



# SEANAD ÉIREANN

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*Dé Céadaoin, 11 Bealtaine 2005.*  
*Wednesday, 11 May 2005.*

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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 received notice from Senator Cummins that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

The need for the Minister for the Environment, Heritage and Local Government to make a decision on the route for the Waterford city bypass as a matter of urgency.

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

The need for the Minister for Communications, Marine and Natural Resources to specify the procedures that are in place or to be put in place for the purchase of power from offshore windfarms.

I have also received notice from Senator John Paul Phelan of the following matter:

The need for the Minister for Education and Science to outline the internal policies which resulted in a child who was sanctioned for two and a half hours weekly resource teaching in November 2003 remaining without this support for 19 months after the sanction and the reason the sanctioned hours were not communicated to the school despite numerous inquiries by the school and Senator Phelan.

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

The need for the Minister for Health and Children to provide an update on phase 2B of the Mullingar Hospital development.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment. I have selected the matter raised by Senators Cummins, Morrissey and Phelan and they will be taken at the conclusion of business. Senator Bannon may give notice on another day of the matter he wishes to raise.

## Order of Business.

**Ms O'Rourke:** The Order of Business is No. 1, statements on the ESRI report on pensioners' incomes and replacement rates, to be taken at the conclusion of the Order of Business and to conclude not later than 1.30 p.m., with the contribution of spokespersons not to exceed 12 minutes, those of other speakers not to exceed eight minutes and the Minister to be called upon to reply not later than five minutes before the conclusion of statements; No. 2, Safety, Health and Welfare at Work Bill 2004 — Second Stage to be taken at 2.30 p.m. until 5 p.m., with the contributions of spokespersons not to exceed 15 minutes and those of other speakers not to exceed ten minutes, with the Minister to be called upon to reply not later than five minutes before the conclusion of Second Stage, which may be today or, if there are more speakers on Second Stage, another day; and No. 18, motion 12, re anti-social behaviour, to be taken from 5 p.m. until 7 p.m. There will be a sos from 1.30 p.m. to 2.30 p.m.

**Mr. B. Hayes:** It is almost seven years since the publication of the report of the national task force on suicide. Many Senators, including Senators Glynn and Henry, have called for a debate on the issue of suicide. Will the Leader organise a debate on this issue to allow us to see how many of the report's 86 recommendations have been implemented? Since the report was published, in excess of 2,500 people have lost their lives through suicide. Ireland spends five times more in preventing road accidents and deaths than in preventing suicide, which is the largest killer of young males in rural and urban Ireland. With its unique perspective, this House would assist a rolling debate on suicide, to which several Ministers could attend.

After eight years since the Government came into office it was good to hear yesterday that the Minister for Transport finally realises there is a problem with the driving test regime. The Minister's idea is to introduce a raft of testers from the private sector to deal with the 15 month backlog of tests. However, 60 additional full-time driver-testing staff are needed. Every time the Minister for Transport seeks permission from the Minister for Finance to put these staff in place, he is denied. A debate on this issue is needed. In the summer months, it would also be sensible to extend driving test centre opening times to 10 p.m. and the weekends to help reduce the backlog.

**Mr. O'Toole:** Recently, I made the House aware that I was the vice-chairman of the Personal Injuries Assessment Board, which was referred to on yesterday's Order of Business and which has just issued its first report. I would welcome a debate on the report. When the legislation went through the House, Members raised serious considerations about the board. If I may gently correct the Leader in a comment she made

[Mr. O'Toole.]

yesterday in describing the settlements as low. It gave a clear impression that the claimants received a lesser amount of money.

**Ms O'Rourke:** The claims are lower than they were.

**Mr. O'Toole:** The overall costs are low because legal, administrative and all other costs are down. It is important to make clear that the amount of money which claimants receive is not reduced, as people with another agenda are implying that people should not go through the system because they will end up with less money. That is not the case.

I ask the Leader to organise a debate on the PIAB, not this month, but perhaps in the final week of the current session, when we will have greater experience of its dealings. Some 8,000 cases are currently being processed but only a few are being concluded. Another month will elapse before a clearer picture emerges. Details of the first 25 cases to be processed were announced yesterday and the results are very satisfactory, as no doubt further results will be. The legal profession is also learning to live with the situation. It is not a question of removing legal advisers from cases in which they need to be involved. That need will still exist.

I am delighted to hear Senator Brian Hayes call for an increase in the number of permanent public servants and I am glad this is his party's view. I am sick and tired of saying, every time we need to reduce class sizes, improve health facilities or speed up the driver testing process, that more public servants are required. Those of us seeking improved services should be prepared to defend increases in the number of public servants and increases in their salaries. This is a crucial issue. Senator Mansergh recently called for a broader debate on public service and finance and we might deal with this particular issue during that debate.

**Mr. Ryan:** Will the Leader ask the Minister of Transport to attend the House? There is great concern in my home city regarding the Aer Rianta debt, which we were told would be entirely attributed to Dublin Airport. It is now suggested that €160 million of that debt will be payable by the Cork Airport Authority. That authority did not decide to spend €160 million on the new terminal. Aer Rianta did so, and it was understood this was a State debt to be dealt with appropriately. If Cork Airport is landed with a debt of €160 million, it will probably take ten years to pay it off. My rough, back-of-an-envelope calculation is that it could mean a levy of €15 per individual passenger for ten years. That could seriously threaten the viability of Cork Airport and would definitely make it less attractive. A promise was given that this would not happen. I suspect the Leader was never too happy about the break-up of Aer Rianta.

