as a Senator and as a colleague for many years. Knowing his voracious appetite for hard work, none of us was surprised at the manner in which he adapted to his role as Minister with responsibility for European Affairs. However, I wish to put on record the significant role he played in the early stages of discussions relating to the problems surrounding the Presidency, specifically those relating to the treaty. He was able to quickly bring together like-minded countries, those with similar interests to Ireland but many of which were outside the EU at that time and looking for leadership. The Minister of State was able to go to the nub of the problem and meet them on firm ground, coming from a country viewed by many of the accession countries as a model. As a result of that correct perception, he was able to use our credibility to great effect and we owe him a great debt for ensuring that we brought these countries on side. I have limited personal knowledge of his efforts having been on the same aeroplane as him as he made telephone calls in an effort to bring people together. He went straight from the aeroplane to a meeting with some of the leaders of like-minded countries.

The Minister for Foreign Affairs, Deputy Cowen's international visits also considerably enhanced this country's role as an arbiter of peace and reconciliation. He visited the Middle East and many other trouble spots as part of the Troika. He went to Kosovo, which is a real problem for us, an issue to which I hope this House will return. The Minister was able to considerably enhance our international image.

My time is limited although I wish I could say more. I will briefly mention the treaty provisions. I am deeply saddened that there is no reference to God in the constitution. I know the Taoiseach, the Minister, Deputy Cowen, the Minister of State, Deputy Roche and the entire Irish delegation did all they could to advance that particular agenda as it reflected the overwhelming view of the people of this country. I am saddened that it has not happened and I cannot understand why.

Foreign policy and defence issues will form a major plank of the debate relating to the constitutional treaty. These issues arose at the Forum on Europe last week. When they come up again in the public arena and are reported on, the manner of the response given at the forum by the Minister, Deputy Cowen, and the Minister of State, Deputy Roche, should eliminate any fears the electorate might have regarding Ireland's continuing role. Our neutrality is confirmed, acknowledged and respected by the member states. I have no doubt the Minister of State will amplify this in his contribution.

I welcome the Charter of Fundamental Rights. I was privileged to be associated with it as a representative of this Parliament during the debate thereon and, therefore, probably have a greater insight than I would normally have. Apart from welcoming it, I also think the charter presents us with a challenge as it concerns the rights of citizens under EU laws. Directives from Europe that are incorporated into Irish law will also be subject to the charter's obligations. There are challenges, certainly with regard to the question of resources. This will be an issue for debate in the coming referendum.

On the referendum strategy, I echo Senator Ormonde's comments that we should harness the wonderful work the forum is doing under the chairmanship of our distinguished friend and colleague, Senator Maurice Hayes. The forum demonstrated during the first and second Nice referenda the valuable role it played in ensuring that proper information was conveyed to the Irish electorate. I know the Taoiseach and the Government are supportive of the forum's continuing role but it should be considerably enhanced because of the importance of this treaty for the future of our country and of Europe.

I hope the Lisbon Agenda will be pursued. We have lost the plot at European Union level regarding the aspirations put forward at Lisbon. We have not achieved as much as was set out at the time. This is an issue in which the Government should have a role. It was, in fact, involved in those discussions over the past number of

[Mr. Mooney.]

months. US criticism of Europe is centred around what the US perceives as a regulatory culture endemic in many European countries. Ireland has deregulated to a large extent, but we are alone in that regard. If one considers the manner in which the trade unions and state sector in France, Germany and various other large EU countries operate, there is a real problem regarding competitiveness and the European Union's ability to provide greater prosperity for its citizens.

Due to our strong cultural links with the United States, I suggest Ireland draws its inspiration from Boston. However, we also draw our economic strength from Berlin and other EU countries. That is the pivotal position we are in.

I compliment the Government, the Taoiseach and all associated with the Presidency on the manner in which they were able to restore the EU-US relationship which was effectively in tatters in the aftermath of the Iraq war. What a wonderful day it was in Shannon, irrespective of the begrudgers and those who legitimately held an anti-war position. That day in Shannon brought about a stronger relationship between Ireland and the United States. It also restored the accurate perception of this country as welcoming, especially towards the President of the United States of America with whom we have a strong historical and cultural link. I commend the Government for the manner in which it handled the Shannon visit, notwithstanding the valid rights of those who demonstrated against the war.

Mr. Bradford: I welcome the Minister to the House. He has frequently attended debates on matters of European and foreign policy in recent years. Geographically, we may be at the periphery of Europe but we are at the core of European politics. What the Minister of State and his Government colleagues have completed over the past weeks and months must be recognised as a significant achievement. The lengthy motion put forward by Fianna Fáil Senators is similar to one which might be presented before the North Korean Parliament in that we are missing the dear Leader here this afternoon. However, we can all support its sentiments. The work that went into the preparation of the constitution, the various summit meetings, and the Presidency was outstanding. A tremendous job was done. As the Minister of State and his colleagues have acknowledged, the Irish diplomatic staff and Civil Service have again proved themselves to be top of their class. No other country could have achieved a better result than the Irish Presidency, a fact all sides of the political spectrum must recognise.

On 1 May we welcomed the new countries, which were really the old countries, into an enlarged Europe. That was a significant and historic day although it has probably not been sufficiently recognised as such. We now have a new, dynamic and united Europe. Where there were walls of concrete and weapons of fear, there are now 25 countries working together towards a new

and positive agenda. I have remarked before that when I first entered this House in 1987 the Continent was divided, built on fear and it had a very uncertain future. However, since 1989 in particular, which saw the fall of the Berlin Wall and the decline of communism, there has been a sea change in western and central Europe, which is now manifesting itself in eastern Europe.

It is a tremendous achievement that this country has played such a significant role over the past few important and historic months. Senator Mooney's quotation of Robert Emmett is apt. I had intended to quote the lines myself. We are taking our place among the nations of the earth.

It is now a question of where we go next and how to proceed. The draft constitution, which has been agreed, is very balanced but will have to be put before the people in a referendum. There is no need for me to lecture the Minister on what needs to be done, we must ensure we do not have a debacle such as the one in respect of the Nice referendum. The issues put before the people should be plain and clear, and the political parties that claim to be supporters of Europe, which comprise the vast majority on this island, should be to the fore in the political argument. Nothing can be left to chance. It would be an enormous tragedy if, after the work of the Government during the Presidency, the National Forum on Europe and the majority of politicians in Leinster House, we did not ensure the referendum was carried. The constitution contains good news for Ireland and Europe. It is fair and balanced and ensures our vital national interests are fully protected. We can fully stand over it.

The appointment of the new President of the Commission must be welcomed. It is fair to say there was some speculation that the job would be given to the Taoiseach, Deputy Bertie Ahern. It would have been very positive for Ireland had he decided to allow his name to be considered. He chose otherwise and his decision must be respected. Perhaps the system of appointing a new President is somewhat cumbersome and unusual in the sense that candidates are not declared in the conventional way.

Mr. Mooney: It is a bit like the papacy.

Mr. Bradford: We are simply missing the smoke. Of course the Minister for Health and Children, Deputy Martin, would not allow us to use smoke, white or black. We must wish the incoming President well. He has an enormous challenge on his hands and I hope he will be up to the job.

Now that the appointment is made, the next issue on which the Taoiseach will have to contemplate as part of the overall jigsaw of European politics will be the appointment of the Irish Commissioner. He has indicated in recent interviews that an appointment will be made in the near future. That is to be welcomed. There have been a number of Irish Commissioners since 1973, some of whom have played a greater role than

others, perhaps because they had more important jobs. The early announcement of an Irish Commissioner will allow the Government to ensure that the candidate, be it male or female, will be in a position to secure an important role. Ireland as a whole benefits from any positive developments in Europe. It is important that the Taoiseach appoint a Commission candidate who will secure a top-class role on the Commission. I wish him well in that regard.

I fully concur with Senator Mooney's comments on the visit of President Bush to Ireland. The day of the visit will be regarded as one of the most important of the Irish Presidency. It was the subject of great controversy and debate and there was a certain degree of protest but genuine good was achieved by it. It was a visit by the US President to the European Union, the Presidency of which was based in Ireland. The Taoiseach, the Tánaiste and President McAleese presented to President Bush in a dignified, honest and open fashion the feelings of the Irish people on certain matters of concern. The debate was constructive and showed how things should be done. It also helped repair any damage which, in the eyes of the American media and public, had been caused by some of the earlier protests. The visit of President Bush was successful and I am sure the strong, persuasive arguments put forward by the Taoiseach and President McAleese are being taken on board to some degree by the President.

I congratulate all concerned, particularly the Minister of State, Deputy Roche, on the work that has been done to date. The Minister of State has been magnificent in his role. He has invested thousands of hours in this project and this should be respected by all sides of the House.

Mr. Minihan: I am delighted to support this motion. I, too, congratulate the Government on the outstanding efforts it has made over the past six months. It is interesting to note that, just six months ago, people were saying agreement on a new constitution for Europe was impossible and that the sides were too far apart. Among those who offered advice on this matter was the editor of the *Sunday Independent*, who advised on 4 January that the Taoiseach should "tread warily and ... hope that he can postpone any serious discussions on the constitution until Ireland's presidency is at an end." Fortunately the Taoiseach chose to ignore this advice. Instead he chose to embark on an ambitious round of shuttle diplomacy eliciting the views of member states in his quest for agreement on the constitution. Compromises were made and the Polish and Spanish Governments stopped insisting on maintaining the voting formula agreed to in Nice. Others also compromised and, in the end, the agreement that a qualified majority shall be defined as at least 55% of the members of the Council, representing at least 65% of the population of the Union, was an honourable one.

So it was that on 18 June, after much negotiation and the burning of midnight oil, the Presi-

deny was able to issue document CIG 85/04, which sounds innocuous but which will resonate for many years after we have retired from politics because it is the final agreement on the constitution of the European Union.

Others also deserve credit for this achievement. The Minister for Foreign Affairs, Deputy Cowen, deserves much credit and it would be somewhat mischievous for me to suggest that the agreement was a fitting finale to his period in the Ministry for Foreign Affairs. The Minister of State, Deputy Roche, should be congratulated on his work and commitment leading up to the Presidency.

I am especially pleased that this motion mentions the role of the Civil Service. In the past, civil servants attending meetings such as the one in Brussels were nicknamed "sherpas" because, without their support, their principals would never have reached the summit. Never has such a description been more deserved, as I am sure the Taoiseach, the Minister, Deputy Cowen, and the Minister of State, Deputy Roche, would agree. I appreciate the work of the Civil Service in Brussels and elsewhere, especially during the Presidency.

This motion also calls on the Government to increase its efforts in explaining the workings of Europe to the people. I would be surprised if the Government had not already made that decision given that the constitution will need to be endorsed by the people by way of a referendum. We all remember the first Nice referendum, which was lost because the Government, the Opposition and we as individual politicians failed to make a convincing argument in favour of that treaty.

While I agree with the motion's call on the Government to increase its efforts in explaining the workings of Europe, I believe we all have a responsibility to promote and explain the EU and its institutions and the implications of the constitution. If we do not do so there are those who, using misinformation and scare tactics, will frighten the people into rejecting this landmark decision.

While the agreement on the constitution marked the pinnacle of the Presidency's achievements there were other high points. The Presidency's commitment to the Lisbon strategy and to making the European Union the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion, was perhaps one of the more significant moments of the past six months. Another was the speed with which the Minister for Justice, Equality and Law Reform acted following the atrocities in Madrid. This was proof that this country could not only plan for a successful Presidency but could act with speed and determination when the situation demanded.

Perhaps, though, for most citizens of this country and the wider European community the events of 1 May will remain long in their memor-

[Mr. Minihan.]
ies. The sight of the leaders of Germany, Poland and the Czech Republic attending a joint ceremony at Zittau on their collective border could not but have moved the older generation. Age-old animosities were buried on the day of welcomes. Here in Ireland the emphasis was on the younger generation as people flocked to events in our nation's capital and throughout the State. In the southern capital Corkonians made new friends as they welcomed the people of Slovakia. Slovak foods, arts, crafts and music were a feature of that memorable sun-filled May day.

I acknowledge the unique situation when an Irishman, Mr. Pat Cox, was President of the European Parliament and Mr. David O'Sullivan was the senior civil servant while our Government held the Presidency. This was a remarkable achievement for this small country. I acknowledge the way in which the Government and the country handled the summit between the European Union and the United States of America and President Bush's visit. We honoured our commitment to Europe and reflected the views of the Irish people in a dignified manner.

The last six months have been a triumph for the Government and for Ireland but, above all, a triumph for the European dream. It was the long-awaited dream of Jean Monnet, Robert Schuman and others that through closer trade links Europe would never again suffer the conflagrations that had afflicted it down through the centuries. The Presidency saw that dream move one step closer.

I would like to finish with this short quote:

What he [Bertie Ahern] and his ministerial colleagues, Brian Cowen and Dick Roche, managed to secure last Friday in Brussels was remarkable: the agreement by 25 states to a new European Union constitution.

This political and diplomatic triumph is a negotiating achievement without parallel in Ireland's 31 year experience of membership of the Union. And a measure of that achievement was President Jacques Chirac's own compliment that the Irish Presidency was the best he had ever experienced.

So wrote the aforementioned editor of the *Sunday Independent* on 20 June last. While a week may be a long time in politics six months, it appears, is a lifetime in the media.

I am delighted to support the motion before the House and to congratulate all associated with the Presidency.

Mr. Ryan: I begin by being as generous and as ungrudging as I can be, which my colleagues on the Government side will feel is not very much, in complimenting the Taoiseach, the Minister for Foreign Affairs and the Minister of State, Deputy Roche, on a job well done. It is not meant to diminish their achievement to say that we have come to take for granted that our Presidencies go well. Our politicians perform well in this area. It is a pity that those who lampoon politics with great

delight seem to be unable to acknowledge when things are done well. It is not for me, as an Opposition figure, to add to the nonsensical cynicism of many journalists. I say, without qualification, that ours was a successful Presidency that reflected well on the Government and on the country. It did not reflect too well on the Government in the elections but that is the nature of politics and does not take from the fact that the Presidency was a successful one for which congratulations are due.

We should reflect on a couple of aspects of that success. When artificial constraints are not imposed on us — I think of the constraint of tradition and our degree of deference to the traditions of the neighbouring island and the constraint of precedent, usually and most unfortunately argued by the Department of Finance — we discover that we can do things well with a skill and capacity for innovation unlike many other countries. We have extremely good public servants and politicians, from all parties, who are capable of using, in a way that politics should, the skills of an extremely good Civil Service and public service. It is interesting that when we move into territory where there are no big files saying that one must do this, we never did that and something else is unprecedented and where we have to learn as we go along——

Mr. Roche: There is such a file.

Mr. Ryan: This is uncharted territory and in such circumstances we do a very good job. It is time we believed in ourselves. The report which is to be released today on our future industrial development says the same thing.

Mr. Roche: Hear, hear.

Mr. Ryan: If anything has been learned over the past ten years it is that we are a capable, innovative, imaginative and flexible people. International capital, that most ruthless of measuring indices, has recognised that fact. I do not dispute the significance of tax rates, grants and so on but the most appealing quality, according to HP, Intel and many other companies, is our achievement in producing an intelligent, well educated and very flexible, in the best sense of the word, labour force. This shows up when we have to do a job like this with extremely limited resources.

It is not long since terror and shock went through the entire Irish public service when there was political chaos in Italy and it was suggested that the Presidency would skip Italy and move on to Ireland at a month's notice. It is interesting that it was suggested that one of the biggest member states and a founder member of the EU was not up to the job but no one had doubts about the capacity of the Irish to do it. While I accept the practicalities involved, the boost to the confidence of small countries that came with the rotating Presidency is one of the things we will lose. Other things will come in its place but a perma-

ment Presidency will take away some of that advantage. I look forward to the Minister of State's response to this point, which I do not make in any negative way.

I cannot but reflect on the irony of seeing, on the seventh day after the end of our Presidency, an announcement in the newspapers that our senior civil servants have been told they will have to wait three years for a review of their salaries. There is not a multinational company anywhere on this island which would make such a statement so soon after such a successful endeavour. Even if it thought of doing such a thing, no company would make a public announcement about it. One cannot but wonder if that mean-minded response to senior public servants has something to do with their increasingly effective campaign against the worst excesses of the poorly thought out decentralisation programme. It may be a coincidence that some of our most senior civil servants and their trade union have been among the most effective and vocal critics of decentralisation. After the level of achievement of the last six months, what looks like a mean-minded decision to repudiate their skills is regrettable. I am disappointed that a Government would do it.

While the constitution is exciting and challenging, I will reserve judgment until I see it. I know it is being printed in 21 languages and I appreciate the logistics involved but we should hold off until we see what it contains. I did a quick calculation, because I had more of a focus on the outcome of the European elections than others, and between 400,000 and 500,000 people in the European elections voted for candidates who are vigorously and overtly opposed to the European constitution, although I do not know how they could be opposed to it when it was not finished at the time. Whatever the outcome, we must be wary.

I have no problems with the Lisbon Agenda but Europe must stop believing that it is a basket case. I will end with a quotation:

America's superior economic performance over the past decade is much exaggerated. Productivity has grown just as fast in the euro area; GDP per person has grown a bit slower but mainly because Europeans have chosen to take more leisure rather than more income; European employment in recent years has grown even faster than in America; and America has created some serious imbalances which could yet trip the economy up badly.

That might sound like a paean to European social democracy but it comes from *The Economist* of 17 June. By all means let us make our economy in Europe more competitive and efficient but we must not abandon the qualities that have made Europe a better place to live than the United States for most ordinary working people, epitomised by the clear decision in Europe to choose longer holidays and shorter working hours over the simple accumulation of more consumer goods.

Mr. Lydon: I welcome the Minister of State to the House. I sincerely believe that he is the only person, and I include the Taoiseach, the Minister for Foreign Affairs, Mr. Giscard d'Estaing all the civil servants and everyone else in the whole Union in this, who read all the documentation on the Lisbon Agenda, the enlargement process and the new constitution. Credit where credit is due and we owe a debt of gratitude to the Taoiseach, the Minister for Foreign Affairs, the civil servants and the Minister of State. Even securing agreement on the candidate for the post of Commission President was a remarkable achievement and we all look forward to working with José Manuel Durão Barroso if he is confirmed in his post.

The word "constitution" is unfortunate in that it is liable to conjure up ideas of a superpower state where until now we had an association of states. We should not be afraid in this regard. Article 1.5 states that the constitution will have primacy over the laws of member states but this is nothing to fear because it does not happen in all cases.

The treaty establishing a constitution for Europe repeals all existing EU and EC treaties from the Treaty of Rome to the Treaty of Nice and incorporates their main elements into the new constitution. Some have criticised elements of this but it is a great idea. Anyone who has tried to plough his or her way through some of the treaties, such as Maastricht, Amsterdam and Nice, will be pleased with the clarity of the text of the new constitution. It is a final treaty more than a constitution.

Should the constitution be ratified, competencies in the security, defence and foreign policy areas will be centralised in Brussels with a unified European approach. This will be a good development. Such an approach is important and I see nothing wrong with a European army or foreign, security and defence policy. More than being just an international power broker, however, the European Union should become a partner in solidarity for the cultural and economic development of the Third World.

It was a major disappointment to me that there was no mention of the indisputable Christian heritage of Europe. A few governments categorically opposed the mention of a specific Christian heritage. It is sad that those were precisely the countries where Christianity played an enormous part in shaping their cultures.

It is clear that an ideological prejudice motivated the opposition and the fear that an explicit mention of Christian heritage could make the European Union less acceptable to a Muslim country that might form part of it. This fear is unfounded as it is from Christianity that arises the principle of religious liberty and the clear distinction between religious and political spheres that allows for peaceful co-existence between different religions within one political organisation.

[Mr. Lydon.]

Even the mention of God was excluded. It is ironic that 25 Heads of State agreed to this constitution without one reference to God on 18 June, the feast of the Sacred Heart of Jesus. It is a decision that will come back to haunt us. There are, however, positive elements in the text that must be noted and applauded. Those include safeguards for the status of churches in member states, recognition of the identities of churches and their contribution and promises of open and regular dialogue. I am glad that an article in the constitution mentions the right to life of all. I wonder does this include the right to life as protected by article 40.3.3° of the Constitution and the protocol appended to the Amsterdam treaty to protect it.