**Ms O'Rourke:** That is right.

**Mr. Ryan:** I can now read the Leader's mind.

**An Cathaoirleach:** It is not part of the Order of Business to anticipate matters.

**Mr. Ryan:** I just had to look into my heart to know what the Leader was thinking. The fundamental issue is that an undertaking was given on the handling of the Aer Rianta break-up, and there now appears to be a retreat from that undertaking. Dublin Airport has dominated the headlines in this area, but the spin-off from the break-up of Aer Rianta needs to be debated in the House again. I ask the Leader to facilitate that debate.

There are currently 13 Seanad Bills listed on the Dáil Order Paper. Could we perhaps set ourselves up as consultants to the Dáil—

**Ms O'Rourke:** To the Dáil?

**Mr. Ryan:** Yes. There is a great tendency to employ such consultants, and we could show the Dáil how to deal with legislation in a reasonably efficient fashion. It clearly needs some guidance from somewhere. Three Dáil Bills are listed on the Order Paper today. One is delayed because other people cannot deal with it. That is the Interpretation Bill 2000. I suppose we are lucky it does not date from the last century.

I wish to draw an extraordinary matter to the attention of the House. What sounds like a very impressive ceremony was promised for next Friday, in which Dr. Mudawi Ibrahim Adam from Sudan was to be the first recipient of the Front Line award for human rights activists. He has been very active in the campaign for human rights in the Sudan. He was due to fly to Dublin last Sunday but was arrested a few hours before his flight. He was due to be presented with his award by Uachtarán na hÉireann on Friday next. I believe his arrest was a deliberate attempt to withdraw him from international debate. This man has been active on the appalling scandal of Darfur and deserves our support. Will the Leader consider proposing an all-party motion from the House, to be passed without debate so we will not take up time, calling for his immediate release and asking that he be allowed to travel to Ireland to receive this award?

**Mr. Leyden:** I support Senator Brian Hayes's request for an ongoing debate on the incidence of suicide. The most recent statistics show that 444 people died in 2003, most of them young. In addition, we are familiar with the tragic story of the young man from Cork who committed suicide in Zurich. This was the fourth assisted Irish suicide to date, at least as far as we know. Marian Finucane replayed an interview with the young man on her radio programme this morning. This is a harrowing situation, particularly for those who suffer from multiple sclerosis. This young man was at an advanced stage of MS and made

the decision to travel to Zurich and die through assisted suicide or, as it is called, euthanasia.

It would be worthwhile to have a debate on this issue. I commend Young Fine Gael and the Fine Gael Party on highlighting it yesterday and consistently bringing it to the fore. The Government and all the State agencies are involved in dealing with this issue. A combined effort is required because no single party has a monopoly of wisdom. It is vital that there be an ongoing debate to ensure we hear all ideas because it is a serious problem. More people are dying by suicide than as a result of road accidents each year and more people have died by suicide in the recent years than died during the conflict in Northern Ireland. This is the main issue facing us at present. The change in the relationship between the Church and the individual has also changed people's perception of suicide.

I commend Rehab on inviting the former President of the United States, Bill Clinton, to Ireland on 23 May. Perhaps the Leader would consider inviting former President Clinton to the House to discuss the issues he will discuss in Citywest.

**An Cathaoirleach:** That is a matter for the Committee on Procedure and Privileges.

**Mr. Leyden:** It would allow the House to highlight this issue nationally. We have a role in this regard. We also have a right to invite the former President of the United States to this Chamber.

**An Cathaoirleach:** It is a matter for the Committee on Procedure and Privileges.

**Mr. Leyden:** I respectfully request that urgent consideration be given to inviting the former President to address the House on the issue of suicide.

**Mr. Finucane:** A short time ago we had an interesting debate on transport, particularly the problem of driving tests. Many Members referred to the huge backlog for tests and I am glad the Minister has rapidly responded. While there might be some teething problems getting the system in place, I wish him well in reducing the waiting list for driving tests.

However, rather than take this *à la carte* approach, he should deal with other areas, particularly the situation with driving schools. Any person can establish a driving school in this country. There are no controls. There is no uniformity in the failure rate at test centres throughout the country. In fact, there is a big discrepancy between different locations. In many cases this is due to the type of driving instruction available in the area. There is no statutory mechanism to regulate these driving schools, which are self regulating. Approximately 25% or 1,200 of them register as a driving school so regulation is necessary.

One of the reasons for the excessive backlog for driving tests is the high failure rate, with the

result that people seek repeat tests. Most people who apply for the driving test will get somebody to confirm that the test is urgently required. Nearly every case, therefore, is urgent because people are conscious of the long waiting list. That must be tackled in parallel with the action being taken to reduce the numbers awaiting tests if the Minister wishes to secure an effective reduction. There will still be a failure rate.

**Mr. Lydon:** We should have a debate on Iraq in response to the news we hear daily of the car bombs and suicide bombings there. Senator Norris recently called for such a debate. We may not be able to do much about the situation but at least we could offer our support to these beleaguered people.

It is appalling that an organisation which is devoted to the protection of human life and to helping pregnant women, namely, CURA, should have its grant threatened by the Crisis Pregnancy Agency just because it will not, or may not be allowed to give telephone numbers of abortion agencies where women can go and have the life in their womb destroyed. That is a sad reflection on our current situation.

**Mr. Norris:** I strongly support Senator Ryan's proposal that there should be an all-party motion on the subject of the arrest of Dr. Mudawi Ibrahim Adam. This would be most valuable and useful because Front Line was established particularly to secure the rights of those people who are literally in the front line. Nothing could illustrate more clearly that Dr. Adam is in the front line than the fact that he was arrested on his way here to receive an important award for his human rights work. His arrest also constitutes an insult to our President. The passing of a motion of this kind would be helpful and appropriate in the circumstances.

I also wish to support the call by Senator Lydon for a debate on Iraq. I have consistently called for this over a considerable period. It is important because we witness a growing chasm opening up between American rhetoric, which is all about victory and the war being over and all the rest of it, and continuing massacres every single day. The daily total now comes to 100 people.

**Ms White:** Hear, hear. Exactly.

**Mr. Norris:** We appear to pass it by.

Finally, I wish to raise a matter that I gather was referred to yesterday when, unfortunately, I was unable to be here for the Order of Business, namely, diplomatic visits and, in particular, the visit to Argentina by a group from a joint Oireachtas committee. I support these trips which I believe are valuable even though in this case one of the projects relating to shellfish cultivation and salmon farming was exposed as folly. Even taking that into account, the development of good relations and contacts is most helpful in diplomatic terms. However, I deplore the tone in

[Mr. Norris.]  
which perfectly legitimate questions from RTE were replied to by the leader of that delegation, Deputy O'Flynn, and his repeated references to the fact that——

**An Cathaoirleach:** I wish to point out——

**Mr. Norris:** ——the committee Chairman is also responsible for the licence fee of RTE.

**An Cathaoirleach:** Deputy O'Flynn is not a Member of this House.

**Ms O'Rourke:** Not yet.

**Mr. Norris:** I beg the Cathaoirleach's pardon. He may not be in either House.

**Mr. B. Hayes:** Don't cry for me Argentina.

**Mr. Norris:** Let us forget about the name. It is very bad practice to employ this hectoring sort of tone and to drop references to licence fees and appearances before a committee. It does not do the dignity of either House any good.

**Mr. Dooley:** I join with other colleagues in calling for a debate on suicide. We had a very good debate on this subject last year. As Senator Leyden stated, things have moved on. My concerns are about the reporting of such incidents, which has been handled most responsibly up to now by most if not all sections of the media. I am concerned about the reporting of the current case to which reference has been made. I do not wish to add further to that, other than to say that the remarks by some commentators may be seen to glamorise it in some way. Perhaps "glamorise" is not the correct word, but they have promoted the notion that assisted suicide is somewhat acceptable in certain circumstances. This will have the capacity of giving credibility to suicide and may lead to an increased risk of suicide among people who find themselves in detrimental situations where they see no way out. The reportage on this case is a move away from accepted standards. In the past we complimented the media on its reticence in terms of reporting on such matters but that has changed and it would be helpful if we had a debate in this House to discuss it further.

**Mr. Bannon:** I support Senator Brian Hayes's call for a debate on suicide. I also seek a debate on the ever-increasing levels of heroin use in every part of the country. Heroin use is now occurring in villages and smaller towns where it was unheard of ten years ago. We need more localised services to deal with the drug problem throughout rural Ireland. Services are mostly located in the large urban centres.

There is also an urgent need for counselling for the parents of addicts as well as for the education of young people in the schools. The problem must be taken more seriously and more needs to be done with regard to the abuse of drugs. A

strategy is required that covers prevention, treatment and rehabilitation. We must get tougher on the drug dealers. They are moving around the countryside like evil thieves in the night. They are destroying the lives of many of our young people and this is an issue that requires swift action.

**Mr. Morrissey:** On Monday, many Oireachtas Members from the Dublin area met with the management of Fingal County Council. They were shocked to be given information that despite the proposed ratification of the review of the draft development plan by the council in the coming weeks, the projected population figures for 2011 will be reached by 2008. This is in tandem with 7,000 housing units being taken out of the draft development plan by parties who speak *ad nauseam* about housing shortages and means there will be a further spiralling house crisis in the Fingal area. This is after ten years of trying to meet demand, which has now happened. The reason the councillors give for taking these houses out of the draft development plan is the lack of transport and rail facilities. They say they have not been given the go-ahead for a rail line to Dunboyne, which would alleviate the traffic situation, a matter which has been raised in this House many times. I certainly would like a further debate on this issue.

Like Senator Ryan, I wonder who will shoulder the debt for Cork Airport. The business plans for the various airports are being finalised and I am aware the one for Dublin Airport does not envisage taking on the debt for Cork. This might have an impact on the ongoing debate about the amount of money that might be spent on a terminal in Dublin. I would like a debate on that issue as well.

**An Cathaoirleach:** I remind Members that only eight minutes remain for the Order of Business. Nine Senators are offering and I will try to accommodate them. However, I am not in a position to accept any more.

**Mr. Coghlan:** I know the Leader misheard me yesterday on the matter of the second and third terminals for Dublin Airport.