The enlargement process involved 450 million people, a mind boggling number. It is wonderful to be able to travel so widely and use the same currency. The former Yugoslav Republics of Macedonia and Croatia have both applied for membership. People can call it an empire if they want. It is multilingual, multicultural and multiracial but it is all European, from the Urals to the Twelve Pins, a wonderful grand design for working together and healing disputes with rational argument and discussion rather than fighting, as was the case in the past.

The work on the Lisbon Agenda was incredible. The two new elements of the financial services action plan, the financial instruments market directive and the transparency directive, were completed and other directives were agreed on take over bids and intellectual property rights, something we do not respect in Ireland. There was agreement on infrastructure, the trans-European networks for transport and the second railway packet. All these efforts help to make this huge organisation work.

There is a new directive on terrorism and we have adopted a directive on compensation to crime victims. There is an agreed approach on the mutual recognition of confiscation orders, re-establishment of the counter-terrorism task force under Europol and substantial progress was made towards the establishment of a European borders agency.

All in all, a great job was done and I congratulate everyone involved. This constitution will give us global status, recognition as Europeans and a strong position in negotiations for world trade agreements and at the UN. I hope that this will be used in a caring manner because we have great power to do good here. With so many people working and travelling together and benefiting from the education processes, this is a grand design.

There is a major job ahead — explaining this to the public and assuring them that the deal they are getting is a good one. No one will be pleased with everything but when the leaders of so many nations agree to so much, it is an incredible accomplishment. I am sure the Taoiseach did not do it all on his own but he was a great motivator

for everyone else. He did a fantastic job, as did the Minister of State, Deputy Roche, and the Minister for Foreign Affairs, Deputy Cowen, and all everyone who worked with them. I congratulate them all. I hope this grand design works out because it deserves our support.

Minister of State at the Department of Foreign Affairs (Mr. Roche): I thank the Members of the House for their generosity. I also thank the Members of both Houses for the exceptionally positive role played by politicians from all the major political parties in the success of the Irish Presidency. I unreservedly thank the diplomats and the senior and junior civil servants who played such an extraordinary role. I have never been so proud to be Irish as I was on the night we brought the constitutional treaty home. When the Irish Presidency began on 1 January 2004, things looked bleak. It looked as if there had been a disaster. The humour during the course of the European Council meeting in December was disastrous and negative. It was worse than not producing the treaty. It seemed as if irreparable damage had been done. I agree absolutely with Senator Ryan that we should celebrate those things that as a nation we do well. We carry a post-colonial chip on our shoulder and we find it difficult to celebrate our successes. We are a remarkable nation. We should not delude ourselves and suggest we are perfect; we are far from perfection——

Mr. Ryan: I will remind the Minister of State of that from time to time.

Mr. Roche: ——but for a small nation, when we put our mind to it and put on the green jersey, we can pull together and do the job. I pay tribute to the role played in achieving the constitutional treaty by Opposition parties. Colleagues such as Deputy John Bruton, Proinsias De Rossa, MEP, and Deputy Gormley assisted me as the Government representative to put together what I believe were very good responses to the challenges which arose during the course of the constitutional convention. A book has been published today in Vienna in which Ireland's contribution is celebrated. A book in circulation at present, *The Accidental Constitution*, also recognises Ireland's role. It is something of which we can all be proud and it is not to seek or suggest there should be partisan advantage.

It gives me great pleasure to take part in this debate on Ireland's EU Presidency. The sixth Irish Presidency of the European Union will be remembered, as this motion recognises, for the careful preparation, hard work and patient negotiation which led to the eventual agreement on the new European constitution. It will also be remembered for the successful enlargement of the European Union and the special occasion on 1 May when Ireland celebrated the day of welcomes with the new member states. That was a truly remarkable and memorable day. Senator

Lydon noted that there is no reference to God in the constitution, but God smiled on Ireland that day. It was a day we will all remember with emotion.

That magic moment could be fairly described as the highlight of the Irish Presidency. The bitterness, divisions, waste, destruction and horrors of the past century were finally put behind us and we looked to the future. We can take real pride, as a small nation on the periphery of Europe, that on that day those events took place in this country during our Presidency.

Members will have received a copy of the report on Ireland's Presidency of the European Union, prepared by the Department of Foreign Affairs. The report states that significant progress was made during our Presidency on all the main priorities we had set ourselves. The motion notes the Lisbon Agenda which remains a priority.

I am delighted that it proved possible, at the special meeting of Heads of State and Government on 29 June to reach agreement on the nomination of the new President of the Commission, José Manuel Durão Barroso, as well as on other senior appointments. That was the icing on the cake in many ways.

I intend to focus in my contribution on the new European constitution. It will be the lasting legacy of Ireland's sixth Presidency. The Presidency brought to a successful conclusion the process that began in Laeken in December 2001. The text of the constitution will be prepared for signature by legal and language experts and it is expected that a signature ceremony will be held in Rome later in the year. Like the Treaty of Rome, the European constitution will serve for many years as the foundation of a Union at the service of its citizens. Once the constitution has been signed, the process of ratification will begin. While it is for every member state to decide how to proceed according to its own constitutional requirements, I welcome the fact that a significant number of states will hold referenda. It is an appropriate way to put before the people of Europe the contents of this remarkable document. I acknowledge that Senator Ryan may not have had the opportunity to read it yet. I am confident that when he reads it, he will be very proud to European. It is a remarkable document which recognises, as the Senator suggested, those things which have made Europe unique.

I look forward to a vigorous and informed debate on the constitutional treaty. The Government will take all appropriate steps to ensure that people are as familiar as possible with the constitution and all it entails. The National Forum on Europe and the Houses of the Oireachtas, including the Joint Committee on European Affairs, will continue to play a full and active role. Laeken set in train the drafting of a constitution for the European Union. To pave the way for the work of the IGC, it proposed that the first draft be produced by a European Convention, bringing together national and European parliamentarians with representatives of the Union's institutions.

As the House will be aware, the European Convention did excellent work and it was right that the text it prepared was adopted largely unchanged by the IGC. Laeken identified a number of key challenges, all of which have now been met.

The constitution contains a clearer description than ever before of what the Union is and what it does. The Union's powers and competencies are set out in a straightforward way and its objectives and competencies are clearly linked to its activities in the various policy areas. The key principles underpinning these activities are conferral, subsidiarity and proportionality. These are set out in plain terms. For the first time it is made absolutely clear that the Union only has those powers which the member states have conferred upon it and that it can only act to the extent necessary to secure its objectives. While the document is a large one, I remind the House that the core element, part one of the constitutional treaty, is only 30 pages long and for the first time, is written in plain language, which is an achievement in itself.

National parliaments will play an important new role in ensuring that these principles are fully adhered to. It will be possible for parliaments to challenge proposals brought forward by the Commission on grounds of subsidiarity, obliging it to re-think proposals. Some have sought to downplay the significance of these new arrangements but they are wrong. While the role of the European Parliament is very important, it is simply a fact that many citizens identify most directly with their own national representatives. That those representatives can now act as a watchdog of the Union's legislative process, ensuring that citizens' interests are fully respected, should be welcomed by everyone.

The constitution makes very significant advances in the protection of human rights. The Charter of Fundamental Rights will become an integral part of the Union's basic law. The Union will be legally bound to recognise the rights it contains and citizens will be able to access the courts to vindicate them. Part 2 of the constitutional treaty, which contains the charter, is set out in the clearest possible language. Every citizen and democrat will be very proud to sign up for the charter. In addition, the Union is to accede to the European Convention on Human Rights, ensuring a coherent and consistent approach between the courts in Strasbourg and Luxembourg. I was very pleased that a representative of Amnesty International has welcomed these important new provisions.

The Union will also be better equipped to play an effective role on the international stage. There will be a Union Foreign Minister, drawing together the work of the Commission and the Council and ensuring coherence between them. The Minister will be served by an external action service, including officials from the Council, the Commission and the member states.

[Mr. Roche.]

These new arrangements will in no way supplant or reduce the responsibilities of member states' Foreign Ministers and their diplomatic services. Rather, they will complement and enhance the work done at member state level. Such a joined-up approach must be welcomed. There would be no point, however, in having a more effective infrastructure if the policies being pursued were not the right ones. This is the reason the clear presentation of the Union's aims and objectives in the conduct of its external actions and relations is so important.

Ireland made a key contribution to shaping the language in this area. In the wider world, the Union is to:

. . . contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular the rights of the child, as well as to strict observance and to development of international law, including respect for the principles of the United Nations Charter.

I am extraordinarily proud that those words were penned in this city. These aims are totally in harmony with the provisions of our Constitution and our commitment to the ideal of peace and friendly co-operation among nations founded on international justice. I believe all Irish people can identify with and support these aims.

I fully appreciate that for many in Ireland and the House provisions on security and defence policy are of particular sensitivity. It is important that people study what has been agreed with great care. Going into the Intergovernmental Conference, the Government stated it would seek to clarify the parameters and operation of the various proposals made by the convention in this area to ensure they were open, accountable and fully in keeping with our policy of military neutrality. I am very pleased to be able to inform the House that I am fully satisfied that these requirements have been met in full.

It is made explicitly clear that the provisions relating to the possible establishment of a common defence at some point in the future "shall not prejudice the specific character of the security and defence policies of certain Member States". This is a specific reference to this State. Written in existing treaty language, this provision protects the positions of neutral or non-aligned countries and has been carried into the new constitution in full. The Seville declarations remain fully in place and the Government will ensure their substance is fully protected in the drafting of any new amendment to the constitution.

The provisions relating to structured co-operation, about which some people have been concerned, were substantially amended by the Intergovernmental Conference. It is made clear that, rather than creating a defence inner core or *avant garde*, these arrangements are open to all

member states that wish to participate. Appropriate accountability has been ensured.

The focus has been shifted from undertaking operations to developing capabilities by member states so as to be able to participate in the Union's peacekeeping and conflict prevention activities. Arrangements for structured co-operation are set out in a protocol attached to the constitution. It is explicitly stated that it "does not prejudice the specific character of the security and defence policies of Member States", and that the Union's activities are to be "in accordance with the Charter of the United Nations". To any fair-minded person, these are significant advances.

The Government does not need to decide at this time whether it would be appropriate for Ireland to participate. However, if we are to have an honest and informed debate about the European constitution, we must guard against any distortion or wilful misrepresentation of what is involved. The constitution does not alter in any significant way the balance of competence between the member states and the Union. There are, however, some important over-arching new provisions which have the potential to have a positive impact.

Ireland was a strong supporter of the inclusion of a new social article which requires the Union, in defining and implementing all of its policies and actions, to take into account requirements linked to a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health. This provision has been widely welcomed. Today, while on my way to the House, I received an e-mail from the European Anti-Poverty Network specifically complimenting the Irish Presidency and welcoming the inclusion of this article in the constitutional treaty.

We would have liked to be able to do more about the EURATOM Treaty. Ireland, with Germany and Austria, signed a declaration calling for a review conference to examine the treaty's provisions which are outdated and inappropriate. Any change required unanimous support in the IGC, however, and this was not forthcoming. Nonetheless, I welcome that, for the first time, the constitution provides the Union with a competence to promote energy efficiency and saving and the development of new and renewable forms of energy.

Some people have expressed particular concern about and interest in the Common Commercial Policy. Ireland and a number of other member states were concerned to ensure that international trade agreements in the very sensitive areas of health, education and social services would not undermine national systems. I am very pleased the Intergovernmental Conference agreed that unanimity will be required where agreements in these areas risk seriously disturbing the national organisation of such services and prejudicing the responsibility of member

states to deliver them. Senator Ryan who touched on this issue will note that I attended the congress of the European Federation of Public Service Unions in Stockholm two weeks ago, at which the wording the Irish Presidency imported into the text in this area was welcomed. As a former public servant and public service union representative, I also welcome it.

Going into the negotiations last autumn, we stated that our key national concerns were retaining unanimity for decision making on taxation; ensuring our distinctive legal tradition was fully protected in the new arrangements in the area of justice and home affairs; protecting our neutrality in defence matters; and ensuring a balanced outcome on the institutions, including equality in the Commission. Working with member states that shared our concerns, we secured a positive outcome for Ireland in all these areas. I take an extraordinary degree of personal pride in this achievement. Although work on the negotiations in this area was long and hard, it was also fruitful and worthwhile.

We also managed to reach agreement on a balanced set of arrangements for the Union's institutions which protect the interests of the Union and all member states, large and small. This was, perhaps, the most difficult aspect of the negotiations. With regard to voting, we secured a compromise with which everyone could live. On the Commission, each member state will be represented in two of every three Commissions from 2014 onwards and all member states will be treated on the basis of strict equality. It will also be open to the European Council, acting unanimously, to set a different size if it so wishes. This is one of the aspects many member states sought to include in the constitution. Let us see how a Commission of 25 members works. It has been consistently asserted that a large Commission would not work and a small Commission was necessary for efficiency. We will have an opportunity to test both hypotheses in 2014.

As regards seats in the European Parliament, we reached agreement on a minimum threshold of six MEPs per member state, a point of particular concern for the smallest states. This decision was just and equitable and indicated generosity on the part of some of the larger member states.

As I have stated, I look forward to the debate ahead. We have a document to present to the people which is good for the European Union and Ireland. We can be genuinely proud of the role we, as a small nation, played in bringing it about.

I will make a brief comment about the external relations agenda. The challenges of the Presidency were particularly evident in this area. During this time, the Taoiseach chaired five summits with Canada, Russia, Latin America and the Caribbean, Japan and the United States. In addition to chairing the monthly meetings of the General Affairs and External Relations Council, the Minister for Foreign Affairs, Deputy Cowen, hosted an informal meeting of EU Foreign Ministers in

Tullamore in April, as well as two large foreign ministerial meetings in Ireland with ASEM and EuroMed, the Asian and Mediterranean countries respectively. He conducted in excess of 50 ministerial meetings. As a nation, we can take great pride in the work done by the Minister, who is not present. I had the opportunity and privilege to witness at first hand his extraordinary dedication and the extraordinary amount of work and effort he undertook. Mr. Cowen played a pivotal role in the effort to reactivate interest in the negotiations on the Middle East peace process based on the Quartet roadmap. Although he does not look for personal aggrandisement, he is entitled to the nation's gratitude for his achievements as he has served it and the European Union extraordinarily well.

In guiding the EU's foreign policy agenda, we focused on the key foreign policy priorities which we set out in the Presidency programme. These included promoting democratic values and human rights, advancing support for an effective multilateral system based on the primacy of the UN, supporting the Middle East peace process through the Quartet and developing a strategic partnership with the wider Middle East and Mediterranean region, strengthening the EU's relationships with its key partners, not least the US, China and Russia and working with African partners to address the enormous development and security challenges facing the Continent. Development issues, including the fight against HIV-AIDS, were given the highest priority. I commend the Minister of State at the Department of Foreign Affairs, Deputy Kitt, for his work in this area which is often overlooked. These priorities, while common to all countries of the EU, reflect the traditional principles of Ireland's approach to foreign policy.

A Presidency must also be able to respond swiftly and effectively to unforeseen events. We worked hard to develop a co-ordinated EU approach to combating terrorism, following the appalling terrorist attacks in Madrid on 11 March. The June European Council took note of the significant progress made, including the adoption of a declaration on combating terrorism and the appointment of an EU counter terrorism co-ordinator, Mr. Gijs de Vries, at the March European Council.

Ireland's Presidency came at a time of immense change and transition for the European Union. Aware of this, we set out to address ambitious goals in a realistic way. We were determined to run an efficient, fair and transparent Presidency and we can fairly say that we achieved all our main objectives. The task now for all of us, as the EU moves forward, is to ensure that our citizens are kept fully engaged and informed and to build on the good will which our Presidency has generated among our partners to ensure that we retain a strong voice in Europe in pursuit of our values and in promoting the concerns of our citizens.

Ms O'Meara: I commend the Minister of State on his clear and extensive overview of the achievements of the Irish Presidency and I appreciate that he concentrated on the matter of the EU constitution. As the countries of the EU prepare to put the constitution before the people in the coming years, it will be a matter of significant concern to all politicians and not only Government politicians. I must also commend the Minister of State and all his colleagues in the Government including the Taoiseach, the Minister for Foreign Affairs and the Minister of State, Deputy Kitt, for all their work over the past six months and in the planning stage prior to that. It would be churlish not to recognise the extraordinary dedication and commitment of Government members such as the Minister of State, Deputy Roche, and of our public servants. To achieve agreement on the constitution and on the nomination of a new President of the European Commission and to oversee in such a stylish and commendable fashion the accession of the ten new member states was a great achievement. We can be proud of the Government's performance in its Presidency of the EU.

The agreement on the constitution is the crowning achievement of the Irish Presidency but the work must now begin to ensure that the public is informed of its content and will support it at referendum and there are lessons from the past in that regard. I hope there will not be a repetition of the debacle that was the first referendum on the Nice treaty. Some of the public may be aware that a new constitution was agreed but an even smaller number know what it is about. I estimate that very few people had a clue what was involved in attaining agreement on the constitution and I appeal to the Minister of State and his colleagues, particularly those who are in the know on this matter, to recognise that they are in a minority.

I advise against the use of jargon, such as the term "the principles of conferral, subsidiarity and proportionality" which the Minister of State used in his speech. These types of phrases are fine when one knows what they mean but they mean nothing to the average citizen or indeed to many well-informed citizens. We will lose the argument by conducting the discussion at such an elevated level that it excludes the majority of people. We need to pitch the discussion at a level which people will understand. Perhaps the Minister of State might suggest to the National Forum on Europe the possibility of visiting primary and secondary level schools over the next two years to inform students about the content of the constitution, what it means for them, its wider context and the history of its development. Otherwise we will be faced with a situation where a dearth of knowledge will lead to a dissemination of deliberate misinformation and misinterpretation and the Government will find itself in a defensive position and with a problem on its hands.

I ask the Minister of State to consider how the constitution will be explained rather than sold to

the people. The Government must set out the practical implications of the ratification of the constitution, which is a single document applicable right across the EU. I hope the constitution will be met positively both here and in the other member states although I am cognisant of the fact that the context is always political and the political context in which the referendums take place across Europe will have a bearing on the results.

The stewardship provided by the Irish Presidency has been commendable. Ms Brigid Laffan, the Jean Monnet professor of European politics in the Dublin European Institute at UCD, writes about the Presidency in *The Irish Times* today. She offers a good overview of the management of the Presidency, the meticulous attention to detail and the logistics involved in planning it, the ability to manage the political agenda, particularly after the terrorist attacks in Madrid, and the manner in which the Taoiseach, Minister for Foreign Affairs and the Ministers of State conducted business. She notes the key role played by Ms Anne Anderson, Ireland's permanent representative to the EU and the first female member of the high-level Committee of Permanent Representatives. It is good to see a senior female diplomat playing such an important part in one of Ireland's best political performances in recent years and it is a testimony to her diplomatic and administrative skills.

Ms Laffan notes in her article that the organisation of the Presidency would not have been so well implemented had the decentralisation programme proposed by the Government been in place. According to her:

The model of decentralisation that is being pursued at present will exacerbate co-operation problems and would have made the management of the Presidency very difficult. No modern State attempting to govern a complex society would embark on this model of decentralisation.

That is an argument for a different day. Considering the Presidency was such a major success, one must examine why it worked.

Mr. Dardis: Is the Senator in favour of federalism?

Ms O'Meara: When something is working, it should not be wrecked.

I welcome the inclusion of the new social article in the constitution, which requires the Union "to take into account requirements linked to a high level of employment, the guarantee of adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health". The Minister of State said Ireland was a strong supporter of the inclusion of this article. I am also a supporter and I hope such guarantees will be played out on the national stage as well as the international stage.

Dr. Mansergh: I warmly congratulate the Minister of State, the Minister for Foreign Affairs, the Taoiseach, the other Ministers and the teams of civil servants in different Departments who made the Presidency such a success. It is a source of tremendous pride in the country and within the Oireachtas. Ireland has never had a bad Presidency and it has had a number of important Presidencies, particularly our first one in 1975 when we showed we could do it well and in 1990 when immensely important events were taking place in central and eastern Europe, South Africa and economic and monetary union commenced.