**Ms O'Rourke:** You corrected me this morning.

**An Cathaoirleach:** Members should direct their comments through the Chair and should keep their contributions brief.

**Mr. Coghlan:** Of course. I did not, in fact, mention the Great Southern Hotels group. However, will the Leader agree we can assume they are safe in State ownership for quite a considerable period in the absence of a decision on the terminal in question? I, too, support the query raised by Senator Ryan as regards the undertaking given to Cork. As I understand it, the Dublin Airport Authority believed in the normal commercial manner that it would be suitably reimbursed for the assets it was requested to transfer on foot of

a Government decision. Now it appears an undertaking was given by the previous Minister. I would like to hear the Leader's comments on that.

**Dr. M. Hayes:** I will help the Cathaoirleach with his time difficulties by simply saying I wish to support the request for a debate on suicide and Senator Ryan's appeal for some sort of motion as regards the visitor from the Sudan, who is being prevented from receiving an award from our President. That should concern us.

**Ms O'Meara:** Will the Leader of the House once again place the issue of child care on the agenda for debate in light of the remarks by Dr. Robin Eames, the Church of Ireland Archbishop of Armagh, at the opening of the church's General Synod in Dublin, yesterday? He stated that even the Victorians would not have tolerated the lifestyles of and pressures on parents and children in today's full working economy. A valuable OECD report on child care has been published and the National Economic and Social Forum will report in a few weeks on the issue. Many reports are available and the debate will continue but an indication that the Government intends to tackle this issue is absent.

I support the call for a debate on suicide. It is shocking that more people die as a result of suicide than car accidents. However, we should be well informed before we have the debate. I am not sure from where the information on suicide coming but I would like to obtain solid information from experts on what they believe are the causes of suicide and what preventative measures can be taken in schools, hospitals, sports clubs and the community generally to reduce the unacceptably high incidence of suicide.

**Mr. Scanlon:** I concur with Senator O'Toole's comments regarding the Personal Injuries Assessment Board. I compliment the board's chairman, Dorothea Dowling, and its vice chairman, Senator O'Toole, on their work which has contributed to the reduction in the cost of insurance. At the time we debated the legislation to establish the board, 40% of an insurance claim comprised legal costs, which was a startling figure. Anything to help reduce such costs is a help.

The special savings investment accounts will begin to mature next year. Once they mature, account holders will have three months to claim the Government subsidy. If it is not claimed within that period, account holders will be charged 23% tax, which will write off the bonus provided by the Government under the scheme. No obligation has been placed on financial institutions to notify people of this requirement. However, it should be obligatory that they should notify people, once their accounts mature, that they have three months to claim their money or else they will pay a substantial tax.

**Mr. Feighan:** I support the call for a debate on suicide and I concur with Senator O'Meara that the debate should be measured, balanced and informed. Suicide is a serious issue and even in my county, which is rural and which has a population of less than 50,000, there were seven suicides in ten days recently. It causes major frustration in communities because people do not know what to say or do about it. All parties should join together to draw up a cohesive plan to address this ever increasing problem.

I called for a debate on value for money in Government spending two weeks ago. My call was supported by the "Prime Time" exposé last Monday night, which highlighted that vast sums of taxpayers' money is being wasted on various projects. The money would be better spent on additional hospital beds, new schools and so on. However, we should debate this serious issue, which needs to be addressed sooner rather than later.

**Ms White:** The first requisite to be a good politician is to have vision.

**Senators:** Hear, hear.

**Ms White:** I am a member of the Clann na Gael Fontenoy GAA club in south-east Dublin.

**An Cathaoirleach:** That is not relevant to the Order of Business.

**Ms White:** While there is too much emphasis on academic success and the points system, points should be awarded for sports. Many young people are enthusiastic about sports until they reach 12 years when their interest wanes. I call for political vision in the provision of a national campus for all sports. All Members should join in calling on the Government to provide a national campus for all sports.

**Mr. O'Toole:** Instead of the incinerator.

**Mr. Bannon:** The Senator should bring it up at the parliamentary party meeting.

**Mr. Ross:** I am somewhat dazzled by the vision on my right.

**Ms O'Rourke:** It is hard to dazzle the Senator.

**Mr. Cummins:** Is Senator Ross a member of a GAA club?

**Mr. Leyden:** Perhaps the Senator is a rambler.

**Mr. Ross:** The issue of Aer Rianta has been raised by Senators Ryan, Coghlan and Morrissey and other Senators. A serious aspect of this matter is that what is happening is unknown to Members of this House. We should debate this issue now and not next week or the week after when a deal has been cooked up between politicians, trade unions and other businesses. If we

[Mr. Ross.]  
debate this after an agreement is made we will be talking to an empty audience because we will not be able to affect it.

I ask the Leader to request the Taoiseach to come to this House, debate the issue and answer questions about what is happening. Other Senators would also welcome such a debate. The Taoiseach is pulling the strings on the Aer Rianta-Aer Lingus deal. We should not have statements because everyone in this house knows that statements are a cop-out.

**An Cathaoirleach:** There is a Minister for Transport.

**Mr. Ross:** There is a nominal Minister for Transport.

**An Cathaoirleach:** That is not fair. There is a Minister for Transport and I wish to correct the Senator.

**Mr. Ross:** There is no reason the man who is pulling the strings of the public should not come in here——

**An Cathaoirleach:** That is not fair.

**Mr. Leyden:** That is Tony O'Reilly.

**Mr. Ross:** ——and answer questions on the issue involved. We should not have statements with the Minister after the event. It is a serious situation because the future of Dublin Airport is not based on the effect on future generations on this country, but on half a dozen seats in north Dublin. It is a scandal that is the deciding factor in the issue.