However, there has not been an occasion when so much pressure has been put on Ireland to pull the coals out of the fire for the entire Union. No more important task has fallen to a member state holding the Presidency and this Presidency was not simply a matter of co-ordinating everything that was going on. It is an exceptional tribute to the diplomatic skills of the Taoiseach and everyone else concerned that this difficult and important task was brought to a successful conclusion.

Other highlights of the Presidency were the successful enlargement of the Union and a number of summits with different countries such as Russia, Japan and, especially, the US. Given the deep rift between European countries and the US, I am glad that, following UN Resolution 1546 and the common US-EU position adopted at Dromoland Castle, the international community is coming together again because divisions serve no one's purpose in the long term.

I refer to a number of different aspects of the constitution. While the main Opposition parties have been extraordinarily generous in their support of the Irish Presidency and acknowledged its achievements, a number of people at the fringes of the political system and outside it take a different and more negative view. I understand the disappointment that there is not a stronger religious reference in the constitution, though it contains a number of positive provisions. I refer to the editorial of the *Church of Ireland Gazette* on 2 July, which puts that in perspective. It states:

The Preamble does not make the reference to Europe's Christian heritage that some states and churches were seeking. No tears should be shed over this omission for the church does not need any special recognition. Moreover, to have given Christianity special mention could easily have been resented by other faith communities — and the EU is a place where many different faiths are to be found. It was important, however, to retain the much more significant Article 51, which guarantees the churches, among others, an entitlement to regular consultation by the institutions of the EU.

It is frustrating to continually read the mantras of opponents of the constitution relating to super-powers, super states and so on. Super states would not have much difficulty attracting numer-

ous applications for president of a similar body to the European Commission, if it were the equivalent of the office of President of the US or President of Russia. The "super state" has resources equivalent to 1.2% of GDP.

I fully endorse the Minister of State's comments on the subject of defence. Reference is often made to the militarisation of Europe. I gave a lecture at the Curragh military college yesterday, which was followed by a discussion. It was put to me as fact that military spending in the EU generally is being cut. I wish Senator O'Meara luck in trying to persuade her party colleague, Mr. Roger Cole, of this.

It has been suggested by persons close to an unsuccessful candidate in the European Parliament elections that the forthcoming presidential election should be used as a referendum on the European constitution. That is an extraordinary suggestion, since the people will have a specific opportunity to vote on the constitution in a referendum and, moreover, the President does not have a role in this regard. He or she is one of the signatories of the constitutional treaty.

I refer to an extraordinary remark by John Brown in a newspaper article. He stated:

As for the presidential election, the issues are totally different this time. We are at a pivotal point in Irish history where we are talking about the final nail in Ireland's coffin as a sovereign state. At the time of the Nice referendum, President McAleese said it was a good model for European — Fianna Fáil's integrationist. The question that needs to be asked is if the Irish people ratify the European constitution, will she sign it?

This raises the extraordinary prospect of the people voting in a referendum on a constitution and, if a certain person is elected President, he or she will have the power to refuse to sign it. People need to reflect on certain basics before they charge in. Ireland has become a more sovereign nation since it joined the EU in comparison with the more isolated sovereignty which prevailed prior to that. Sovereignty should be used in co-operation and co-ordination with other countries. Ireland has done fantastically well out of Europe. The constitution provides a framework, which will enable a larger Union to operate coherently. How could that be contrary to our interests?

Mr. Dardis: I wholeheartedly welcome the Minister of State who deserves enormous credit for the work he has done and I join in the tributes paid to him, the Taoiseach and the Minister for Foreign Affairs, as well as to the Civil Service. It is quite remarkable, given the size of the country and of the public service, that we can produce a team of such quality. When one sees the resources available to the public services in larger countries, our public service deserves enormous credit.

It was an inspired choice to appoint a Minister of State with responsibility for European affairs

[Mr. Dardis.]
who would deal with the constitutional treaty, and Deputy Roche was also an inspired choice for that position.

Dr. Mansergh: Hear, hear.

Mr. Dardis: It is not readily appreciated outside places like the Forum on Europe or the Joint Committee on European Affairs, of which I am a member, how much work and vigilance the early drafts of the constitution needed. It had to be watched on behalf of Ireland to ensure the eventual outcome was one with which we and other member states could live. The Minister of State deserves enormous credit for that work, which is not as widely recognised as it might be.

The landmarks of the Presidency have been mentioned of which enlargement on 1 May was probably the highlight. As the Minister of State said, it was an emotional day and Seamus Heaney put it most eloquently and admirably when he said: "On a day when newcomers appear let it be a homecoming for them." That was a perceptive and accurate reflection of what the day meant.

Getting agreement on the constitutional treaty was a singular achievement. When the Taoiseach spoke about it in the early days of the Presidency as being an objective which could be secured there was widespread scepticism, even among those who were advocates of the treaty, that that could be done. That was a milestone. Getting agreement on the incoming President of the Commission was also something to be very proud of.

There is a message here about the ability of smaller countries to broker deals. We do not come to the table with some of the baggage and agendas larger countries bring. Obviously the Irish effort in this instance was singularly successful, and smaller countries can bring valuable qualities to the table when it comes to issues like these. The Minister of State has acknowledged that the role of the Opposition was critical as well, which is correct. The Government did not have to look over its shoulder at what the Opposition was saying, because there was a unity of purpose within the country on the direction which should be taken. That was very helpful to the Government and it was notable at last week's meeting of the Forum on Europe that there was unanimity among all parties on the success of the Presidency.

Last week Senator Hayes and others referred to what was said at the forum. It was obvious at the forum that people had moved on to the debate we would face in adopting the constitutional treaty. It will be incumbent on any of us involved in the "Yes" side of that debate to know this document inside out, upside down and backwards, which has not always been notable in the past. The great virtue of this treaty is that we have one document. When we campaigned for Maas-tricht and other treaties we were looking through four different books to get back to the original

Treaty of Rome and it was an incredibly difficult task even for those dedicated to the job. At least we now have that coherence, as well as a clarity of language, notwithstanding some of the criticisms of Euro-jargon.

However, there was selective quoting from the treaty at the forum. Article 40, paragraph 2, states that the common security and defence policy shall include the progressive framing of a common Union defence policy, and that this will lead to a common defence. One should leave it at that but PANA said this indicated there was a first strike capability on the part of NATO and it was going to drop a bomb on someone. One has to read the rest of the paragraph, which states:

This will lead to a common defence when the European Council, acting unanimously, so decides. It shall [this is the phrase the Minister of State mentioned, to which I also subscribe] in that case recommend to the member states the adoption of such a decision in accordance with their respective constitutional requirements.

The document goes on to state that the policy of the Union, in accordance with this article, shall not prejudice the specific character of security and defence policy of certain member states. The safeguards are there, and to represent it otherwise is mischievous and wrong.

Senator O'Meara spoke about bringing the message to the schools and the forum has done valuable work in that area. There are essay and debating competitions for schools, and literature and videos have also been distributed. I am not talking in particular about the adoption of the treaty but a message has been sent out to try to bring these issues to a broader audience. Surveys reveal that there has been an impact.

On the constitution itself, the question of fundamental rights is incorporated. The charter is there. However, it is represented that there are no attitudes here on social policy, but the treaty spells that out specifically, as well as the responsibilities of states in ensuring equity and fairness and that workers' rights are protected. It was also valuable to sort out the difficulties with qualified majority voting and with taxation. The language has been simplified.

The only outstanding task is to appoint a Commissioner. Deputy Walsh would be a very good Commissioner, but that is a personal view. He has been an excellent Minister and he knows the situation inside out. He would be capable of doing a good job, although David Byrne also deserves credit for the job he has done.

Our attitude to ourselves has been transformed. I began farming before we joined the EU and can remember what it was like — the post-colonial attitude to which Senator Mansergh referred was dominant. We could not see beyond the nearest neighbour. We did not know there were places like Bosnia-Herzegovina or that there were problems in the Middle East. We could not see beyond the pond. Now we have a

much broader perspective. We have much greater national self-confidence and we are out from under the colonial yoke that stifled us for so long.

Ms Ormonde: Ours was a great Presidency which reflected very well on the country. As the Minister of State said, we are a small nation but we wear the green jersey very well. When the going gets tough, we get going.

We have a superb Civil Service, which reflects our educational system, as we saw with the superb brains behind the scene that delivered on each programme stage by stage. Many contributors have mentioned the principle of subsidiarity, and I had to reflect for some time on that issue. Now I have grasped it, I do not want to see it in the arena again. It means that we take control of our own decision-making process in the areas of taxation, social and security policies. We can co-operate on the international scene when we want to fight crime but our military neutrality is protected. That is clear. When the debate starts I do not want that distorted or misrepresented, as began to occur at the forum last Thursday. Fortunately, the Minister for Foreign Affairs was present to challenge those doing so to a debate on facts. I welcome that debate, which we should start early in the autumn.

We have a good, readable and accessible EU constitution but we must now get it into the schools and the wider arena. This time, the media should give us a chance to disseminate the constitution to members of the public who still do not know what it is about. During the local elections campaign, the issue of the did not arise and was not on anybody's agenda.

Mr. Dardis: It was not even a European election issue.

Ms Ormonde: It did not arise, even at a time when Ireland was on the international stage. We have risen to the challenge and no longer suffer from an inferiority complex or low self-esteem. We have made our role in Europe work. The new constitution has evolved from positive thinking. I wish the Minister of State, Deputy Roche, well and I hope his portfolio will not be changed, although there may be good reason to promote him.

Mr. Dardis: He might be hoping for a change.

Ms Ormonde: Due to the Minister of State's understanding of European affairs, he should be the key person to push this positive thinking forward. The media is now beginning to come round, but I ask them to adopt a positive role in the next six months because we are in a make or break situation. Citizens want us to work for them and we must make them understand that the EU constitution is for the good of Ireland. We are a great little country and we should not spoil it now. I am happy to leave this matter in the hands of the Minister of State because he will make it work. I

congratulate the Taoiseach, the Minister for Foreign Affairs, the Minister of State and all the senior staff who took part in Ireland's EU Presidency. As with all good stories, we must take care of it.

Question put and agreed to.

Sitting suspended at 6.55 p.m. and resumed at 7 p.m.

Business of Seanad.

Ms O'Rourke: I wish to propose an amendment to the Order of Business that the proceedings on Committee Stage of the Dormant Accounts (Amendment) Bill 2004 shall, if not previously concluded, be brought to a conclusion at 8.30 p.m. by one question which will be put from the Chair and which shall, in relation to amendments, include only those set down by the Government.

Acting Chairman (Mr. Cummins): Is that agreed?

Mr. Ryan: No.

Question, "That the amendment to the Order of Business be agreed to", put and declared carried.

Dormant Accounts (Amendment) Bill 2004: Committee Stage.

Section 1 agreed to.

SECTION 2.

Question proposed: "That section 2 stand part of the Bill."

Mr. Ryan: Will the Minister tell the House what particular malaise exists in the Government that means every Bill must have an undefined day for establishment? Are we really not capable of stating that a Bill will be brought into force a day, a week or a month after it is signed by the President? Every time the Government comes before the House with such a proposal in a Bill, it demonstrates a lack of confidence and the lack of an ability to plan or decide priorities because it can be a day, a week, a month or ten years before it comes into force. It is no way to run good, efficient, modern Government.

Minister for Community, Rural and Gaeltacht Affairs (Éamon Ó Cuív): I accept the Senator's point in principle. However, in this case there is a good reason for the provision. As the Senator is probably aware, a call was issued under the current legislation for proposals, some €300 million worth of which have now been received by the dormant accounts board, and, at its request, we have advanced permission to spend €60 million. However, there has been a considerable time

[Éamon Ó Cuív.]

delay in processing these applications and, off the top of my head, it has not yet approved €10 million worth.

Therefore, I would like to ensure the board can complete the processing of the current round of applications before we activate the changes proposed in this Bill. It is only fair to those who made submissions. It would not be possible for ADM or the board to give me an indication of when the process will be completed. Therefore, it would be wrong for us to have an arbitrary date as ADM might not yet have finished its appraisal of the vast number of applications it has received, out of which the current disbursements of €60 million are being made.

Mr. Ryan: What the Minister is effectively stating, although he will not do so outright, is that if he was not introducing this utterly unnecessary legislation, the existing board could get on with its business and there would be no delay. However, what he means is that because the Government is determined to get its hands on the slush fund, everything has been held up, decisions have been held up and resources will not be provided to the board because it will not be doing this job. Therefore, decisions on applications from all the good causes which are supposed to benefit from this money are being held up and the Government does not know when it will be ready to issue the slush fund. However, I predict it will be in approximately a year and half when the election is around the corner, for which the Government is waiting.

Éamon Ó Cuív: I regret the Senator's tone.

Mr. Ryan: It will get worse.

Éamon Ó Cuív: I am sure it will.

Mr. Ryan: Bí cinnte faoi sin.

Éamon Ó Cuív: The board has had made available to it all the money it has requested to deal with these——

Mr. Ryan: It does not have the resources to make the decisions. We all know it. The Minister will not give the money to the board because the Government wants it for itself.

Éamon Ó Cuív: An open call was made through newspaper advertisements last December, which closed early in the year. At that time, some €300 million worth of applications were received because the call was so open. The board asked ADM, which is an agency which operates under the aegis of my Department, to evaluate all the proposals received. The dormant accounts board asked for a further €30 million, making €60 million in total, to deal with these applications. However, ADM has to date only been able to process enough applications to approve less than a spend of €10 million. I am not

sure how long it will take ADM to process the rest of the €300 million worth of applications, which were made in good faith under the arrangements in place at the time between December and March.

Therefore, I want to afford ADM whatever time it needs, within reason, to process those applications and allow the dormant accounts board to disburse all the money it has asked for to deal with those applications in hand, which amounts to €60 million. This is the board's estimate of how much it will need to deal with that round of applications. When that round of applications has been processed, the next round will be processed under the new system.

We will, no doubt, debate the comparative merits of the new system and the old system under other amendments tabled by the Opposition. However, it would not be fair to cut off the current process in mid-stream. Therefore, I cannot give an establishment date that would effectively take away from the board which initiated this round the right to conclude its work on this series of applications. The process proposed is reasonable, fair and equitable with the money, which is as people generally expect us to be.

Question put and agreed to.

SECTION 3.

Question proposed: "That section 3 stand part of the Bill."

Mr. McHugh: On the basis that the existing board is an independent and transparent structure, and while I acknowledge that resources could be a problem if there was extra money to disburse, it could have been resourced fairly and squarely, even on a local or regional basis at ADM level. We would have had a more independent and transparent distribution of funding.

The board should retain its role in sanctioning and directing the disbursement of funds. The Bill seeks to politicise the allocation of moneys. Nobody can counteract that argument because it will be discussed in the Minister's Department and among his ministerial colleagues and money will be channelled into various worthy ventures. It is likely that some of the money will end up in the disabilities and educational sectors and that it will duplicate mainstream funding. Under the original scheme, groups on the margins would have been given an opportunity to get the money. This is a missed opportunity.

While putting in place a dummy board, a man of straw whose only role is to create a facade of independence and fairness, it is crucial that the board retain the right to disburse the funds. That is the reason I tabled the amendment.

Acting Chairman (Mr. Dardis): We are discussing the section.

Mr. McHugh: I have tabled an amendment.

Acting Chairman: The Senator is speaking about section 7 rather than section 3.

Mr. McHugh: It is section 7.

Acting Chairman: We are discussing section 3. We have not yet reached section 7. I asked if section 3 was agreed.

Mr. McHugh: From what sheet is the Chair operating?

Acting Chairman: We are dealing with the Bill, not the amendment.

Mr. McHugh: As a newcomer to the Seanad, which one——

Acting Chairman: When we come to section 7, I shall call the Senator to move his amendment.

Mr. McHugh: That is fine.

Question put and agreed to.

Sections 4 to 6, inclusive, agreed to.

SECTION 7.

Government amendment No. 1:

In page 4, line 33, to delete “(as amended by the Act of 2003)”.

Éamon Ó Cuív: This is a drafting amendment. The reason for the amendment is that the words “(as amended by the Act of 2003)” in the title of section 7 are superfluous as Part 5 of the principal Act was not amended by the Act of 2003.

Amendment agreed to.

Mr. Ryan: I move amendment No. 2.

In page 5, between lines 5 and 6, to insert the following:

“(a) to establish transparent criteria for the disbursement of funds under the *Dormant Accounts Acts 2001 to 2004*.”.

The Minister of State, who was mercifully spared the ignominy of having to defend the indefensible on a second occasion today, in his Second Stage speech, which I was spared the frustration of having to listen to, made a quaint but telling comment when he said: “we must be careful about using correctly taxpayers’ money”. This is what the Government thinks.

Acting Chairman: I hope the Senator is not going to indulge in a Second Stage debate.

Mr. Ryan: I am not. The amendment is about transparency in the process of disbursing funds belonging to other people which the Oireachtas decided should not be left to make money for the banks and should be used for appropriate causes.

It is now turned into taxpayers’ money. We have already moved away from what it is, part of the general fund. The Government will say it is not true.

Mr. Brady: It is.

Mr. Ryan: This is a process of talking about transparency. If one distils down what is contained in the Second Stage speech of the Minister of State and some of the more sanctimonious output from the Minister, one would believe there is a wonderful process of transparency. As far as I can figure out, and I have listened to the Minister, what they believe transparency means is that the board produces a plan of which the Government may or may not approve or amend. Therefore, the board is no more than an advisory board. Although there are already sufficient applications for €300 million worth of disbursements, the board will advertise again. It will then go through a process of political decision making with some technical advice and at the end it will tell us who got the money. They think that is transparency.

Let me explain what transparency means. It means one knows what categories of good causes can be assisted by this fund. It also means that one establishes an objective set of criteria which are open to independent scrutiny. It means people can see. Transparent has another meaning, that one can see through. Those of us on this side can see through what it is doing.

Mr. Finucane: Hear, hear.

Mr. Ryan: What transparent really means is that we know the objectives, the good causes or the good value issues and we know how they will be evaluated according to an objective scale. Ireland has spent 20 years trying to get a transparent method of working out which primary school was next to get its toilets fixed. We have a pretend transparency but it is progress. What we have here is hoo-ha, big advertisements, great publicity and a process which ends up with Ministers talking to Ministers about what to do with it. The amendment to the Freedom of Information Act specifically means that correspondence between Ministers is secret. Therefore, we will not know how the Ministers arrive at their conclusions. They believe, after all they should have learned from the controversies and the election, that transparency means letting people apply and telling them who got it. The only people who believe that is transparency is the Government.

As I said when I raised the question of the commencement date, what it is doing is delaying further the disbursement of funds that do not belong to it. It simply happens that the only way we can disburse these funds is through legislation which can go through the Oireachtas only when the Government supports it, but which if it was not the intention of anybody would become a slush fund for Government. The only way to

[Mr. Ryan.]

prevent it becoming a slush fund for Government is to have criteria that are open to scrutiny and that stand up to objective examination.

Amendment No. 2 seeks that the board establish transparent criteria for the disbursement of funds, not criteria for asking and telling people afterwards who got it. For example, if there are ten drugs task forces, tell us why three get it and three do not. There are drugs task forces and a number of other issues relating to illiteracy, homelessness and so on and the Minister has already said there are €300 million worth of applications when the maximum sum may well be less than that amount. Therefore, some people will get money and some will not. Transparency means we should be able to see how and why the decisions were reached and it should stand up to objective scrutiny. That is what real transparency means.

Nobody in Ireland believes any State body could be totally depoliticised. The only way to start this is to take the decision on who gets the money and who does not away from politics and put it into independent boards. That is what my amendment seeks. Only some extraordinary product of the 1950s or the 1960s would believe we have reached an acceptable level of transparency if we are told publicly who gets it and there is an annual report stating how it was additional to expenditure. There is no transparency here. The final decisions will be political and based on criteria which anyone in politics understands but which are entirely at variance with the spirit of the proposal from the DIRT review committee some years ago.

Éamon Ó Cuív: Funnily enough, I do not argue with much of the spirit or detail of the Senator's contribution. While I do not blame the board, one of the problems with the current arrangement was that it placed a very open advertisement. When one places an open advertisement, one inevitably receives a great number of applications. If we had left the application period open for another three months, we would probably have received requests for €1 billion in grants of all sizes. A great many people put a great deal of time into the application process but very few of them could mathematically have been successful as the level of grant disbursement required in one year would have exceeded the total fund.

We decided early on that we would allow for the dispersal of a modest amount of the fund every year. As there was no disbursement last year, the spend of €60 million should be considered as €30 million per annum. As applications for a total of €300 million were made, only one in ten applicants can be successful. Most community groups are tired of spending endless time and wasting consultants' time making up great plans and applying to find their chances of succeeding, irrespective of what criteria are in place, are negligible. I claim responsibility for having changed three fundamental aspects of the plan from the

original provisions. In the context of social and economic deprivation, we put in a reference to CLÁR and RAPID. We also included a particular reference to RAPID in the context of education. We have also made particular reference to those who suffer the most severe disabilities. The changes were made transparently and I will stand here openly and defend them. I made the changes because the RAPID areas are objectively the most deprived and CLÁR areas the most isolated while people with the most severe disabilities should have first call on the money.

Senator Ryan does me an injustice. I have discussed the proposed methodologies I intend to pursue with the implementation teams in the RAPID areas whose members feel a scatter-gun approach is currently in place. Early in this process, the Senator's colleague, Deputy O'Shea, asked in the Dáil whether the area implementation teams which have spent years drawing up plans for their own RAPID areas had any input into the evaluation of applications under the current system. The answer is "No" as the dormant accounts disbursement board and the mechanism we put in place—

Mr. U. Burke: The Minister has it all.

Éamon Ó Cuív: I do not have any say at the moment.

Mr. U. Burke: That is what the Minister claims. Who has the say in that case?

Acting Chairman: The Senator will have his chance to speak later.

Mr. U. Burke: It is very hard to listen to that.

Éamon Ó Cuív: To explain to the Senator, I have quite rightly no say currently. I have made no representation to or approached the board or any board member on the disbursal of as much as a cent.

Mr. Ryan: Under the old system we can find out about it, but under the new system we will not know as these matters will be outside the provisions of the Freedom of Information Act.

Éamon Ó Cuív: No. Using the methodology we used recently in RAPID areas, where adequate Exchequer funds cannot be provided, we can decide in consultation with area implementation teams, which are broadly representative of their communities, to apportion fairly and transparently a certain amount of funds to a particular need in cases of social disadvantage. Having discussed such measures with implementation teams and agreed that such funding is additional and unlikely to be forthcoming from the Exchequer, how could I politically influence a particular decision where they were 100% sure of succeeding?

Mr. U. Burke: Is the Minister open to suggestions?

Éamon Ó Cuív: Certainly. As it is the reason I stood for election, I defend my right as a politician to create coherence in the way the State moves forward.

The other issue is the ownership of the money. If we knew in detail who owned the money, those owners could claim it back. That would be their preference. The problem is that nobody knows who owns this money. It was placed in a special fund and is akin to taxpayers' money. Elected Members on all sides handle public money in trust. It is not our money. The money in the dormant accounts fund is not as different from taxpayers' money as some have claimed because the State underwrites all of it with a 100% guarantee. In the unlikely event that everyone whose money is in the fund claims the entire €200 million, the State will have to observe its legal guarantee to pay it out in full, irrespective of the amount disbursed previously. We should not forget that the ultimate underwriter of this money is the taxpayer.

I assure Senator Ryan that the Government does not want to do what he alleges. That is not the way I do my business. The Government wishes to use the mechanisms of the State, including area implementation teams and public services, to make assessments and generate proposals. Each sector should be told how much money is available to address each particular issue before proposals are sought. We can all agree that it would be much more effective to meet with all disability groups to agree priority areas for a certain year and the amount of money we will apply.

Mr. U. Burke: Now we are getting to the kernel of the matter.

Éamon Ó Cuív: Groups should be invited to make their applications having been informed of the proposed level of allocation and in the sure knowledge that as long as they follow the criteria set out, they can put in the time and effort with a 100% guarantee of success. I have operated many schemes on this basis.

Mr. U. Burke: The Minister certainly has, and reaped the rewards.

Éamon Ó Cuív: The system has been very successful in that the beneficiaries on the ground feel the approach is a much more satisfactory way to disburse funds than either of the traditional methods.

We have examined these issues in my Department. In respect of the once-off grants we give out, we receive 30 times as many applications as we can fund. A great deal of frustration builds up in these circumstances and there are better ways to proceed. Without access to the systems of Government, it is not possible to operate this

approach. Basically we are trying to bring into the frame all those public servants who have an incredible corpus of knowledge and expertise but who currently are sidelined in this procedure.

Mr. Ryan: When one raises an issue, it is a classic ploy of the Government and, I am beginning to believe, of the Minister, as in this case, to go off on a tangent. I did not ask him anything about what he talked about, although I am glad to hear it and I will deal with it later. I raised the issue of transparency——

Mr. U. Burke: What is that?

Mr. Brady: The Minister is fully transparent in what he is doing.

Mr. Ryan:——which he promptly ignored. He has not yet told me how objective criteria will be established. I will outline the process of disbursement of the moneys simply to explain what the Minister was talking about. The Bill states that the board shall prepare and submit to the Minister, before 1 June 2006 — that will be an interesting time as it will be in or around the next general election but I am sure that date is a coincidence — for approval a plan for the disbursement of moneys from the account. On the next page the Bill states that the plan does not take effect until it is approved by the Minister with or without amendment.

The first stage is that the Minister can approve or amend the plan. This will be prepared by the board which is supposed to give the Minister objective advice. Then, the Minister may, with the approval of the Government, amend the plan at any time after it takes effect. That is the Minister's second power. Then, the Minister shall ensure that the plan under this section is published in a form and manner that he may determine. This is the Minister whose actions are transparent who will decide how we are to be told about it.

The Bill states that after consulting the appropriate Ministers — which will be done in secret because the Government filleted the Freedom of Information Act — the Minister shall, not less than once a year, submit to the Government for its approval, with or without amendment, a proposal. This represents more power for the Minister. We do not know the criteria in this regard.

Acting Chairman: There are later amendments to this part of the Bill.

Mr. Ryan: The Acting Chairman allowed the Minister to deal with the entire issue and I am entitled to respond to it.

Acting Chairman: Yes, but other Members have tabled amendments and in deference to them we want to try to avoid debating them now.

Mr. Ryan: If some of the Members on this side of the House want me to stop, I will do so——

Mr. U. Burke: The Senator should keep going. He is hitting the nail on the head.

Mr. Ryan: —but I have picked up a considerable level of support from my colleagues in Fine Gael in my pursuit.

The Bill further states that when preparing the proposal, the Minister shall have regard to the approved plan. He is not bound by it. Where will we know how he has regard to the approved plan? We will not know because he will not publish the objective criteria. The Government may approve the submission with or without amendment and so on.

The issue in this regard is not all the fine things the Minister is talking about. We all agree that there may well have been structural problems with the original board. This is a new territory for us. The Minister may well be right about the need to tighten up some of these things, but the officials who are doing the work for the board are the same officials who will be back in Departments doing the same work. The Minister of State said that the work is currently being done by people on secondment. Why will it be suddenly much more efficient when it is done in Departments?

The truth is that it will become a political slush fund. It will be dressed up in fancy language and become a political slush fund. That is what the Minister for Finance said he did not want to happen, which is the reason he set up an independent board. My party and, I believe, my colleagues in Opposition want to return to a position where the criteria for allocating the funding are transparent at every phase and not susceptible to political interference. I cited five stages in the process where the Minister has the right to amend the plan, only one of which he has to publicise.

Mr. U. Burke: Regarding the disbursements plan, can the Minister reconcile what is stated in the proposed section 42(2)(b) of the principal Act—

Acting Chairman: The Senator should speak to the amendment.

Mr. U. Burke: I am dealing with the disbursements plan to which the Minister referred and I beg the indulgence of the Acting Chairman.

The proposed subsection (2)(b) states that the plan must be prepared in a form and manner in accordance with any guidelines and directions that may be issued by the Minister. Can the Minister reconcile that provision with a statement made by the Minister for Finance in the other House in 2001? He stated that to get away from the problem of having the Government blamed for having a slush fund, it had been decided to establish a board of trustees. He also said that this board would distribute the money subject to guidelines and without the direction from Government or Minister. How can the Minister explain his acquiring the power to direct in this

regard, as Senator Ryan said? It represents a U-turn from the position of the Minister for Finance in 2002 when he established this board.

This change is what the Minister of State objected to when I made a statement in this House earlier this year when we discussed dormant accounts. He came into the House like a raging lion and said that I was making personal accusations about him which were untrue. I had written a simple letter to the Minister, but he misrepresented the contents of the letter, which is on the record. Can the Minister simply inform us, without equivocation, why there is such a U-turn on disbursements policy under this Bill?

Mr. Finucane: I previously spoke on this matter during the Second Stage debate and I do not intend to elaborate on what the previous speakers said. I am disappointed with the outcome of this debate. The original suggestion regarding dormant accounts was made by the late former Deputy Jim Mitchell in his capacity as the then chairman of the Committee of Public Accounts. I was enthused by what the Minister for Finance said about it at the time when I was in the other House. I thought he was rather visionary in his approach that it would not be established as a potential slush fund. I thought there was a degree of objectivity in setting up the board separately.

However, I thought it was sneaky the way the decision was reversed on 19 December when the Houses were in recess. The Minister's colleague, the Minister of State, Deputy Noel Ahern, announced in a newspaper at the time that the Government was changing the ground rules with regard to it. The board, which was to be active in regard to the allocation of moneys, would now have very much a passive involvement and that role would very much revert to the Minister.

I am disappointed about this change. I remember when Donal Creed was Minister with responsibility for youth and sport a long time ago and the then policy in regard to lottery funding. We talk about transparency in regard to allocations, but the reality of what happens on the ground in regard to allocations to the area of youth and sports is that if one approaches a Fianna Fáil Deputy, he or she will help one to fill in the proposal form. The Deputy will then meet the general group, whether they be members of a GAA club or members of another group, and agree to take the application further. The Deputy will then arrange for a deputation to go through the mechanics of the process to bring it to the level of the Minister. The relevant Department will indicate that details of the allocations of the funds will be published on a website. However, in reality what happens on the ground is the appropriate Deputy is tipped off a few days in advance and will notify the appropriate people that he or she does not know the specific amount but that funding is on its way and the group has been looked after. That is what is happening in this area and it seems to be an accepted norm.

With regard to what the Minister for Finance said originally in this regard, I said that we were changing the ground rules in regard to this, as a board would make the decisions. The Minister of State said that the board received allocations or submissions which could total up to a €1 billion. Some €222 million is available under the dormant accounts fund. If that is the case and if one was concerned about it, somebody, in consultation with the board, should have determined the criteria in regard to the applications for funding. It could have been given out over an evolving period, but there is a deep suspicion that what happened in regard to the lottery funds will happen in regard to the dormant accounts fund and the same criteria will apply as in the past.

Again, it will come down to from where the application comes, the Deputy involved and the presentation made. This is a way of getting elevated within the pecking order in the system, even if an application does not conform to the criteria governing educational disadvantage or otherwise. These are the same circumstances as obtain in respect of national lottery funding for sport. There will be another layer of largesse for the spending of which the various Government parties will take credit. That is not transparent and Senator Ryan is perfectly correct in this regard.

The Minister spoke for a long time, trying to justify his position. He can talk all he likes about this issue, obfuscate it and put a spin on it, but it is another political slush fund. It is regrettable and the Minister is contradicting what he originally stated on this subject. In this regard, let us consider an article that appeared in *Comhairle's Relate* newsletter, an excellent monthly publication that outlines areas of concern to politicians and others. The Minister made his announcement on 19 December and the article was published in January. It stated all the criteria originally envisaged that would apply regarding the dormant accounts fund and we assumed the rules and regulations that would apply would be those that were supposed to apply. We know what happened in reality.

There was a certain amount of deception regarding the manner in which the announcement was made on 19 December. It was made during the Christmas recess when the House was not sitting. The Minister can apply all the spin he likes but the fund is another political slush fund for which he, other Ministers and Deputies can claim credit subsequently.

Mr. Brady: It would be useful if we could return to the amendment and the question of transparency. This Bill is totally transparent.

Mr. Ryan: We can see through it all right.

Mr. Brady: I did not interrupt the Senator. I have listened to the arguments but the provisions are in black and white. The agency will report to the Minister, who will then lay the results of the report before the Houses of the Oireachtas. It is

totally transparent. I realise that the Opposition parties have not been in Government for some years but if they really believe any Government would, in this day and age, get away with using a slush fund, as they call it——

Mr. U. Burke: The Government got away with it for seven years.

Mr. Brady: It is totally transparent. If the Opposition believes that any Government, regardless of how it is constituted, would get away with what it is suggesting, it is completely wrong.

Éamon Ó Cuív: I am sorry that my explanation of how one creates the transparency the Senator requires passed over his head.

Mr. Ryan: It passed through my head and left nothing behind.

Éamon Ó Cuív: What will happen, as happens already regarding other schemes in my Department, is that there will be clear criteria by which the various programmes will be adjudicated. These will be public knowledge and the Senator and the dormant accounts board will be able to measure absolutely when reviewing each year's work whether the disbursement method was transparent, objective criteria existed and the decisions were objective.

Under the legislation as it stands, the Minister has the power to vary the plan. We have exercised that power and I have explained in this House how we have done so. Furthermore, under the legislation as it stands, I can give any direction I want to the board to disburse money for any purpose I see fit.

Mr. U. Burke: On a point of order, will the Minister examine the record pertaining to when he last dealt with this item in this House to see what he said at the time——

Acting Chairman: That is not a point of order.

Mr. U. Burke: ——and how it contradicts with his last statement? It is unbelievable that the Minister can turn this on its head within such a short period.

Éamon Ó Cuív: What I said then was that as long as a board is independent, it remains independent.

Mr. U. Burke: For as long as.

Éamon Ó Cuív: However, where the decision rests with the Minister, it will be made fairly, objectively and properly. That is what I said.

Mr. Ryan: Just like Punchestown.

Éamon Ó Cuív: If the Senator checks the record in terms of decision making and the pro-

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cedures followed in my Department, he will find that I inherited in 1997 some schemes from the previous Government that had not——

Mr. U. Burke: He created a few more.

Éamon Ó Cuív: I created many more schemes and they all operate according to very clear, transparent criteria. In many schemes the decision making on the individual items is not made by me but by the relevant groups. The main advantage of the proposed system is that, rather than being dependent on a small number of civil servants and contract workers in ADM, we will be able to bring the expertise of the whole system to bear on the process and therefore it will be possible — it is not possible at present — to discuss with the disability groups their priorities before we decide on the exact disbursement process. We will be able to use all the agencies of State to engage in the advisory process, to which the disbursement board does not have access because of its structure. I am absolutely confident that, for as long as I am Minister, I will be able to stand over every decision made in terms of its objectivity and fairness.

Mr. U. Burke: The Minister has always done that.

Éamon Ó Cuív: I have. It has always stood to the test.

Mr. U. Burke: The Minister——

Acting Chairman: Senator Ulick Burke should stop interrupting.

Éamon Ó Cuív: Moreover, the Senator's own colleague, Deputy McGinley, who attended a committee of the Dáil——

Mr. U. Burke: We heard this.

Éamon Ó Cuív: Yes. Let us put it on the record.

Mr. U. Burke: The Minister should quote himself and not mind Deputy McGinley, who is not in the House.

Acting Chairman: We must have order.

Éamon Ó Cuív: He attended a committee of the Dáil regarding scéim na mbóithre áise, the moneys pertaining to which I accept had been badly spent in the past. He said the reinstatement of that scheme, which had been abandoned while the Senator's party was in Government, was welcome. He complimented me on spending the money fairly.

Mr. U. Burke: The majority was spent in his own constituency in west Galway.

Éamon Ó Cuív: If the Senator checks the parliamentary question——

Mr. U. Burke: I brought them in and showed them to the Minister——

Acting Chairman: Senator Ulick Burke really must stop interrupting continually. If he has a point to make, he should make it when the opportunity arises.

Mr. U. Burke: ——in the House under those circumstances.

Éamon Ó Cuív: If the Senators check yesterday's Dáil record, they will note that I replied to a parliamentary question in respect of the disbursement of Gaeltacht capital moneys and that no allegation can be made against me of being biased in favour of County Galway.

I am absolutely happy we are not guilty of the malign intent the Opposition is trying to pin on us and that our proposals, in terms of criteria and method, will stand the test of time absolutely. Others will have to answer for what happens under other Governments.

Labhrás Ó Murchú: One reason we are having such a robust debate on this amendment is because it is central to the case of my colleagues on the other side of the House.

Acting Chairman: We are having a robust debate but I am not sure it is on the amendment.

Labhrás Ó Murchú: They are concerned with the issue of transparency. Senator Ryan is correct and has set out his stall regarding his definition of transparency. I am not sure there is a great divergence of views but there is a perception, as distinct from a definition, of what transparency means. In this case, perception is just as important. The Minister does not need my defence but I reiterate the point I made in his absence on Second Stage that he is one of the success stories of the Government not only in his constituency, but throughout the country. I said this during the Second Stage debate and I repeat it now. I know this because I keep my ear to the ground. It is important to recognise from where he is coming.

I take the Minister at his word when he describes how this operation will happen. I have been involved in community activities. I have made applications to different funds and been unsuccessful on many occasions. Having spent money on consultancies and had its expectations raised, I know how discouraging it is for an organisation to have an application refused. The Minister has given a commitment that criteria will be put in place to measure where the funding goes. That also applies to the board as it exists at present. I do not take from the board or from what it has succeeded in doing but we cannot ignore the fact that the Minister for Finance made his point in the Dáil in the context of a certain

sum of money. There is a huge amount of money there at present and it will increase. It is right to interact with existing agencies, whether local authorities or Departments. The advertisement appears to have been relatively open. If it invited a large number of applications, they would be impossible to administer. We must adapt to the new situation as we find it.

I welcome this robust debate. It underlines the mechanisms at our disposal for monitoring how this will operate. That is what the Oireachtas is for and what representation is about. I do not apologise for making representations on behalf of an individual. It is our role to do that and I am sure all public representatives do the same.

Mr. U. Burke: The Minister takes exception to that suggestion.

Labhrás Ó Murchú: This amendment is taking so much time because this aspect is central to the case being made.

Mr. Finucane: The Minister indicated that Deputy McGinley said he was fair minded. When the criteria are published and I write to him regarding someone who conforms to the criteria, will he give me, as an Opposition representative, the same attention he would give a Government Member?

Éamon Ó Cuív: I can answer that question in the affirmative. Any Deputy, Senator or public representative has always got the same treatment from me. If Senator Finucane checks with his colleagues, he will find that to be a fact.

In operating a scheme I might decide, after consultation, to spend, for example, €4 million on adult education. In many of the mechanisms I am now operating, the courses which benefit from the money are not decided by me. Today, for example, I had meetings with Departments to draw up schemes under the RAPID programme. In all of those cases there tends to be a double lock system but the common lock in all of them is that the local area implementation team must agree to whatever is being done.

Some Senators may be aware that we recently did top ups of the capital sports grant in RAPID areas. That was a purely mechanical operation. We gave a 30% top up subject to two conditions. The first was that we would not give more money than applicants asked for and the second was that the amount did not go over 80%. The projects had to be in RAPID areas and be endorsed by the local area implementation team. I did not have any choice in the matter. Once the mathematical formula had been applied there was no point in anyone making a representation to me. The grant payments were decided by a mathematical system.

I accept the principle of what the Senator said. It is important that the grants are made according to criteria. However, I have a reservation about putting that into law. If the board was legally

obliged to write the criteria it would have to have done a huge amount of detailed work in consultation with all the Departments to get the necessary information to draw up the criteria to operate the scheme. In many cases, such as the AIT schemes, we piggy-back on the State's evaluation mechanism, which is independent of Ministers. We use Departments for payments and for all sorts of reasons. We can do that if a scheme is part of the mainframe system, but not if the Accounting Officer accounts directly to the Dáil.