**Mr. Dooley:** That is democracy.

**Mr. Ross:** It is not democracy because the airports of this country belong to everybody, not specific people.

**Mr. Dooley:** That is why everybody should have an input.

**Mr. Ross:** Let us have a proper debate with the man who is accountable.

**Labhrás Ó Murchú:** I support Senator Ryan's call for solidarity in support of a person whom most people believe is an icon of free speech and human rights. Those of us living in a democracy find it hard to understand why any regime would want to stifle the expression of free speech. Inherent in this arrest is a snub to our President. It is important that this Chamber takes the opportunity to find a mechanism of showing solidarity in this case.

**Mr. Kitt:** I join the call for debate on Iraq, not just on suicide bombings and killings but also on the provision of basic supplies such as water,

sewerage, health and education, as all are affected by the terrible events there.

I join Senators' calls for an all-party motion on the eminent doctor from Sudan. It is very sad that a person who advocates human rights is not allowed to travel for an award. I note that one of the persons who nominated recipients of awards to be presented by the President was Senator Mooney.

Despite criticism of him, I support the Minister for Transport's actions on the western rail corridor. I welcome the fact that the Minister will go to the west at the weekend to see the corridor, an initiative which was started by our party leader many years ago.

**Ms O'Rourke:** Many contributors this morning spoke about suicide, on which we had a debate on 27 February 2003. As it has been two years since then and in light of everything that has happened since, we will endeavour to schedule another debate. I note that many speakers said they wanted the debate to be informed and coherent. Senator Brian Hayes referred to the national debate on suicide seven years ago, since when, sadly, many deaths have occurred. He called for a rolling debate as events develop, which sounds like a good idea. Hopefully, deaths will not multiply.

The appointment of 60 additional driver testers was noted and it was suggested that opening hours at test centres should be extended. I said yesterday, inadvertently, that less money was being awarded in insurance claims. Senator O'Toole said as vice-chairman of the PIAB that costs and administration are lower, but awards are not. The Senator was pleased to note that the additional driver testers will be public servants.

Senator Ryan referred to the €160 million debt at Cork Airport. The previous Minister for Transport said the debt would be taken over by Dublin Airport.

**Dr. Mansergh:** That is correct.

**Ms O'Rourke:** I suggest the Senator consults the relevant Seanad debate. I remember distinctly the previous Minister stating here that any overhanging debt at Cork and Shannon would be subsumed into Dublin. It is on the record of the House. As Senator Ryan suggested, we should get clarification. If the debt is subsumed into Dublin, it will place a heavy burden on the airport and make things very difficult for it.

Senator Ryan referred also to the 13 Dáil Bills on the Seanad Order Paper, which we seek every day to have expedited. He referred also to Dr. Adam, the first part of whose name I cannot get through. Dr. Adam was to receive a Front Line award in Dublin for his work in Darfur. If the leaders of the groupings in the House were to gather after the Order of Business, we could draft an appropriate all-party motion on the matter and send it immediately to seek his release.

Senator Leyden also spoke about suicide and raised the matter of assisted suicide. They are different matters and it is not up to us to judge why a person should seek that way out. Senator Leyden praised the Fine Gael Party for taking so great an interest in the matter. Senator Leyden also asked me to invite President Bill Clinton to the Chamber and the Cathaoirleach very properly said that was a matter for the Committee on Procedure and Privileges. We are meeting the committee today. I do not hold out much hope that the President will come, but we can certainly ask him.

Senator Finucane called for a debate on transport and driver testing. Fine Gael moved a Private Members' motion on the issue previously, which led to a very good debate. Senator Finucane said the lack of regulation of driving schools should be addressed, though some of them operate a loose arrangement. The need for greater regulation of driving schools was noted.

Senator Lydon called for a debate on Iraq and raised the threat posed by the Crisis Pregnancy Agency to the continued funding of CURA. CURA, in joining the grant assistance scheme, must comply with certain criteria. The Crisis Pregnancy Agency and CURA both provide valuable services.

Senator Norris raised the case of Dr. Mudawi Ibrahim Adam, the ongoing issues in Iraq and the visit by Members to Argentina. He is in favour of travel by Members to gain international perspectives but noted the belligerent tone of a recent radio interview on the subject.

Senator Dooley called for a debate on assisted suicide. We have no process for intervention in Switzerland's legal policies. Senator Bannon raised the issue of heroin use and called for improved drug education services. He was correct to claim that drug dealers are similar to evil thieves in the night. They rob people of money, health and faculties.

Senator Morrissey and other Members had an enlightening meeting with the Fingal county manager. The Senator remarked that all roads lead to the terminal. Senator Coghlan discussed Cork Airport, the debt of which is to be transferred to the Dublin Airport Authority. While, on learning of this matter, I believed Dublin would be crippled by the increased burden, I realise that Cork might also be affected if its debt is not transferred. I am amused by allegations that Cork Airport has gold-plated facilities. Cork should have a good airport.