I will consider an amendment which would oblige the Minister to make the criteria for the assessment of applications publicly known. That would allow both the public and the board to measure what the scheme is doing against those criteria. Senators should remember that if Ministers did what we are alleged to do, the dormant accounts board would scarify us at the end of the year. It will be there as a watchdog.

Mr. McHugh: The board will be appointed by the Minister. Its members need not be involved in the community sector.

Mr. Brady: That does not strike them dumb.

Mr. McHugh: I do not say that but the Minister is not obliged to appoint people from the community and voluntary sector to the board.

Acting Chairman: Senator Ryan indicated his wish to speak next.

Éamon Ó Cuív: At the rate we are going we probably will not reach Senator Ryan's amendment.

I do not wish to discuss amendments we have not reached. There is a dilemma here. There is a problem in board members being proposed by various groups who might be beneficiaries of the scheme. There is also a problem if they are appointed by the Minister. I would like to debate this dilemma in detail because I agree that we must be careful in how we appoint boards and make sure we put the best people on them. One of the first things I came across when I became a Minister was a procedure for evaluating funding applications. However, some of the applicants were, in fact, evaluating their own applications. Having got legal advice, we started the procedure all over again. There are difficulties there. I accept both sides of the argument and I am open to the question.

I will consider a mechanism which will oblige the Minister to make public the criteria for assessing the applications. My experience in operating such schemes is that there is a need to make sure that a scheme operates as designed. To do that one must get considerable information before the scheme is designed. For the board to do that at the beginning of the year would make it impossible to maximise the benefit of the funding for the recipients.

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I am anxious to allay fears that the criteria and selection will not be objective. I favour telling applicants how much money is available and what the criteria are before they apply, so that they know how much to apply for and that the only tests the Department will apply are whether the applicants meet the criteria and have applied for the correct amount of money.

Senator McHugh will be familiar with the primary schools playground enhancement scheme in CLÁR areas where grants of €10,000 are available. Applications for €15,000 had to be sent back. Every school in the CLÁR area will benefit by €7,500 if they choose. I do not decide what schools get the grant. As long as they fulfil the criteria they are through the hoop. Any primary school can be guaranteed to qualify for the grant if it is in a CLÁR area and applies for less than €10,000 for the purpose of the scheme. That is the kind of methodology I favour because it is effective for the recipients and it saves money.

It often seems that for every €100 million we spend, the consultants get €20 million and in some cases they get the entire €100 million. Those who win get a little, everyone else loses and the consultants are the only ones who consistently make money.

Acting Chairman: We have now spent an hour on amendment No. 2 so I ask that we dispose of it.

Mr. Ryan: I welcome the fact that the Minister is moving in the direction of transparent criteria. That is progress and if he had said that in his first reply to the amendment, we would not have been here for the past 45 minutes discussing many other things. If the Minister had said he was prepared to consider an amendment to make his criteria transparent, I would not have a huge difficulty with the board, although it is the simplest way to achieve transparency. I will withdraw the amendment with a view to reintroducing it on Report Stage.

I cannot understand why, if the criteria for deciding disbursement are objective, he insists that the Government may still amend the submission on disbursement before it decides on it. If the criteria are objective, there is no need for the Government to have the right to amend the proposal because it will be done according objective criteria. The Government can amend the criteria as part of its proposal but once the criteria are written there should be no reason for it to amend the final submission.

Éamon Ó Cuív: We are talking at cross purposes.

Mr. Ryan: The Minister makes a submission to the Government for the disbursement of funds and the Government may approve the submission with or without amendment. Why is there a need

for the Government to have the right to amend something which has been objectively set?

Éamon Ó Cuív: I will come back on that point.

Mr. U. Burke: On what the Minister said with regard to the fairness with which he will deal with all representations to him, I remind him of what he said in the House. At, Official Report, 7 April 2004, vol. 176, col. 276, he said:

It is only a short time ago that Senator Ulick Burke was strongly critical in the House of the proposals of the Government to change the governance of the dormant accounts. He was loud in praise of the concept of independent statutory boards keeping things away from politicians. One can imagine my utter amazement when last week I received a letter from the same Senator Burke requesting funding from me, under the dormant accounts scheme, for an application from his constituency.

. . . It would appear that Senator Ulick Burke has a major problem with overt political controls operated in a fair and transparent manner, but has no problem with covert political interference.

The Minister said that in response to representations I made to him and it now rings hollow when he comes in here and says he will treat all representations equally. If he can stand by that statement and then say what he did tonight, I am in complete agreement with Senator Ryan.

Amendment, by leave, withdrawn.

Mr. McHugh: I move amendment No. 3:

In page 5, between lines 5 and 6, to insert the following:

“(a) notwithstanding any other provision of this enactment, to provide final sanction for the disbursement of moneys if satisfied that such disbursement is within the policies and principles of this Act and the Principal Act.”.

This amendment is in a similar vein. At the outset of the Minister’s tenure in the Department of Community, Rural and Gaeltacht Affairs, he talked a fine talk about maintaining and sustaining rural communities and services, ensuring that they remain vibrant and funding communities in CLÁR programme areas. He talked about broadband and other great ideas, but he missed a golden opportunity by failing to stick with the existing board which was working.

An Cathaoirleach: Are we talking about the board now?

Mr. McHugh: We are talking about transparency. The Minister missed an opportunity to stick with the existing board and it is politicised now whether we like it or not. Senator Ryan is satisfied that the Minister is moving on his

amendment but I am not because the €220 million will be gobbled up by Departments and will enter mainstream funding. Small community and voluntary groups working with people with disabilities will miss out. The board should retain its role in sanctioning and directing the disbursement of funds.

This Bill politicises the allocation of moneys while putting in place a board of straw the only role of which is to create a facade of independence and fairness. It is crucial that the board retains the right to disburse the funds.

The Minister said earlier that he is damned if he does and damned if he does not. Will he give the money to the Ministers who will take it from those involved in the community sector by asking people in the community to contribute towards their own projects? The Area Development Management Limited and Combat Poverty Agency did not do that, they had highly competent people distributing millions of euro through the peace and reconciliation programme without politicising allocation. That was the mechanism the Minister should have used. He missed a golden opportunity and that is why I have tabled this amendment.

Éamon Ó Cuív: I am getting worried about how little faith politicians have in their own integrity.

Mr. Ryan: It is just in Fianna Fáil that we do not have faith.

Éamon Ó Cuív: Senator Ryan may not have faith in Fianna Fáil but it appears that over the years, the public has consistently had faith in it.

Mr. Ryan: That is changing fast now.

Éamon Ó Cuív: The Senator will, no doubt, point to the recent local elections. When the Labour Party is as large as we are following the local elections, it will be delighted.

An Cathaoirleach: I would prefer if we returned to the subject matter of the amendment.

Éamon Ó Cuív: I accept the point, however, and I will look at section 44(3)(a), where there might be some ambiguity. I am jumping ahead but the reasoning behind this is that if a measure comes back and there is a flaw in it, it is reasonable that the Government, having decided on it, can amend it.

Éamon Ó Cuív: I accept there might be some implication that we could change projects. I do not want CLÁR to give that impression. I will consider that between now and Report Stage because that was not the intention. I accept that meaning could be taken from it.

I will explain what worries me. I set up a scheme under CLÁR for topping up water schemes and it has been very successful. Very simple criteria were set down. If the scheme cost

over a certain amount and if the local authority signalled that the best way of providing water for that area was to provide 100% top up, we would provide that top up once the householder paid a certain fixed amount. The first part was easy because tendered prices were supplied by the contractors and these could not be inflated because they were tendered competitively.

A member of the Senator's party who is a county councillor, a member of *Údarás* and a very good friend of mine, Pól Ó Foighil, tipped me off that due to the creation of the scheme, the road restoration prices had suddenly gone through the ceiling, in other words, the county council was asking me to do the road as well as the water. He was involved in the scheme and he knew about it. I referred the scheme to the Department of the Environment, Heritage and Local Government which referred it to their officials who inspected the works. They found the county council had raised the specification for the water pipe. The officials advised me that these schemes should be specified according to the minimum criteria laid down by the Department for such schemes rather than being a deluxe model. They advised me of a very useful rule that no more than 25% of the cost of the scheme should be spent on road restoration and on ancillary costs, in other words, engineers and other services who could name their own prices. I amended the criteria in order to protect the State's interests and to close a loophole by which the scheme could be abused. The scheme has been incredibly successful.

People often use these schemes in a way which was not originally intended.

Mr. Ryan: That arises locally.

Éamon Ó Cuív: If I find that arises, I try to insert another rule to stop misuse of a scheme. I have no problem with changing criteria in an open way and publishing it in order to close a loophole. The integrity of the entire scheme is protected in that way. We tried to find a balance between having all the required objective criteria and good systems and flexibility to take remedial action where something does not work out according to that which was agreed. For example, a scheme may be introduced to provide very sophisticated motorised mobile equipment for people with serious disabilities or special computers and it is then discovered that a target group exists which was not considered. If an amendment is proposed to include that very worthy group of people, not an individual, there must be some mechanisms in such cases and without too much convolution to allow the schemes to be changed. We had an internal debate to try to develop this model.

The biggest change is that instead of an unfocused approach there will be a more focused approach to spending the money in consultation with the recipient groups who know their needs best. One of the reasons for that approach is if an

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advertisement is placed in the newspapers asking for submissions, sometimes those who are the best at making submissions are not necessarily those with the greatest need and those with the greatest need are sometimes the weakest. I want to identify the needs and direct the money to where the need exists. I have no other intention. I will examine that section of the Bill because I accept it is open to misinterpretation and may be open to abuse.

Mr. McHugh: I thank the Minister for being open in his response. The issue of transparency is important in this matter. It is important to instil confidence in the process. I suggest the peace and reconciliation programme could be part of the template as it involved different measures and a process for application. The group which is not in a position to fill out a competent application should be given direction. There are county enterprise boards, Leader groups and county development boards which have people working in the bureaucratic machine. I suggest they could facilitate many of the groups.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendments Nos. 4, 9, 10, 12, 13 and 15 are related and may be discussed together. Is that agreed?

Mr. Ryan: I am sometimes reluctant to agree to grouping of amendments. It is very rarely in my years in this House that a Seanad Bill has been guillotined on Committee Stage. This Bill will not reach the Dáil before next autumn.

An Cathaoirleach: That was agreed on the Order of Business.

Mr. Ryan: It was agreed against my wishes and it was agreed again in a motion put by the Leader at 7 p.m. It was against my wishes then also. It is the wrong way and a poor precedent.

An Cathaoirleach: Is it agreed to take the amendments together? Agreed. I ask the Senator to move amendment No. 4.

Mr. Ryan: I move amendment No. 4:

In page 5, to delete lines 7 to 10 and substitute the following:

“(a) to prepare, approve and carry out a plan for the disbursement of moneys under Part 6, in accordance with the criteria established by it.”.

I do not wish to spend much time on these amendments because we have discussed the subject matter of amendment No. 4 already. It is simply to repeat what Senator McHugh said. My consideration and concern is about the objectivity of the evaluation and the decision making. If the criteria are published in advance and open to public

knowledge, my concern is whether the correspondence between Ministers on the matter will be covered by the Freedom of Information Act following the Government's amendment to the Act. Correspondence between Ministers and the board would be public knowledge or could be easily made public by ministerial order under the Freedom of Information Act. However, because it is now between Ministers, it will be excluded under the Act. Even though I accept the offer by the Minister and am prepared to listen, I still believe we will be left with a problem.

Éamon Ó Cuív: Letters I write to Ministers are not generally on the subject to which the Senator refers.

Mr. Ryan: The Minister can do as prescribed in the amendment.

Éamon Ó Cuív: I operate these things already. We have, for example, a good, open template in CLÁR and RAPID. I invite Senators to look at the printout of how all the schemes operate under CLAR. It is on my Department's website. They will find that I do not personally make any decisions, except as to the group allocation of money under each heading. In other words, I decide whether to allocate €1 million, €2 million, €3 million and so forth but do not make any decisions on any of the schemes. Everything is done using a scheme and a method as Senators will note if they care to examine the CLÁR printout. We are developing a similar system in RAPID.

I assure the Senator that decisions tend to be taken at meetings between officials in my Department, sometimes accompanied by me, and officials of other relevant Departments, sometimes accompanied by the relevant Minister, all of which are minuted. The work is done in an open and transparent manner.

The intention of the legislation is not to make decisions on projects. We will make political decisions, subject to review every year by the board as to good practice. If €12 million is available for social and economic disadvantage, of which a specific amount will be allocated to RAPID areas, we will consult the AIT schemes and, having done so and secured their agreement for our broad approach, make a political decision on whether to allocate €2 million, €3 million or another sum for a certain measure, as opposed to specific projects. We will then inform those concerned how much has been allocated before disbursing that sum.

I will give an illustration of the type of approach I am trying to develop. Under the RAPID scheme we divided the money between strands one and two. Each strand one area was allocated the same amount, while lesser amounts were allocated to each strand two area because deprivation levels in the latter areas were lower. It was inferred, however, that this was not a thorough approach. As I did not have a better approach, we called in the Central Statistics

Office and an expert on deprivation levels who carried out an analysis. We are trying to develop a model to allocate money to each area based on a multiplier, namely, the population of the area in question multiplied by the deprivation index for the area. The areas with the largest population and highest deprivation index will, therefore, receive most money.

This system will be mathematical and fair. An area such as Tuam, for example, which has middle and upper class areas as well as more deprived areas will, as a result, have a lower town deprivation index. The population will then be multiplied by this index to give a result. This approach is open and transparent and reflects the models already developed under RAPID and CLÁR. The type of model we want to model for the dormant accounts is an exact replica of the highly transparent approach in these other programmes.

All the systems we operate under these schemes are available on the website. We are developing the system for RAPID but all parties, specifically the 45 AIT schemes, each of which has 20 or 30 members representing a broad spectrum of society, know exactly how we have operated the RAPID scheme. I regularly meet the representatives of the AIT schemes and I assure Senator Ryan that they are satisfied our approach is fair. While they would like more money, as we all would, they agree they have been part of a process.

Representative of the AIT schemes have also been enthused that the same system applied under RAPID will apply to dormant accounts, that they, as the representative groups in the RAPID areas, will have a say and that the process will in some way match their plans for projects which are unlikely to materialise in the foreseeable future without Exchequer funding. This is the type of methodology we hope to introduce. In time, I hope the Senator, who is a fair-minded man, will accept that this and nothing more is what was intended.

I agree there is a political element. As a politician, I honestly believe that there is a political gain to be made from doing my job well and I would never go behind a door to say so. Surely the whole idea of elections is that those who run the country well are rewarded while those who run it badly, unfairly or in a discriminatory manner get their just rewards.

Mr. Ryan: The Government recently got its just rewards.

Éamon Ó Cuív: That is not the case because we are still in Government. Is this not what democracy is about?

Each year, we will answer to an independent board which will make an evaluation and, ultimately, to the electorate. The electorate are not fools and I guarantee that if we were to do the crazy things outlined by Senator Ryan and were slated by the independent board, the electorate would let us know at the next election.

Amendment, by leave, withdrawn.

Mr. Ryan: I move amendment No. 5:

In page 5, between lines 10 to 11, to insert the following:

“(b) to prepare and approve detailed proposals for disbursement under the *Dormant Accounts Acts 2001 to 2004*,”.

Éamon Ó Cuív: We have discussed the amendment.

Amendment, by leave, withdrawn.

Mr. McHugh: I move amendment No. 6:

In page 5, to delete lines 30 to 35 and substitute the following:

“32.—(1) The Board shall consist of a chairperson and 10 ordinary members appointed by the Minister and shall include—

(a) an officer of the Minister not below the rank of principal officer,

(b) a person who, in the Minister’s opinion, represents the interests of the financial services industry,

(c) 4 persons who—

(i) in the Minister’s opinion, have knowledge of, or experience in relation to, the purposes for which disbursements may be made, and

(ii) are appointed by the Minister after consultation with the organisations that the Minister considers to be representative of the purposes so specified,

and

(d) 4 persons who, in the Minister’s opinion, have knowledge of, or experience relating to any other matters that appear to the Minister to be relevant to the Board’s functions.”.

It must be a condition that at least four members of the community and voluntary sector are appointed to the board. This matter should not be discretionary but the question of how it is done is a matter for another day. It is essential that the community and voluntary sector is involved in the board because it is involved in the areas in which the money will be distributed and consists of competent people.

Éamon Ó Cuív: I agree with the spirit of the amendment. There is no way I would appoint a board that was not representative or did not include high calibre people, particularly from the voluntary and community sector. It would not enter my mind not to appoint the number of representatives from the voluntary and community sector specified in the amendment. Normally, in appointing a board one seeks competent, capable people, who are not deeply involved in the corporate politics of the sector in question. In travelling to various events around the country I seem

[Éamon Ó Cuív.]

to see the same people at all of them, but they may not be the people delivering most on the ground.

I accept there is a dilemma in this regard. I remember, for example, being told to set up interview boards and so on when I was dealing with the issue of the Coimisinéir Teanga. The problem I had with this approach was that the persons I considered most appropriate for the position may not have applied for it, whereas I was confident they would apply if I approached them and told him I considered them eminently suitable. I get things right and wrong but in the case of the Coimisinéir Teanga most people have said I picked well——

Mr. Ryan: I agree.

Éamon Ó Cuív: ——and carefully and that the person selected is of the utmost integrity and independence. I am not sure, however, that he would have considered himself a candidate if I had established an extensive interview system. I remember meeting him by chance on a Galway street one week before the nomination. He asked me when I would appoint the Coimisinéir Teanga to which I replied I would do so in due course. I remember walking away smiling to myself and thinking little did he know that he was the person I considered by far the most eminently suitable for the position because he was young, vibrant, capable, independent and had a massive track record. I accept the principle of the amendment.

Mr. McHugh: Does the Minister accept the amendment?

Éamon Ó Cuív: No, but I will reflect on it overnight.

Mr. Ryan: There is no rush as we will not take Report Stage until the autumn.

Éamon Ó Cuív: I will reflect on it. The issue is one of balance. I remember from my time as Minister of State at the then Department of Agriculture, Food and Rural Development that I always had reservations about the idea of particular organisations nominating people to boards. I am not keen on that approach. Some of us believed that this system, which I accept was introduced for good reasons, has not served well, for example, in the case of An Bord Pleanála.

There are also sometimes problems with gender equity in that system. Senator McHugh has a valid point and it comes back to the issue of trusting the integrity of Ministers to make good appointments. The systems in place have thrown up their own quibbles and quirks and have not always had the approbation of the public in their implementation. I shall consider this issue before Report Stage.

Mr. McHugh: I welcome the Minister of State's comments and look forward to hearing the result of his deliberations.

An Cathaoirleach: As it is now 8.30 p.m, I am required to put the following question in accordance with an order of the Seanad of this day: "That amendment No. 6 is hereby negated, that the Government amendments indisposed of are hereby made to the Bill, in respect of each of the sections not disposed of that the section or, as appropriate, section as amended is hereby agreed to, that the Title as amended is hereby agreed to and that the Bill as amended is accordingly reported to the House."

Question put.

The Seanad divided: Tá, 24; Níl, 13.

Tá

Bohan, Eddie.
Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Dardis, John.
Dooley, Timmy.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Kitt, Michael P.
Leyden, Terry.
Mansergh, Martin.

Minihan, John.
Mooney, Paschal C.
Morrissey, Tom.
Moylan, Pat.
O'Brien, Francis.
Ó Murchú, Labhrás.
O'Rourke, Mary.
Ormonde, Ann.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.

Níl

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Ulick.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.

Finucane, Michael.
Hayes, Brian.
McHugh, Joe.
O'Toole, Joe.
Phelan, John.
Ryan, Brendan.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators U. Burke and Ryan.

Question declared carried.

An Cathaoirleach: When is it proposed to take Report Stage?

Ms O'Rourke: Next Tuesday.

Report Stage ordered for Tuesday, 13 July 2004.

Equality Bill 2003 [Seanad Bill amended by the Dáil]: Report and Final Stages.