**Dr. Mansergh:** It is the European city of culture.

**Ms O'Rourke:** All culture-mongers will go to Cork. Senator Maurice Hayes called for a debate on suicide and concurred with Senator Ryan's comments on Dr. Adam. Senator O'Meara raised the issue of child care. While Dr. Robin Eames was careful to hedge his statements, I received

the impression from him that mothers should be at home.

**Ms White:** The Senator is correct.

**Ms O'Rourke:** I note his view but do not agree with it. A call was made for information on measures for the prevention of suicide. Senator Scanlon congratulated Senator O'Toole on his appointment as vice-chairman of the PIAB and raised the issue of exit taxes on people disposing of SSIA's within three months. The rush on these accounts will be such that no money will remain in them. Senator Feighan noted the number of suicides in Roscommon, which for a period of time were reported almost daily. The "Prime Time" report was salutary on this issue.

It is difficult to match the rhetoric of Senator White on the Fontenoy club. I recall a poem which includes the line "On Fontenoy, on Fontenoy". Senator Dardis has just reminded me of the line, "Even the ranks of Tuscany could scarce forbear to cheer", which is applicable to this House.

**An Cathaoirleach:** Fontenoy is not relevant to the Order of Business.

**Ms O'Rourke:** A little culture is good.

**Dr. Mansergh:** Today is the 260th anniversary of the Battle of Fontenoy.

**Ms O'Rourke:** Can the Senator quote any more lines from the poem?

**An Cathaoirleach:** The Leader to respond without interruption, please. The Leader should reply to the Order of Business only.

**Ms O'Rourke:** Senator White made the point that there is too much emphasis on academic matters and not enough on sports. She called for a national sports campus. The Minister for Arts, Sport and Tourism, Deputy O'Donoghue, announced yesterday that the plans for the campus will be published within a few weeks.

Senator Ross declared himself dazzled by Senator White's erudition. He is not lacking in that department either. I do not know the poem from which Senator Ross quoted but he called for a debate on Aer Rianta with the Taoiseach. I will not ask the Taoiseach to come to the House to answer questions on this matter.

**Mr. Ross:** Why not?

**Ms O'Rourke:** I will not ask him to come in for such a debate.

**Mr. Ross:** The Leader would invite the Taoiseach to the House to debate Northern Ireland.

**Ms O'Rourke:** Yes, I would invite him in to debate Northern Ireland because he has specific

[Ms O'Rourke.] responsibilities in that area. We must remember that Deputy Bertie Ahern is the Taoiseach of the country and it behoves him to —

**Mr. Bannon:** The Taoiseach has done a very bad job.

*(Interruptions).*

**An Cathaoirleach:** Order in the House please.

**Mr. Ross:** He is the Taoiseach of the airports.

**An Cathaoirleach:** The Leader to continue, without interruption, please.

**Ms O'Rourke:** It is right that the Taoiseach would have an interest in everything.

**Mr. Ross:** That is why I would like him to come into the House to talk about this matter.

**Ms O'Rourke:** If the Taoiseach were to answer every such call, where would he end up?

**Mr. Norris:** Making a decision.

**Mr. Ross:** If it was Jack O'Connor, he would be in the House in a flash.

**An Cathaoirleach:** I ask Senator Ross to refrain from interrupting.

**Mr. Dardis:** Perhaps we should quote Goldsmith, "...and still they gazed, and still the wonder grew,..."

**Ms O'Rourke:** "That one small head could carry all he knew."

Senator Ó Murchú expressed solidarity with Dr. Adam and his fight for democracy and freedom.

Senator Kitt raised the issue of Iraq and Dr. Adam. He also praised the Minister for Transport for his enlightened view on the west of Ireland.

Order of Business agreed to.

### **Pension Provisions: Statements.**

**Minister for Social and Family Affairs (Mr. S. Brennan):** I thank the Cathaoirleach and Members of the Seanad for organising this debate, which is timely. I appreciate the opportunity to again discuss pension provisions, which we have discussed in the House on a number of occasions in recent months. I look forward to further discussions today.

I welcome the report from the ESRI, entitled Pensions, Incomes and Replacement Rates, and pay tribute to the excellent work of the ESRI in its production. I am interested in Senators' views on how to structure a pensions system for the future that guarantees all citizens a better livelihood and ensures people can enjoy an adequate

income in their retirement years. I will listen carefully to what is said in the House today.

My Department commissioned the ESRI report so that its findings can feed into the national pensions review, which is currently under way by the Pensions Board. This review was due in late 2006, but I have asked the Pensions Board to bring it forward to this year. I now expect an interim report in June and a final report by September. I ordered the acceleration of the review because of the urgency of the pension challenge this country faces.

Before dealing specifically with the ESRI report, I want to outline briefly what that challenge is. The reality is that Ireland has a pension problem, but it is not unique to this country. Internationally, including in Ireland, governments are grappling with meeting the challenge of funding pensions for an older population who are generally living longer and healthier lives.

In some ways Ireland is fortunate because the problem has not yet become a crisis, as is the case in a growing number of countries. If left unchecked, however, the consequences in the years ahead for hundreds of thousands of older people in retirement could be quite alarming.

Put simply, a century or so ago pensions were introduced for those aged 70 and over, at a time when life expectancy was around 60. Therefore, it was not going to cost them too much money. Today things are different — people generally retire at 65, while life expectancy is well over 80, so the gap is bigger.

The facts speak for themselves and I regard them as stark and worrying. I am glad to have an opportunity to place those facts on the record of this House. Out of a current national workforce of some 2 million people, it is estimated that over 900,000 workers do not have a private or occupational pension. Unless speedy and targeted action is taken soon to address this unacceptable situation, most of those 900,000 people will end up relying on the basic State welfare pension in retirement.

The pension situation is particularly serious for women. I have raised this matter on a number of occasions. Only 46% of women in the workforce currently have pensions. When one takes away those on public service pensions, the percentage falls further. Only one third of working women outside the public service have pensions and many have pensions that are far from adequate.

Having said that, however, we have made some progress. For example, State welfare pensions have increased by over €80, or 81%, which is 50% above the rate of inflation, over the period and they are well ahead of earnings. We are close to achieving the Government's commitment to take old age pensions to €200 a week by 2007. I am working hard on that project.

The Pensions Board's strategies to increase awareness and coverage are delivering results. More than 50,000 personal retirement savings accounts, or PRSAs, which are tailored for the

individuals needs, have been taken out. That is good progress.

The national pensions awareness and action campaign is helping to firmly plant pensions high on the agenda of more people. As Senators will be aware, this is national pensions week. An action campaign is under way and the Pensions Board deserves our appreciation for organising this week to focus on the issue of pensions. This debate is timely in that it falls in the middle of national pensions week. The recent Social Welfare and Pensions Bill included significant legislation on the operation and supervision of pension schemes.

However, despite the hard work of all concerned, including my Department officials, the Pensions Board and many groups around the country, we are failing to mobilise the general public and employers to start contributing in the numbers required. We cannot leave 900,000 people, many of whom are vulnerable and unsure as to what their later years will bring, in an uncertain situation.

The ESRI report which prompted this debate confirms much of what we already knew. It must be factored in that the report is based on statistics from 2000 and Ireland has changed considerably in the intervening five years. Overall, however, the report has added a depth of research which is valuable and will assist and influence the national review under way.

Senators will be aware of a number of the report's findings. These include, for example, that the average income of a pensioner in 2000 was slightly more than half of average industrial earnings; approximately 33% of pensioners have an occupational or private pension and this accounted for about 25% of total retirement income; pensioners' incomes are lower at higher ages, particularly for women; all sources of retirement income other than social welfare benefits fall in importance as age increases and are less significant for women than men; and the percentage of persons aged over 65 years who have incomes below 60% of median income and experience relative deprivation increased from 5.9% in 1994 to 38.4% in 2000.

Income from occupational and personal pensions is concentrated in the top two fifths of the income distribution of pensioners in 2000. On this basis, the ESRI concludes that tax expenditure on pensions produces inequitable results and calls for this issue to be examined further. Replacement rates for pensioner couples were 51% in the period between 1994 and 2000 and 43% for single pensioners. This can be compared against the Pensions Board's national pensions policy initiative income replacement target for retirement income from all sources of 50% of gross pre-retirement income.

The report finds that younger persons are more likely to expect an income from occupational and personal pensions, while older people expect their retirement income to come primarily from the social welfare pension. It also notes that 63%

of those aged under 35 years expect income from occupational and personal pensions, whereas CSO data indicates that only 37% of this group have coverage.

State pension increases are well ahead of both prices and earnings and, as the ESRI report points out, the welfare pension is replacing a greater proportion of gross earnings than it did in previous years. However, other developments such as income tax reductions and increased numbers at work are serving to improve overall household disposable income. In this regard, one aspect of the report's findings of particular concern is that which shows that pensioners are at a higher risk of poverty than many other groups in society. This is unacceptable and must be specifically addressed.

Overall, Senators will note from the report's findings that retirement income expectations are — correctly — high. People who devote a lifetime of service to the country, irrespective of the service or occupation in which they are employed, are entitled to expect to be looked after in their later years and their contribution recognised.

While I have already broadly outlined the significant progress being made on pensions, its pace and delivery are not sufficient. Decisive, determined and targeted action on pensions is needed. There are no easy solutions because this is a difficult area involving complex issues. We must factor in a growing belief that the future return on pension investments may not be as high as forecast a decade or so ago. I have addressed in the House on previous occasions on the role of pension funds, their returns and the level of trust and confidence in such funds and many Senators expressed a view on the issue.

We must continue to monitor the importance and impact of tax reliefs on pensions which currently amount to €1.5 billion per year, roughly equivalent to what the Government spends on State welfare pensions. As currently structured, the reliefs may not be achieving the wider pension coverage we need. It must be stressed, however, that these tax concessions are an investment in the retirement incomes of those currently at work. In the years ahead, the coverage figures we are aiming for should result in a significant improvement in the numbers of older people with supplementary pensions. Above all else, we need a radical approach which will require considering alternative solutions, devising new and attractive products and setting out to fundamentally change the pension landscape.

The Pensions Board, as part of its national review, will examine progress towards current targets and general strategy, including the supports and incentives offered through the tax system to encourage private pension provision. It will also examine alternative models for providing pensions based on best practice from other countries.

I stress again, however, that if we are to make significant progress we must consider radical alternatives. In this regard, I have requested the

[Mr. S. Brennan.]

Pensions Board to urgently examine a number of possible new routes, including whether we need to introduce more mandatory provisions into the system. One possible way forward could be to introduce a mandatory scheme incorporating an opt-out clause. The scheme could be split three ways with the employee, employer and State making a contribution. In my judgment, few people would opt out of such a scheme, particularly if the State and employers were also contributing.