An Cathaoirleach: This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 103, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question, "That the Bill be received for final consideration", the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators' convenience, I have arranged for the printing and circulation of the amendments.

I propose to group the amendments as follows for the purpose of debate: subject matter of amendments Nos. 1, 40, 42 and 43; subject matter of amendments Nos. 2 to 13, inclusive; subject matter of amendments Nos. 14 to 28, inclusive, and amendment No. 41; and subject matter of amendments Nos. 29 to 39, inclusive.

I remind Senators the only matter they may discuss is the subject matter of the amendments made by the Dáil and they may contribute only once on each group of amendments.

Question proposed: "That the Bill be received for final consideration."

Minister of State at the Department of Justice, Equality and Law Reform (Mr. O'Dea): I thank Senators for their contributions to this legislation, which were well considered and constructive. I had the pleasure of bringing this Bill before the Seanad only five months ago. I was happy to accept substantive amendments in this House and I subsequently accepted further amendments in the Dáil, having reflected on a number of issues first raised by Senators. The Bill has been improved greatly by this process.

A total of 43 amendments were made in the Dáil to the Equality Bill 2004, 28 of which were in respect of Part 2 of the Bill amending the Employment Equality Act 1998. A number of these were minor, technical amendments or clarifications while others addressed more substantive issues. Some 11 of the amendments to the Employment Equality Act 1998 related to the transfer of jurisdiction of discriminatory dismissal cases from the Labour Court to the Equality Tribunal, which is now provided for in the Bill. Some 11 of the amendments were in respect of Part 3

of the Bill amending the Equal Status Act 2000. In addition, four amendments were in respect of Parts 1 and 4 of the Bill arising in relation to amendments to the Pensions Act 1990 under which occupational pension matters arising from the equality directives have been implemented.

Amendments Nos. 1, 40, 42 and 43 provide for amendments to the Pensions Act 1990. This is the case because the provisions of the race and framework employment directives, as they relate to occupational pensions, were implemented by amendments to the Pensions Act 1990, provided for under the Social Welfare (Miscellaneous Provisions) Act 2004. In a number of cases the amendments to the Pensions Act refer to provisions of the Employment Equality Act which are the subject of amendment under the Equality Bill 2004. In accordance with legislative procedure it was not possible in these cases to refer to the provisions in question at the time of passing of the Social Welfare Act. Accordingly, the necessary provision is being made in the Equality Bill under Part 4, section 66. The new section 66 amends the relevant references in sections 65, 81E, 81F, 81H, 81J and the Fourth Schedule of the Pensions Act 1990. Consequential amendments to the Long Title of the Bill and to section 1 of the Bill to take account of the new provisions were also necessary.

Amendments Nos. 2 to 28, inclusive, and 41 provided for a range of amendments to the Employment Equality Act, many of which were technical in nature. Amendments Nos. 2 and 10 were introduced to clarify the way "relative seniority" may be determined for the purposes of section 34(7) of the Act of 1998.

Under section 34(7) of that Act, an employer may give different rates of pay and different terms and conditions of employment to employees based on their relative seniority or length of service in a particular post or employment. It was brought to my attention that in some employments, where all other factors are equal in determining relative seniority based on length of service, such as where a number of staff are recruited to the same category of employment at the same time, collective agreements may be in place which allow a "tie-breaker" to be applied based on the employees' relative ages on the date of recruitment to the post. In these situations, the limited circumstances in which they would operate, and subject to their being collectively agreed, section 23 of the Bill now provides for a new subsection (7A) in section 23 of the Act validating any such terms in a collective agreement. A consequential amendment to section 3 of the Bill, providing for a definition of "collective agreement" in section 2 of the Act, has also been made.

Amendments Nos. 3 to 6, inclusive, to section 9 of the Bill amending section 16(3) of the Act of 1998, which delete four of the seven factors originally listed as relevant to determining "dis-

[Mr. O'Dea.]

proportionate burden” on an employer, were introduced on Committee Stage in the Dáil in response to concerns expressed in the debate on the Bill in this House. On further consideration of the point as raised, I agree that this provision should reflect the exact provision of the framework employment directive in this regard and should refer only to factors specified in the directive, that is, financial and other costs entailed, the scale and financial resources of the employer's business and the possibility of obtaining public funding or other assistance.

Amendment No. 7 was made to section 10 of the Bill amending section 17 of the Act of 1998, which provides for the exclusion from the scope of the Act of actions taken in accordance with the Employment Permits Act 2003 which regulates the employment permits regime. It was considered that the intention of the provision, to exclude discrimination on the ground of nationality, in accordance with the 2003 Act, from the scope of the 1998 Act, was unclear. An amendment was adopted on Committee Stage in the Dáil to make this intent more explicit and was added to on Report Stage with a further safeguard specifying that the exclusion applies to the ground of nationality. Amendments Nos. 8 and 9 replaced the word “deleted” with “repealed” in sections 14 and 21, which respectively provide for the removal of sections 23 and 32 from the Act of 1998, as both of these are now provided for in new section 14A of the Bill. Amendment No. 9 was a Fine Gael amendment and amendment No. 8 was effected for consistency. Amendment No. 11 is a technical amendment to section 51(3) of the 1998 Act to clarify the application of the reference to the Civil Service Commissioners Acts to the appointment of the chief executive officer and staff of the Equality Authority. Amendments Nos. 12, 23, and 26 are technical amendments to the Bill to correct inadvertent errors at drafting, none of which impacted directly on the provisions of the 1998 Act.

Amendment No. 13 was made to facilitate access to redress from the Equality Tribunal, where a complainant is unable to effectively pursue a complaint by reason of an intellectual or psychological disability. It provides that in such cases a parent, guardian or person acting in place of a parent, may act as the complainant. Amendments Nos. 15, 19 and 22 made procedural improvements to the Employment Equality Act to allow immediate effect, where both parties to a case agree, to be given to a decision of the Director of the Equality Tribunal rather than waiting for the 42-day period in which an appeal can be lodged, to expire; to allow preliminary decisions to be made by the director on technical or minor questions of fact or law, rather than requiring a full hearing of the case to be held; and to clarify that in cases which the authority is

considering or is taking under section 85 of the 1998 Act, the normal solicitor-client relationship of confidentiality will apply to information relating thereto.

Amendments Nos. 14, 16 to 18, 20, 21, 24, 25, 27, 28 and 41 provide for a series of amendments to the Employment Equality Act, each of which is related to the transfer of jurisdiction in discriminatory dismissal cases from the Labour Court to the Equality Tribunal. Section 77 of the 1998 Act divides the jurisdiction in discrimination cases between the tribunal in respect of discriminatory treatment, and the Labour Court in respect of a discriminatory dismissal arising from the same set of circumstances. The transfer of jurisdiction for both to be dealt with by the tribunal will bring greater coherence in the equality legislation and simplify the operation of the employment rights bodies. The amendments were welcomed by both the Labour Court and the Equality Tribunal and I am happy to acknowledge that this amendment was first proposed by Senator Tuffy in this House.

Amendments Nos. 29 to 39, inclusive, relate to amendments made to the Equal Status Act. Amendments Nos. 29 and 30 relate to the disposal of premises and the provision of accommodation. Amendment No. 29 was proposed by Deputy Moynihan-Cronin and I was pleased to accept it. The amendment is intended to provide that where accommodation is provided in a separate and self-contained part of a person's home and the provision of accommodation affects the person's private or family life or that of any other person residing in the home, that this is also exempt from the prohibition of discrimination. Amendment No. 30 which I brought forward, was to bring the discretion of the Minister for Justice, Equality and Law Reform in housing matters into line with that of local authorities.

Amendments Nos. 31 and 34 provide clarification that any decision taken in the context of asylum and immigration cannot be challenged under the Equal Status Act 2000. The effect of these Dáil amendments is to restrict the exemption to actions taken on the basis of nationality, and not to actions based on any other discriminatory ground. It is also made clear that decisions affecting non-nationals outside the State, or unlawfully present therein, cannot be challenged if they are taken on the basis of nationality. Amendment No. 32 is a technical amendment to align the wording in the section with the wording under the Immigration Act 2004. This was necessary to avoid the creation of different meanings under different legislation for the same term. On Report Stage I brought forward amendment No. 33 to amend an incorrect reference used for a subsection from another piece of legislation.

Amendments Nos. 35 to 37, inclusive, relate to the requirement to give the goods or service provider in question notice of intention of making a

complaint within two months of the date of the occurrence of the alleged incident. The Equality Bill as passed by the Seanad permitted the Equality Tribunal to extend the two month deadline to four months for reasonable cause. The Opposition proposed extending the two month notification period to six months in all cases. Given the transient nature of the contact between service providers and customers, it is unfair to expect a service provider to recall an incident over a period of time. However, I proposed amendment No. 35 to the effect that the Equality Tribunal be permitted in exceptional circumstances to dispense with the notification requirement, where this is not prejudicial to the respondent. On foot of this amendment, a technical amendment, amendment No. 36, was made to subsection (6)(a) of section 21 of the Act of 2000 to reference the new subsection inserted in section (3).

Amendment No. 37 is identical to amendment No. 15. Amendment No. 38 provided for new subsections in section 23 of the Equal Status Act in line with similar amendments to the Employment Equality Act. This is a technical provision to provide for avoidance of doubt that where solicitors or barristers are employed under section 23 by the authority, the normal provisions governing legal privilege and client confidentiality apply and that certain provisions of the Solicitors Act 1954 do not apply to that section.

Amendment No. 39 is a technical amendment to provide that before the Minister makes any regulations under the Equal Status Act 2000 on the operation of the Act, he shall consult with the authority and the director.

I am pleased to progress this Bill through the Oireachtas. The implementation of the equality directives, and the various procedural improvements to our existing equality legislation and infrastructure, will facilitate our ongoing efforts to eradicate discrimination from the both the workplace and society at large. The Bill as amended will better facilitate access to redress where cases of discrimination are encountered and I commend these amendments to the House.

An Cathaoirleach: There may be a mix-up with the groupings.

Mr. J. Walsh: I propose we take all the amendments together in one group if that is agreeable to the House.

An Cathaoirleach: Is that agreed?

Mr. B. Hayes: I agree.

An Cathaoirleach: Agreed. I wish to point out that Senators may only speak once on all the amendments.

Mr. B. Hayes: That was the old-fashioned way of doing things before the change in Standing Orders brought about by Senator Ryan. Is that not the position, a Chathaoirligh?

An Cathaoirleach: It was at the request of Senator Ryan. I remember it.

Mr. B. Hayes: It was raised at the Committee on Procedure and Privileges.

Mr. Ryan: In that case, I will not be so agreeable the next time, a Chathaoirligh.

An Cathaoirleach: You have agreed in this instance.

Mr. B. Hayes: It depends on what type of a day the question is put. I welcome the Minister of State back to the House. It is difficult to discover what is going on here unless one is dealing with consolidated legislation. I have repeatedly called for consolidated Acts because, as the Minister of State knows, he is not only referring to one piece of primary law, but, on the last count, a total of 18 pieces of legislation was also referred to. Senators would need to consult all of them to make sense of it.

The last time this legislation came before the House it received a good airing. I am pleased to see that some of the suggestions made by opposition Senators and Deputies, in respect of these directives, have been taken into consideration by the Minister. By its very definition, there is a need to take one's time with a Bill that deals with transposing EU directives into domestic law. In that respect, this House is important in that it does not have the same time constraints as the Lower House, given the theatrical nature of the Dáil from time to time, including the party political posturing that takes place there. Having also had experience of the Lower House, I can say that this House lends itself to having the time in which to tease out such matters in greater detail.

Most of the Bill's provisions relate to EU directives. Over a consistent period, the great driver against discrimination in our society was not the State but the European Union. Various laws introduced in the European Parliament and the regulations devised by the EU Commission have provided equality for all our citizens. Therefore, when EU directives are to be transposed into Irish law we have an obligation to deal with them in a serious manner, as I am sure the Government does.

I commend the work that has been done on the Bill. It is good to see that the suggestions of so many Senators and Deputies concerning this legislation have been heeded by the Minister of State who has had time to reflect on them. That is the way in which we should be doing our legislative business. Other Ministers should follow the example of the Minister of State, Deputy O'Dea,

[Mr. B. Hayes.]
and his departmental colleagues in this respect. In particular, Ministers in the Department of Transport should take due cognisance of the length of time that is required to take legislation through the Houses.

An Cathaoirleach: We are dealing with the Equality Bill.

Mr. Ryan: I concur with what Senator Brian Hayes has said. I am a great critic of the Department of Justice, Equality and Law Reform but on many occasions both the Minister, Deputy Michael McDowell, and his Minister of State, Deputy O'Dea, have been more than willing to spend a considerable amount of time in this House dealing with legislation that was introduced here. For example, the Minister was very responsive to Opposition proposals concerning the Civil Liability and Courts Bill.

No one could take exception to any of these amendments. Legislation that is dealt with at a reasonably sane level and a reasonable pace, without undue haste by the Government or too much obstruction by the Opposition, can be improved. Parliamentary scrutiny is a necessary part of the legislative process. It is not a figment to achieve democratic status for Government proposals, but a real process. This is a human process in which various people can see matters that even experts can miss. If I have learned anything over the years in the Oireachtas, it is that I do not know very much myself but I pretend to know a lot. I have also learned that people whom one would think know everything, in fact, often tend to have slight gaps in their understanding. In the end, all of us mere humans have a contribution to make.

As a professional engineer, I have also learned over the years that no lay person should ever feel the least bit intimidated in the presence of a professional. There is a good chance the lay person can add something to the legislative process that perhaps legal specialists cannot. In defence of politics, there is a view that only politicians can deal with legislation because of what they know and have learned through their own experience. While I do not wish to disparage officials or Ministers in any way, such experience could never be brought to bear through officialdom alone. The same argument could be made to show that efficient officialdom will produce a better health service, but I am sceptical about that. I would also be sceptical if we had a wonderful, technocratic system of Government because I believe the same issues would arise.

I welcome the process which has seen this Bill introduced in this House, passed by the Dáil where it was further amended, and now returned to us. While I realise it is demanded by Standing Orders, it annoys me that all these Bills which

originate in the Seanad end up being printed on green paper just because the Dáil amends them slightly. It is a small issue but I feel I should mention it.

Mr. B. Hayes: The Senator will put up with it, however.

Mr. Ryan: I will have to put up with it.

Mr. J. Walsh: I welcome the Minister of State, Deputy O'Dea. I join with other speakers in welcoming the facilitating manner in which the Minister, Deputy Michael McDowell, and the Minister of State have taken account of the positive suggestions and recommendations contained in amendments to the Bill. At first glance, when I saw that 43 amendments had been made to the Bill in the Dáil, it raised the question as to how thoroughly the legislation was examined in this House. However, many of the significant amendments, some of which are technical in nature, arose as a result of the debate in this House. The legislation has benefited from the thought-provoking debate that took place here because many suggestions made were considered in finalising the Bill. While some of the amendments were technical, others will enhance the import of the Bill.

It is important to tease out equality legislation. Sometimes, we receive reports from various bodies dealing with equality issues but they are not always grounded in common sense. It must be recognised that people are not equal — they are different. People have different levels of ability, aspirations and ambitions. In many ways, they want to pursue their own course in life. It is essential, however, that people should have equality of opportunity, so our legislation must be grounded in that respect. In any event, equality is the cornerstone of good republican philosophy.

I welcome the amendments that have been made by the Dáil and I look forward to the implementation of the Bill which consequently will have a beneficial impact for a number of people.

Mr. O'Dea: I forgot to announce that because of a typographical error, there is a superfluous "and" on page 41, at the end of line 15. In accordance with Standing Order 121, I am requesting the Cathaoirleach to direct the Clerk to make the necessary correction.

I sincerely thank Senators Brian Hayes, Ryan and Walsh for their very kind comments. As I stated in the course of my reply, the Bill reflects a number of excellent suggestions from Fine Gael and Labour Party Senators and is much improved as a result. It demonstrates that the Department of Justice, Equality and Law Reform, expert though it may be, does not have a monopoly on wisdom in these matters and that when one brings common sense to bear, one invariably gets a better result.

On the serious point raised by Senator Brian Hayes, I wish to inform the House that it is intended to ask the Office of the Attorney General to prepare a restatement of the Employment Equality Act 1998 and the Equal Status Act 2000 to incorporate this legislation in order that we will have a single consolidated statement of law for ease of reference, not only by practitioners but by the general public and people working in the field.

I thank the Seanad for its valuable contribution, without which this Bill would be much less effective.

Question put and agreed to.

Question, "That the Bill do now pass", put and agreed to.

International Development Association (Amendment) Bill 2003: Second Stage.

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

Minister of State at the Department of Enterprise, Trade and Employment (Mr. M. Aherm): This is a short but important Bill which provides for this country's contribution to the most recent round of funding for the International Development Association, IDA, which is the concessionary lending arm of the World Bank. The IDA provides grants or long-term loans at zero interest rates to the poorest developing countries. These are countries where *per capita* income is less than US\$875 — above this limit other sources of funding should be available.

The Bill makes provision for the payment of Ireland's share of the amount agreed at the IDA13 replenishment discussions, the 13th round of funding for the organisation, which was agreed in 2003. Ireland pledged a contribution of €50 million payable over the period to 2008, subject to the approval of

the Oireachtas. The Bill I am introducing today provides accordingly.

The International Bank for Reconstruction and Development, better known as the World Bank, was established in 1944. Its first task was to rebuild Europe after the war. The bank then turned its attention to the developing countries where there was a profound need for economic and social development. As the 1950s progressed, it became clear that the poorest developing countries could not afford to borrow the money they needed for capital development on the terms offered by the commercial banks or even the World Bank. They had very great needs but little ability to repay. It was clear that they required access to money on easier terms than were available through the existing channels.

As a result a group of World Bank member countries decided to set up the International Development Association in 1960 as part of the World Bank family of institutions to lend to very poor developing nations on highly concessionary terms. Its founders saw the IDA as a way for the "haves" of the world to help the "have-nots". The IDA now lends about US\$6 billion to US\$7 billion a year for different types of development projects, especially those that address people's basic needs such as primary education, basic health services and clean water and sanitation. The IDA also funds projects that protect the environment, improve conditions for private business, build needed infrastructure and support reforms aimed at liberalising countries' economies. All these projects are intended to pave the way to economic growth, job creation, higher incomes and a better quality of life.

However, the founders also wanted IDA to be imbued with the discipline of a bank, not least so that borrowers would be able to adopt the discipline of working with other financial institutions. A continuing challenge in more effectively and efficiently addressing the great needs of IDA client countries is to develop mechanisms for pooling knowledge and harmonising requirements with the other multilateral institutions, both within and outside the Bretton Woods group of institutions, the bilateral development agencies and the client countries.

Much of the effort of the IDA is concentrated in Africa, which has some of the most intractable problems in the world at present. At current rates of increase, the population of sub-Saharan Africa is expected to grow to over one billion by 2020, despite declining birth-rates and the increasing number of deaths from AIDS. Both the IDA and the World Bank have had a very significant impact on the problem of HIV-AIDS, which is without doubt the greatest health problem in the developing world.

The HIV-AIDS pandemic has killed 23 million of the 63 million people it has infected to date and left 14 million orphans worldwide. It has left countries in Africa, in particular, without many of working age; it has killed care-givers and teachers. Africa faces continuing loss of human capital and human life with severe impacts on economic growth. In some countries, life expectancy has been cut by up to ten years by the disease. The World Bank and the IDA are the largest institutional investor in AIDS projects. The IDA also supports efforts to ensure co-ordination with other multilateral and bilateral donors in providing a platform for addressing the pandemic.

Africa's development issues are complex and interwoven. The IDA continues to examine these issues systematically and to seek ways to respond in a flexible and timely manner. Conflict has also imposed a large cost on African countries, both

[Mr. M. Ahern.]

in human and in economic terms. Alongside efforts to address key underlying economic and social factors such as poverty, unemployment, and low education levels, the IDA has begun to examine how best to contribute to the reduction of conflict in the region and is actively pursuing ways to re-engage with, and to re-deploy resources to, countries emerging from conflict. In addition, the IDA has stepped up its involvement in countries' efforts to improve governance and ensure greater political participation.

While the mission of the International Development Association remains the provision of "soft" money to the poorest countries, there will always be a need for periodic inflows of new money from those countries, including Ireland, which are prepared to inject capital into the IDA. This is a much smaller group of countries than the 184 countries that are members of the World Bank. The IDA is funded largely by contributions from the governments of the richer member countries whose cumulative contributions since 1960 amount to some US\$109 billion. More money is needed for the IDA approximately every three years to replenish its funds. Funding for the 13th IDA replenishment will allow the IDA to lend some \$23 billion, of which donors' contributions will provide a little over half. The remaining funds come largely from repayments of previous IDA credits, as well as other non-donor resources. These periodic replenishments of IDA resources are inevitably the product of long and complex discussions, not only about the capital needs but on other issues such as the future operation of the institution.

The agreement for the 13th replenishment of IDA includes two major changes — the issue of the replacement of loans by grants and the establishment of performance standards. In July 2002, after lengthy discussion, the IDA donors agreed to a complex plan to convert 18% to 21% of future IDA loans to grants. Under this plan, certain countries will receive 100% of their assistance for HIV-AIDS and natural disaster reconstruction projects on grant terms.

Countries emerging from conflict and countries which are vulnerable to debt and where *per*

capita income is less than \$1 per day will receive 40% of their assistance on grant terms separate from and in addition to funds for HIV-AIDS and natural disasters. Other countries with a *per capita* income of less than \$1 per day will receive 23% of their assistance in the form of grants, again separate from and in addition to funds to deal with HIV-AIDS and natural disasters. It is as yet too early to assess the effect of this change.

One consideration in the move from loans to grant aid is that the need for capital replenishments is increased. At present, a proportion of IDA funding is generated by repayments of loans

from client countries. Money going out in grants will not come back in through repayments, so additional new money will be needed to fund programmes in the future.

The introduction of a framework for measuring results is another innovation of the IDA 13 replenishment arrangement. The objective is to better assess the effectiveness of IDA programmes in contributing to key development outcomes, including those reflected in the millennium development goals which were agreed at the Monterrey conference on financing for development in March 2002. The IDA 13 arrangement called for the development of a system that reflects country priorities, links to the millennium development goals and assesses IDA's contribution to development results.

The Irish have been generous in dealing with requests for measures to assist others less well-off than ourselves in the past and I have no doubt the House will wish to follow that path today.

The Bill is straightforward. The original legislation providing for this country's contribution to the IDA is the International Development Association Act 1960. Section 1 of this Bill amends section 3 of the 1960 Act to provide for the contribution of a sum not exceeding €50 million to the 13th replenishment of the IDA. Section 2 contains the Short Title and collective citation.

I commend the Bill to the House.

Mr. B. Hayes: I welcome the Minister of State. In the last paragraph of his speech he answered the first question I was about to ask. Why is this matter coming from the Department of Finance? Apparently it is because of our commitment to the World Bank and to the International Development Association. As the Minister of State is aware, in recent years much of our support to sponsoring countries we have helped in parts of Africa and other parts of the world has come through a separate budget, albeit through the Department of Foreign Affairs and the development agency therein. That there is some measure of international agreement on a new replenished fund is welcome. As I understand it the reason the fund is being replenished is that a certain percentage of the existing funds available will be given out by direct loans. That is a welcome development. The IDA requires an additional fund to top up its capacity to provide loans on a long-term basis on minimal rates of interest, if any, to the applicant countries.

Those of us who live in the northern hemisphere have a responsibility to share with those in the less privileged parts of the world. That in recent years we have managed to increase quite substantially the amount of funds available through our programmes here and through the EU to help countries in the Third World is welcome. We have not yet reached the UN GDP target but we are approaching it. Irrespective of

good or bad times economically the amount of funds we make available year-in year-out to the Third World and to development relief is of paramount concern. It is a civilising notion that year-in year-out we should increase the percentage of our GDP contribution to the Third World. There should be agreement across party lines that this should be the priority every year irrespective of how difficult times may be here.

We welcome this measure. The House needs to give support to it to ensure the Government can make the additional €50 million available. During the period from now to 2008, will this money come out of our development aid budget or how will it be aggregated in terms of the Estimates? Perhaps the Minister of State can provide some information on that issue in the course of his reply.

As the Minister of State said much of this money will go directly to countries fighting the AIDS pandemic, particularly in sub-Saharan Africa. Two years ago I had an opportunity to visit Uganda and see at close quarters the work of our embassy and of the donors and the NGOs in the field. One of the few countries in Africa that has made progress in recent years in stabilising the AIDS crisis is Uganda. Its government has been called into question. When he came Ireland some months ago, President Museveni was criticised by one of our agencies for his form of government. It is one of the few governments in Africa that has managed to make progress in this area. Rather than criticise the government, we should support it.

I was impressed to see Irish money being well spent in Uganda two years ago. I was informed by the ambassador on my arrival that Ireland is the third largest donor to Uganda. I asked if it was per head of population but he replied we were the largest donor in absolute terms. That a country the size of Ireland should be the third largest donor to a country of the size of Uganda, a former colony of Britain, is an amazing achievement. This justifies the position of various Governments in recent years in focusing our efforts on seven host countries which we support through our programmes. That is a better approach than having a small amount thinly spread throughout the entire African Continent and other developing countries.

I welcome the Bill. Perhaps the Minister of State will tell the House how the €50 million of development aid will be dealt with in the Estimates.

Dr. Mansergh: I welcome the Minister of State and this important Bill which has the advantage of binding the Minister for Finance directly and personally into the ODAF. The measure of ODAF contributions is not only funds from the Department of Foreign Affairs, be they bilateral or multilateral, it also involves funds from the

Department of Agriculture and Food, the FAO, the Department of Finance and international financial institutions. It is positive that the ODAF is an interdepartmental concern rather than something which can be pigeon-holed in one section of a Department.

The funds in question are provided to the very poorest countries. While there may be merit in some low-interest loans as even the poorest countries must learn to operate within some financial parameters, it is positive to develop a straight grant system. Repayment is at best cosmetic in the case of such poor countries. I do not wish to steal Senator Ryan's thunder but there was one sentence in the Minister's speech which caught my eye to the effect that the International Development Association funds projects to protect the environment, improve conditions for private business, build needed infrastructure and support reforms aimed at liberalising countries' economies. These activities depend on the spirit in which they are carried out. In a totally statist system which impoverishes people, some liberalisation is necessary. On the other hand, it is clear from experience that over-zealousness and excessively rapid liberalisation can be disruptive and fail to improve living standards. We must be clear that liberalisation should benefit the countries concerned rather than multinational companies from outside allowing them to collar most of the primary resources which exist there. Projects such as those outlined should be implemented sensibly, moderately and in the interests of the countries themselves rather than world-wide enterprise.

Senator Brian Hayes mentioned with pride that Ireland is the third largest donor to Uganda. I remember when I visited Lesotho in 2000 with the Taoiseach, Ireland was the largest donor by a small margin. We can make a real difference in those countries by concentrating on basics such as better access to schools and water supplies. Led very much by the Taoiseach, particular attention has been paid over the last three or four years to tackling the horrifying scourge of HIV-AIDS. In his speech, the Minister of State said that 23 million had been killed out of 63 million people. One must ask from more points of view than one if it is really necessary given the development of medical technology for such a toll to take place. Perhaps it has to do with patents and the profits of multinational health companies. I have some occasion for doubt whether the balance is right there. When they are carrying out programmes, international financial institutions should be trying to ensure that unnecessary levels of death can be avoided.

Given the lateness of the hour, I will not continue further except to express my warm support for the Bill and make one final point. Like Senator Brian Hayes, I have had a great deal of involvement with ODA over the years and policy

[Dr. Mansergh.]

relating thereto. We will not be able in the fullest sense to hold our heads high until we have reached the international norm. I appreciate that at 0.41%, the figure for this year, is ahead of the EU average of 0.39% and I am aware that the EU has adopted 0.4% as an interim target, which we are effectively over. However, we must keep going and in keeping with our ethos and traditions we should be among the leading countries. For the most part, these are small Nordic and Benelux countries. Given the slow-down of the last two years we have been tending to stand still. It is an exaggeration to say I approve of that. We tend to proceed in this area by a step-by-step approach rather than by an upward gradient. I hope that from the autumn Estimates on, we will resume upward movement.

The Taoiseach made a solemn commitment when we were seeking UN Security Council membership to try to achieve the target of 0.7% by 2007. There is no point in thinking we can do it in a rush at the end. We have three years and I hope that along with our important social and other priorities we will give adequate priority to the need to be more generous to the developing world. We can afford it in our improved financial situation.

Mr. Ryan: I point out to Senator Mansergh that Karl Marx always recognised that private enterprise was a necessary part of the beginnings of proper development. It was later on that he would have differed, not that I have read much Marx having far better things to do with my time.

Mr. B. Hayes: Like the Chinese example.

Dr. Mansergh: I read four volumes a long time ago.

Mr. Ryan: The Senator is four volumes ahead of me.

Acting Chairman (Mr. J. Walsh): He is rewriting it.

Mr. B. Hayes: The dialectic.

Mr. Ryan: While I do not want to be contentious, I am slow to say I welcome the Bill. This is not because of what the IDA does or because it attempts to improve conditions for private business. Recently, I was intrigued to see a quote attributed to Milton Friedman who said that when the poor countries of eastern Europe approached him after their liberation from communism, they asked him what was the first thing they should do. He said they should privatise, privatise, privatise but more recently has concluded that he was wrong. According to Milton Friedman, he should have told them to establish a proper legal framework and the rule of law before

they privatised anything. If anything has been driven home to me in various political campaigns outside these Houses, as a member of various Oireachtas committees and a few Oireachtas delegations and in attending conferences, it is that political structure is nearly as important as aid in facilitating development.

I hope the Chinese experiment does not collapse in tears so to speak because of absence of an accountable political structure. Nobody would wish for anything other than that the current extraordinary transformation of China, with all of its negatives, would be a success. The spectacle of 1.25 billion or 1.3 billion people moving from abysmal poverty to an experience resembling a decent life would be an extraordinary achievement, as is the spectacle of India with a population of close to 1 billion people moving in the same direction.

I am somewhat impatient with politicians of whatever hue who view the development of countries like China and India, and particularly the opening up of their vast labour markets, as a threat. The prosperity of 2.5 billion people is no threat to anybody, although it may pose an environmental threat. If one wants to be self-interested, one need only reflect on the scale of the markets that would open up by the transition of a population of 2.5 billion into people who have the capacity to consume, irrespective of what jobs move from one part of the planet to another.

There was a myth at one stage that Japan was threatening the prosperity of the United States in the 1960s and 1970s and there was a bit of a wobble. The result was that one country stayed prosperous and another became prosperous. There is an element of that currently happening in the European Union. There are suggestions that our success is at the expense of others. I am sure there are specific examples where that is true.

The wonderful thing about good development is that it is a win-win game. There are changes in economies because of competitive forces, but there is no collapse of one country because of what people in another country do. There is no reason for that. Countries overwhelmingly fail economically because of a failure or an absence of governance within the country, not because of what other people do to them.

I am a little reluctant to support the Bill because while I fully subscribe to the need for good governance and believe the IDA and the World Bank have belatedly endorsed this, they were forever willing to dictate policies to governments. There is also the shameful record of structural adjustment policies, which the World Bank and the IMF would now have us believe they never meant to impose. These were extraordinary policies where they demanded cuts in public expenditure but neglected to notice that it was health, education and other services that were

being cut while the arms budget in many cases exploded — that is perhaps a bad pun, but that is what happened. The pet projects of tyrants expanded while there were cuts in public expenditure. Apparently these institutions seemed to believe that one could destroy primary education and basic services aimed at reducing the incidence of infant mortality and still develop a country. The fact is it has taken a long time and the work of numerous NGOs to address the effects of these policies.

Governments like a succession of Irish Governments have always been progressive in their policies in this regard. I could argue about the volume of aid, but Irish policy on development aid has been universally progressive. I could also argue about the details. However, there has been a view all along that while we can argue about the quantity of Irish aid, and I would make colourful comments about Governments that are reluctant to continue to increase their allocation of aid, the quality of our aid is a symbol of good practice to the rest of the world.

When I spoke during the debate on Private Members' business on the European Presidency, I said that we should never forget that we can do things very well here when we trust in our own judgment. ODA is one of the areas in which we have done that. We have constructed our own programmes. We do not tie our aid even though *per capita* we may be the biggest exporting country in the world. We do not tell developing countries that they must buy Dell computers or particular pharmaceutical products because they are manufactured here. As a matter of policy, successive Governments decided not to do that. Some of the countries which I most admire in northern Europe have done that, sometimes quite inappropriately.

The issue about the IDA is that of aid and trade. I have no problems with the principle of liberalising trade or with globalisation. I cannot imagine how anybody living in Ireland could have a problem about globalisation. This country is a classic beneficiary of globalisation. However, I have two problems about the way it operates in practice. When globalisation takes the form of an institute based in Washington telling a small country in Asia, South America or Africa the nature of the sort of practices it must implement, one is into very dodgy territory. What needs to be introduced in those countries is good governance to let them move in that direction with the priorities they choose, but inexorably in that direction.

The second issue is to encourage the collapse of trade barriers between developing countries. A major part of the obstacles to trade for developing countries is not the north-south barriers but the south-south barriers, the barriers to trade between developing countries. It is worth pointing out that the planet set itself the millen-

nium development goals. It is a worthy policy to use baseline measurements to assess progress.

The level of progress in terms of development is not wonderful. China is so large it distorts the averages in development figures. If China is removed from the averages and one considers the progress being made on the rest of the planet, the picture is not a happy one. China tends to push up all the averages of *per capita* GDP because it has been a success. If one takes China out of the equation, one will get a more realistic picture of the level of development, especially if one considers the figures for a region such as Sub-Saharan Africa. As an African parliamentarian told me at a meeting I attended six months ago, 350 million people in sub-Saharan Africa live on one dollar a day while a European cow is subsidised to the tune of \$2 dollars a day, and a Japanese cow is subsidised to the tune of \$7 a day.

Some 2.5 billion people on the planet live on \$2 a day or less and approximately \$1.1 billion people live on \$1 a day. If one considers the millennium goals and the trajectories, in many cases we are off trajectory to meet the millennium targets. I want to record a few figures. In 1999 the child mortality rate under five years of age was 125 per 1,000 live births and now it is 120 per 1,000 live births — not a spectacular decrease. The proportion of the population living below the \$1 a day poverty line of the less developed countries was and still is 33%. We need to be generous with aid, but we are entitled to have rigorous evaluation of how good is that aid. One figure that shocked me, and I am not often shocked, is that one of the indicators of development — I do not know who picked this indicator — is the number of fixed lines and mobile telephones per 1,000 inhabitants. Somebody in America picked this indicator without a doubt because it would not be on my list. In 1999 the figure was 21, and in 2002 it was 40, which represents a massive increase of 20% per annum. That raises the question that when there is no improvement in regard to the proportion of people who have to live on \$1 a day and there is such spectacular growth in something like the number of fixed line phones and mobile phones, we are entitled to and must repeatedly re-evaluate the quality of aid and the quality of the development package. I hope the IDA and the World Bank have begun to learn that lesson because history does not suggest they were very enlightened in the past.

Mr. Kitt: I welcome the Minister of State. This debate is very important and, as the Minister of State knows, we have it every few years. It is very interesting to note what has been said about the extra money that will be made available because of this Bill. It is obviously very welcome.

I have raised on a number of occasions an issue pertaining to the IDA and the associated Bretton Woods agreement. There seems to be an empha-

[Mr. Kitt.]

sis on loans, regardless of whether they are long-term, short-term or have a 0% interest rate. As the Minister of State indicated and as stated in the explanatory memorandum to the Bill, the IDA helps the world's poorest countries to reduce poverty by providing credits, which are 0% interest loans with a ten year grace period.

I was more happy with the Minister of State's reference to two major changes to the agreement for the 13th replenishment of the International Development Association, namely the replacement of loans by grants and the establishment of performance standards. At a time when there is much querying of governance, particularly that in Africa, and queries about public administration and corrupt regimes, we must be very careful when providing assistance. Let us be blunt about the matter. Mr. John O'Shea has raised the issue of corruption in some African countries in particular. I would like to think we will have an opportunity, particularly through the Committee on Foreign Affairs, to examine governance in some of these countries, particularly those with problems such as HIV-AIDS.

Some weeks ago, the Minister of State, Deputy Noel Ahern, and I were in Sao Paulo at a meeting of the United Nations Conference on Trade and Development. We were very privileged to see the work the Holy Ghost Fathers are doing in that city to provide water schemes, crèches and computer courses, particularly for young people. They are also renovating buildings to provide small classrooms. It is a good example of where people are in for the long haul. In many cases, however, crisis management is like fire brigade action in that one of our NGOs enters a particular country and tries to rectify problems very quickly before it is forced to leave, with the result that the approach is not as good as that of getting involved in education and health issues. It contrasts with the excellent project of the Holy Ghost Fathers.

Today the Committee on Foreign Affairs discussed and approved a draft programme for Uganda. It particularly examined page 21 of the relevant report, which specified what the World Bank had provided for Uganda over the past four years. In 2001-02 the provision increased to US\$300 million from a previous figure of US\$100 million. The following year it dropped by 50% to US\$150 million and this was also the provision for 2003-04. This is a case of where the World Bank is reducing its support for a country. Having said that, the African Development Bank has been increasing its funding. Ireland has given €12 million consistently for the past three years. There was a drop in the contributions from the United Kingdom and the Netherlands, which I found surprising.

I am making the point that there are more factors involved than the World Bank, which is

the most significant contributor in the case of Uganda. We see many headlines on poor governance and administration and alleged corruption and we all know of the claim that €35 million was spent on an aeroplane in one African country after it had declared that it needed significant aid contributions. We must monitor this issue. I am very happy that the DCI contribution is increasing and I hope we will reach the target of spending 0.7% of GDP on overseas aid by 2007. I hope this Bill will help us to make investments over the longer period. Such investments have been very successful in the sub-Saharan countries.

The Minister of State's figures indicate the challenge that lies ahead. For example, he stated that at current rates of increase, the population of sub-Saharan Africa is expected to grow to over one billion by 2020. I hope the work of the Minister and the Department of Foreign Affairs in the DCI area will ensure that we can make the necessary investment. Countries with a *per capita* income of less than US\$875 need our help.

Mr. O'Toole: I welcome the Minister of State and I am glad to have the opportunity to say a few words on this issue. I support the Bill and hope it will pass through the House in good time.

Senator Kitt touched on a number of issues about which I feel strongly. The first issue with which I want to deal is that of globalisation and the World Bank. We should recapture the term "globalisation" from those who have allowed it to deteriorate into something utterly unacceptable. In simple terms, my idea of globalisation is that it involves a global implementation of the Treaty of Rome whereby there would be free movement between the various parts of the world. If America could cope with such a concept, we could deal with many of the problems that exist.

The reality is that the World Bank has not worked or made an impact. I was looking recently at statistics on Chad, which has traditionally been regarded as the poorest country in the world. It was certainly a notoriously poor country in the 1960s. The average income in Chad today is lower than it was in the 1960s. Why has the problem worsened? The answer is related to protectionism. As late as yesterday the US introduced another protection measure, the value of which I cannot remember.

The Minister of State will be well aware of the effect of protectionist policies on the steel industry in his constituency over the past year. Despite the WTO agreement, the US introduced a most stringent protectionist regime against world trade in steel. This has managed to create all sorts of problems, which are now reverberating on us in Ireland where steel is more expensive than it ever was, thus having an impact on the price of houses, etc.

Globalisation, if it were conducted properly, and even free trade, if it were given a chance —

I am no supporter of the market as a system of solving the difficulties of the world — would solve some of the problems. There should be free movement of labour. This means people from poor countries would be able to apply for work and make a proper contribution in rich countries so they could share in the gains therein. It also means that poor countries would not be subjected to the dumping of other countries and the one-sided agreements that the United States in particular makes with poorer countries whereby it dumps its goods on them and does not allow them to export into it.

That is disgraceful. These are the people who speak about the so called free market. If there is a free market anywhere, it is not to be found around the United States of America.

This morning on the Order of Business, Senator Kitt referred to an initiative by Superquinn. Although Senator Quinn is my competitor for votes, I recognise his move to increase the number of Fairtrade items being sold in his supermarkets.

10 o'clock
The object of this exercise is not to make everyone drink Nicaraguan coffee but to raise awareness. As with waste management, people must first be made aware of the issue before they take action on it. This awareness must extend to our buying non-fair trade items, particularly sports equipment. The sweat shops of Asia are supplying sports equipment to the rich of the western world at the cost of lives, careers and families. Some of the companies which are presented as role models in the world's economies exploit people to an extraordinary extent. The answer to this problem is neither to pay New York level wages to workers in Taiwan nor to remove factories from there altogether. The answer is honesty, integrity, fair play and ensuring that the economies of third world countries can grow and become wealthy in a way we would like to see happen in our own country.

The sooner this happens the easier it will be for all of us. It is only when the east develops levels of wealth which are similar to ours that we will have a level playing pitch and steel plant closures will not be necessary in one part of the world in order to have slave labour in another part. The sooner we bring people up to our level the easier it becomes for us. That may seem like a contradiction but it is how we must look at the problem.

American agriculture must be examined. We hear much criticism of the Common Agricultural Policy, which has been reformed three or four times in the last 15 years. We should look at the agricultural policy of the United States and at the levels of protection and support for items such as honey and wool. There is no free market in these areas. Nevertheless, the voices of the United States make big speeches about the importance of free trade, open markets and entrepreneurship. They call for this everywhere except at home.

The Government has raised these issues throughout the world. Senator Mansergh recently referred to immigration and said we must look into our own hearts. When I hear of sending aid abroad I am reminded of the black babies. We have always been good at sending money far away. I would like to see more of the developing world over here so that we can be enriched in a multicultural society and learn from the culture, skills and innovations of other countries. We should rejoice in that world instead of building walls against it. At the same time we must have a managed and regulated immigration policy. We do not have to bow in front of anyone. We do not need to open our borders to everyone and neither do we need to build a wall around ourselves. We must have a managed approach, as works well in other countries. The countries which have been most open are Canada, New Zealand and Australia. Even Australia, with its ships and its camps, is pointed out by people working on immigrant and refugee issues as having a fairer system than many of the European countries. I have talked this issue through with them.

It is good that we move into this area and share our wealth. The Minister of State remarked that Ireland has, traditionally, been a generous country but our generosity is patronising. I am not sure what people are thinking when they are giving money to developing countries or watching "Live Aid". Are they just feeling good listening to the music or do they feel they need to learn about this issue? We must do more than simply send money. Something must come back. Senator Kitt mentioned the contribution of the Holy Ghost Fathers throughout the world. The Columban Fathers have also been spectacular in many places in South America and have brought intellectual revolution, life, spirit and openness to people. There have been missionaries of all types. We need to see the work happening. The engagement with other countries needs to be positive for us as well.

It is only by opening our borders and allowing people to sell and work in the developed world in a regulated way that we will achieve the aims of the World Bank and bridge the gap between the haves and the have-nots.

Minister of State at the Department of Enterprise, Trade and Employment (Mr. M. Ahern): I thank Senators for their wide ranging and interesting comments on the Bill. The Members of this House have shown a consistent and genuine concern for the less well-off countries of the world and this is acknowledged.

Senator Brian Hayes asked does the IDA contribution form part of the overseas development assistance budget. The ODA budget is principally funded through the Vote of the Department of Foreign Affairs. The IDA contribution is

[Mr. M. Ahern.]

included as part of the overall ODA budget. It is paid through the Central Fund and does not form part of the annual Estimates.

The IDA lends money on a no-interest basis. Repayments start after ten years and loans must be repaid over a period of 35 to 40 years. The IDA's approach is to support country-led poverty reduction strategies in key policy areas, including helping to raise productivity, providing accountable governance and improving access to education and health care.

Senators emphasised the need to focus development efforts on the poorest countries of the world and the Bill, as presented, seeks to do this. The efforts of the International Development Association are focused on those countries where *per capita* income is less than \$670. The Bill makes provision for the payment of Ireland's contribution of €50 million, payable over the period to 2008, to the IDA's current funding needs.

Finance is important to the successful achievement of overseas development programmes but it is not the only criterion on which effectiveness is judged. Consequently, Ireland's overseas development co-operation policies have as their absolute priority the reduction of poverty, inequality and exclusion in developing countries.

The Government's continues to have as an objective the achievement of the overseas development assistance target of 0.7% of GNP by 2007. In 2003, Ireland spent €456 million, or 0.41% of GNP, in overseas development assistance. Total spending on ODA this year is expected to approach €480 million, the highest ever in the history of the programme. This is a substantial contribution but the Government continues to have as an objective the achievement of the 0.7% target by 2007. It is encouraging that all sides of the House are so committed to the attainment of the objectives of poverty reduction and that they continue to support the Government's involvement in the IDA.

Question put and agreed to.

Acting Chairman: When is it proposed to take Committee Stage?

Dr. Mansergh: Now.

**International Development Association
(Amendment) Bill 2003: Committee and
Remaining Stages.**

Bill put through Committee, reported without recommendation and received for final consideration.

Question proposed: "That the Bill be returned to the Dáil."

Minister of State at the Department of Enterprise, Trade and Employment (Mr. M. Ahern):

I thank all parties in the House for the debate on the Bill and their support for the IDA. By supporting this Bill, we address hardships faced by the poorest and most vulnerable in IDA countries. I was in Maputo recently and saw the work being done in one of the poorest countries in the world. It is important that we contribute our share and more to help people in those ravaged countries and that issues such as HIV-AIDS, post-conflict crisis, health and social services and human development are addressed. I welcome this Bill because it important for us to continue to support these worthwhile initiatives. I thank the officials for their work in this area.

Dr. Mansergh: I thank the Minister of State and his officials for bringing this Bill to the House. We all welcome and support it.

Question put and agreed to.

Acting Chairman: When is it proposed to sit again?

Dr. Mansergh: Tomorrow at 10.30 a.m.

Adjournment Matters.

Hazardous Waste.

Ms O'Meara: In the seven years I have been in this House, I have raised this matter more often than any other. That is an indication of the long running nature of the problem, how difficult it has been to make progress and how frustrating attempts to sort out the remediation of the tailings pond and other abandoned mine sites in the Silvermines area have become.

The tailings pond is 147 acres of tailings left over by Mogul Ireland when it finished work in 1982. It is not the only mine site in the State but it is the largest and has caused the most difficulties. Reports by consultants, experts and an interagency group chaired by the Department of Agriculture and Food concluded that other sites were more toxic but that the tailings pond poses a very direct threat to people living in the area because dust blows off it into the air and on to surrounding land.

While there has been progress involving the EPA, Teagasc, the local authority and the Departments of Agriculture and Food and Communications, the Marine and Natural Resources, it has been slow and has now reached a point where it will be difficult to advance.

On 28 June, a technical plan was due to have been lodged with the Department by Mogul Ireland to fulfil its responsibilities to the community and the State under clause (k) of the min-

ing lease for the area. There is still no sign of that report. That is only one indication of the level of difficulty the community and State agencies are having with Mogul Ireland in getting it to face up to its responsibilities, short and long-term.

The long-term plan would be for the rehabilitation of the site but the short-term situation is of great concern and I am seeking answers about it from the Minister this evening. There is evidence of further serious erosion of the protective grasses covering the tailings pond and dangerously high levels of lead in the dust blowing from the surface of the tailings. The company has failed to maintain the protective cover or to develop a long-term sustainable plan for the area. Due to the dry spell and the failure of the company to maintain the existing cover on the tailings, a further 30 acre area is eroding and readings taken by the EPA show that the dust contains dangerously high levels of lead. Every monitor has recorded exceeding but the more recent figures show even higher levels of excesses of lead in the area around the Gortmore tailings pond than normal. That indicates that there is further erosion and that the problem is more serious than we had thought.

There is no short-term plan for dealing with this. Deputy Eamon Ryan of the Green Party, who is a member of the Committee on Communications, the Marine and Natural Resources, told me last week that his party had asked questions of the Minister on this issue. I looked at the answers today and was astonished to read that the Minister said "there is an emergency action plan operated by Mogul and the local authority to deal with dust blows and other problems which may occur at the tailings pond". I have news for the Minister — this action plan is not working and in my correspondence with the local authority and the EPA, I discovered that one group is passing the buck to the other. The council says it is Mogul Ireland's problem, Mogul Ireland is doing nothing, the council is doing nothing and, as a result, an existing environmental problem is deteriorating further and the local community is totally frustrated.

I was also surprised to see in the answer to the parliamentary question that the Department "has not received any notification of occurrences of serious dust blows or escapes of polluted leachate at the site in recent years. The last recorded serious dust blow occurred in the mid 1980s". Continuous monitoring of the dust blowing in the area shows there is a constant excess of lead and other heavy metal levels.

In view of this I am amazed to find that the Department of Communications, Marine and Natural Resources states in answer to a parliamentary question that there is effectively no dust blow in the Silvermines area, when anyone living in and visiting the area who stands around for five minutes can see there is a serious dust blow

occurring continuously from the site. In light of recent events, that is, the failure of the company and the county council operating in tandem to ensure that the existing surface is maintained and watered in dry weather, there is even further erosion and the problem is getting worse rather than better.

There is much frustration in the area. It is coming to a point where people will need to ask questions as to why this problem is not being dealt with. It is not good enough that after years of talking and several expert reports and the expenditure of a good deal of money on consultants, we seem to be further away from any action being taken. While we wait for that action the situation is getting worse, the environment is being damaged and the community is forced to live in a deteriorated environment. That is why I have raised this matter and will continue to raise it until action is taken and we get satisfaction. I look forward to the Minister's reply.

Minister for Transport (Mr. Brennan): I am replying on behalf of the Minister for Communications, Marine and Natural Resources. On his behalf I thank Senator O'Meara for raising the issue. I will ensure her comments are brought to the attention of the Minister.

I note that this subject has been extensively covered in previous motions, the latest being on 22 October 2003, so a great deal of background detail is hopefully not required. However, it might be useful to summarise the basic facts which give rise to this motion.

Silvermines has a long history of mining, spanning over 1,000 years. There was a time when the mining industry was the principal source of employment in this region, but that day is well gone. What is now left consists of fairly ugly relicts of mining such as old spoil dumps, mineshafts, derelict buildings and tailings ponds, which are the main objects of concern to the local community. The residue also includes an interesting mining heritage, and I understand the local community would wish to see this preserved as part of an integrated rehabilitation plan for the region.

An Environmental Protection Agency report in 1999 referred to the tailings area as a perpetual risk to human health and the environment. This was followed by an inter-agency report, which made 39 recommendations. Thirty-six of these have been implemented, or are ongoing. The other three are the major issues and relate to remediation and management needs of the area. These are the issues being discussed. SRK Consultants, appointed by the Department, produced a detailed report on what needs to be done to rehabilitate the area and the costs involved. The capital cost is estimated at €5.2 million, with €70,000 yearly for ongoing management and monitoring.

[Mr. Brennan.]

Under clause K of a mining lease which expired in 1998, Mogul of Ireland Limited is obliged to remediate certain areas, including Gortmore tailings pond. Legal advice is that there is only a once-off call on Mogul, and the Chief State Solicitor issued a letter to Mogul in April 2003 setting out the type of works required under clause K. Mogul has produced some proposals during 2003 which were incomplete and did not satisfy this Department. North Tipperary County Council and the Environmental Protection Agency were, and continue to be, involved in the consultations, the objective of which is to produce a cost effective and environmentally acceptable solution for the clause K sites. Any solution must also be acceptable to the local community.

Mogul submitted a reasonably comprehensive proposal on 5 March 2004 and this was the subject of a meeting held in Nenagh on 22 March 2004 attended by representatives of the Department, North Tipperary County Council, the Environmental Protection Agency and Mogul. There was a cautious welcome for Mogul's proposals, which were acceptable from a conceptual point of view, but it was agreed that additional details were required. The Department sought the additional details on 1 April 2004 and Mogul responded on 7 May 2004. The response was less than complete and at another meeting with Mogul on 24 May 2004, the Department's specific requirements were spelled out to Mogul. Mogul is working on its response, which is expected later this month.

The frustration of the local community especially those living in the vicinity of Gortmore, is understandable. Clearly, progress is not up to expectation. It is hoped that the emergency action plan between North Tipperary County Council and Mogul will alleviate short-term problems, while agreement on long-term remediation is sought. I note, as it should be, that the Gortmore local community is kept informed of developments and several information meetings between it and the Department have been held. Mogul has also met it to explain the company's proposals.

One must also acknowledge Mogul's difficulties. The mine closed in 1982 and was sold to the current owners in 1984. Development of a new mine was not viable and Mogul has expended substantial moneys in rehabilitation works up to 1999. In its current proposals, the company cites problems relating to finance, access and permitting. It says it is working to resolve these issues. Considerable work was undertaken by Mogul in endeavouring to secure a permit from the local authority to spread organic material as a sustainable cover for Gortmore. This application for a permit, published in a national newspaper in December 2003, drew substantial local objection and was withdrawn in April 2004. As already

mentioned, Mogul has discussed its proposals with the Gortmore local community.

While not wishing to minimise local concerns about dust blows and other problems, I note that this final report of the expert group on lead and other relevant metals in Silvermines, published in March 2004, reiterated the inter-agency's findings that, "the Silvermines area is a safe place in which to grow up, live and work provided that certain precautions are taken by public agencies and local people". I hope this allays local concerns to some extent.

The Department is awaiting final detailed proposals from Mogul, which will be evaluated in consultation with the local authority, the Environmental Protection Agency and the local community. I hope these proposals will be viable and can be agreed so that the necessary works can commence. It is essential to ensure that Mogul and not the taxpayers pay for the remediation. It would be totally unacceptable that a limited company, which has a legal responsibility to remediate the areas in question, was in some way let off the hook at the expense of other projects, which the Exchequer might otherwise undertake with the money. The Department therefore intends to pursue all options to ensure that the cost of remediation does not fall on the taxpayer and it may be necessary to seek legal advice on the available options. The Department has no responsibility for remediation of the non-clause K sites, but will continue to assist the local authority, which may be able to advance remediation by virtue of powers vested in it under waste management and derelict sites legislation.

Ms O'Meara: I thank the Minister for his reply which is comprehensive but not satisfactory. I wish to put the Department on notice. I ask the Minister to communicate this on my behalf and on behalf of the local community. There is a serious short-term problem. The Department will probably have to spend more money pursuing Mogul than it would cost to rehabilitate the site. The length of time it will take to do that will mean the site will deteriorate further, will cost more to rectify and the environment will be further damaged. It is not a satisfactory situation.

Rail Services.

Mr. Morrissey: I thank the Minister for his attendance in the House to deal with the matter of the extension of the Maynooth railway line from Clonsilla to Clonee. I congratulate the Minister on the launch of Luas which goes through his own constituency. I am struck by the great similarities between this matter and the Luas line. The Luas line runs on the old Harcourt Street line which was closed down in 1958; the line I am speaking about was closed down in 1963. The beds of both lines were kept relatively intact and free of development. However I heard the Mini-

ster say at the launch of the Luas that in 1977, he was almost a single issue candidate campaigning for the reopening of the Harcourt Street line. I do not wish to be known as a single issue candidate seeking the reopening of the Clonee line but I have been raising the issue single-handedly for some time and the Minister is aware of that.

The Minister has recently shown a great willingness to invest in the railways. The Department of Transport announced recently the reopening of the line from Midleton to Cobh which is a line very similar to the line to which I refer. The distances are similar, approximately seven to nine kilometres, on old railway line beds, relatively free of development. However, Dublin west and along the Maynooth catchment line comprises the fastest growing area in Ireland. I doubt if any statistics could refute that point.

Several developments, which have started already, will come on stream soon. These are in Pelletstown on the border of Fingal County Council and Dublin City Council, which will consist of 4,200 housing units, the racecourse development adjacent to Phoenix Park consisting of 2,200 units and the Hansfield zone in Clonsilla, an SDZ under the previous Government that is under appeal. I submitted an appeal against the development of the Hansfield zone to An Bord Pleanála last October on the grounds that it does not have a railway line. Other large tracts of land with planning permission along the railway line also await development.

Fingal County Council is considering an application to construct five blocks of eight storey apartments. This is a step too far. Until now, four storey apartment blocks have been built along the line on the basis that they will be adjacent to a public transport corridor and comply with housing guidelines. While eight storey apartment blocks would also be within the guidelines, Fingal County Council would be taking French leave, so to speak, were it to grant permission for these blocks on the basis that they will be beside a railway line. The council will, however, correctly argue that upgrading the railway line is not its responsibility.

Given the investment and development in the area, something must be done to alleviate traffic congestion on the Navan Road and address the level of house building along the Maynooth line, which I use daily. Even the 9.30 a.m. train into Dublin only has standing room and this is an off-season period when students are off and people are on holidays. One can imagine the circumstances facing passengers on peak time trains at 8.20 a.m. and 8.40 a.m. and what they will face in October. At a time when we are encouraging people to leave their cars at home, it is not safe to encourage people living along the Maynooth line to use the public transport system.

Statistics have shown that the quality bus corridor on the Navan Road is the worst performing

bus corridor in Dublin. I appeal to the Minister to consider making the necessary investment in the Maynooth line. Irish Rail approved a line to Clonee as part of its five year strategic plan and is conducting a feasibility study. The Spencer Dock and Clonee lines must be developed in tandem. In light of the Minister's approval for a line to Midleton, I ask him to approve upgrading and development of the Maynooth line, particularly given the high rise developments along the line.

The Tánaiste and Minister for Enterprise, Trade and Employment, the Taoiseach and the Minister for Finance stated recently that a metro would be a good project, but it is not likely to see the light of day in the short term because we cannot afford it at this point. I hope this is not the case. We must, however, consider alternatives, whether suburban rail, extensions to Luas or a greater roll-out than of the quality bus network that the Minister envisages. For this reason, I ask him to seriously consider my appeal for an extension of the rail line from Clonsilla to Clonee.

Mr. S. Brennan: I thank the Senator for raising this matter and for his comments. He will be aware that I appreciate his special interest in transport, which is even evident on the head bills of his letters to me. I am being genuine, not patronising, in informing him that I take particular account of proposals he makes because of his special interest in transport which I have observed over the past two years. I will, therefore, take special note of his contribution this evening.

I thank the Senator for his comments concerning the Luas. I believe its success will increase as the days and years pass. I also thank him for raising the future development of rail services to Clonee and Spencer Dock. As he stated, Irish Rail is examining the possibility of developing a spur from the Maynooth line to Dunboyne which passes close to Clonee. This project is consistent with the Dublin Transportation Office strategy up to 2016, Platform for Change.

In this regard, the company is undertaking a feasibility study and outline scheme design. This study will address future traffic demand, operational feasibility, capital costs, cost benefit analysis, project delivery options and funding options. It will be set against the background of planning guidelines for the region, planned developments in the area and future road developments. The work is expected to be completed within a six month timeframe. Irish Rail will involve representatives from Meath County Council, Fingal County Council and the Dublin Transportation Office in the exercise.

In order to cater adequately for the anticipated traffic growth along the Maynooth line, Irish Rail is also proposing the construction of a new station at Spencer Dock to help alleviate the congestion difficulties being experienced at Connolly

[Mr. S. Brennan.]

Station. My Department is in discussion with Irish Rail on the matter and a formal proposal is awaited.

The Taoiseach's comments concerning the metro referred to the 20 or 30 year overall plan, which would cost billions of euro. While he and I agree it is not possible to proceed with the whole plan, we are likely to proceed with the airport to the city centre section as a first step. The Government will finalise its considerations on this matter within a few weeks.

Mr. Morrissey: I thank the Minister for his comments. I look forward to Irish Rail's formal presentation to him when it completes its feasibility study. I hope funding will be made available for its proposals. Money is no longer the problem. Value for money will always be an issue but the line will come up trumps in any cost benefit analysis. I ask the Minister to approve the proposal to assist the future development of the area.

The Seanad adjourned at 10.40 p.m. until 10.30 a.m. on Thursday, 8 July 2004.