I have asked the Pensions Board to examine ways of tapping into the valuable savings habit solidly established by the innovative SSIA savings scheme. The SSIA's will begin maturing by mid-2006 and €15 billion or more will be available to account holders by the end of 2007. Although this offers a unique opportunity to encourage investment of SSIA savings by individuals in pensions, to do so will require the devising of an attractively packaged product.

I have also asked the Pensions Board to assess the pros and cons of making retirement at 65 years a choice for individuals, in other words, the possibility of giving people options to work longer if they so wish. Men and women are living longer and lead more active lives in their later years. Working a few years after retirement age can make a real difference to income in retirement. I want to examine innovative ways of encouraging and allowing people to work longer if this is what they want and rewarding their decision with a bonus system when they eventually retire. People want to have choices and do not necessarily want to have to adhere to a set of inflexible rules. As I have noted many times in the House as regards social welfare in general, a one-size-fits-all regime is not the best way to reflect the needs and wishes of people in the 21st century. This is equally true in the case of pensions. Those who through their toil and effort have contributed to the continuing evolution, growth and prosperity of this country have a right in retirement to be recognised for that effort and share in the fruits of prosperity. The way in which we achieve this will be a mark of how we have progressed and matured as a nation.

Fundamental questions, including issues of a philosophical nature, must be asked and debated. The responsibility to ensure our aims are delivered rests with all of us. The State will play its part through regular increases in the State pension, incentives to save for retirement and planning and legislating for necessary changes. Employees must face up to their responsibilities to plan ahead for retirement, while employers also have a central role to play. I was disappointed by comments made on Monday by one employer organisation which appeared to distance its members from any responsibility in the drive to provide all citizens with adequate pensions.

**Ms O'Rourke:** The Minister and the organisation in question are very close.

**Mr. S. Brennan:** I did my bit for it, as did Senator O'Rourke.

Ireland with its new found wealth and relatively young population still has sufficient time and opportunities to plan and structure a pensions system. As I noted, philosophical issues arise in this context, which is the reason I am interested in hearing the views of Senators and Deputies on pensions policy. There are those, including the organisation to which I referred and Members of both Houses, who take the view that it is not the responsibility of the State to ensure everyone has a pension. This view holds that it is the responsibility of employees to provide for themselves and no one else has any significant responsibility in this regard. There are also those who take a contrary view, namely, that it is the responsibility of employees, employers and the State, in a three way partnership, to ensure every citizen has a decent income in his or her retirement years.

Notwithstanding the facts and figures, the issues at the heart of the pensions debate are philosophical in nature. This is not just taking place in Ireland but also around the world and I am keenly interested in the views of Senators on this central issue. To what extent do the State and the taxpayer insure people have an income or to what degree do we leave it to people themselves? It is a philosophical as well as a practical discussion.

**Ms Terry:** I welcome the Minister to the House for this debate and I appreciate the time he has put into it since he moved to the Department of Social and Family Affairs. While I have some hard things to say, I hope the Minister will make a difference. Until now things were in poor shape but the Minister has the will to make a difference for every pensioner and everyone saving for a pension. I agree with much of what he said but I take issue with and will address some of his comments. I will not say anything I have not said before.

I thank the Minister for commissioning the ESRI report, which is independent and gives an unbiased view of the pension situation. It has not been influenced by the Department or any vested interest. Many suggestions I made previously are included therein — I am glad to see I am not on my own when I say what I think. This report backs up the stance I have taken in previous debates and I hope the Minister will take time to look at my suggestions.

Pension provision is about ensuring our pensioners have sufficient income to live on and do not fall into a poverty trap. This report shows that many of our pensioners are living in poverty and neither the Minister nor I want to see that happen. The problem, which has arisen for a number of reasons, must be tackled. This is national pensions awareness week and there are many reports

available. The OECD report on pensions shows that workers on average earnings in OECD countries can expect their post-tax pension to be worth just under 70% of their earnings after tax. Ireland, however, is at the bottom of the league of 30 countries, with a net replacement rate for those on average earnings of 30.6%. That is appalling but it does not surprise me.

The Pensions Board must examine how other countries deal with pension provision and ensure pensioners have sufficient income to maintain the standard of living they expected. There are good practices in other countries and the pensions industry in Ireland should examine them.

I have been critical of the pensions industry on many occasions. It was brought to my attention yesterday that a member of the Pensions Board had a letter published in *The Irish Times* in December referring to statements I made in this House about the board. I take it as a compliment because it demonstrates that I had irked the board. This person stated that she had been on the Pensions Board for two decades. If I were her, I would hang my head in shame. If all the board can come up with is the PRSA, it is a poor day's work.

I am surprised the Minister has patted the board on the back for the PRSAs because they have not worked. When the Minister complimented the board, he stated that 50,000 PRSAs have been opened. Why not give the percentage of the work force who have taken them out? A total of 1.3% of employees have taken out a PRSA. The Pensions Board set a target of 60% by the end of 2005 but the PRSAs have been an absolute disaster because they are simply more of the same unsecured pensions that guarantee nothing. All the Pensions Board refers to is getting people to take out a pension, it never mentions the risk that they may not get an adequate pension on retirement because they are not guaranteed and can switch from defined benefits to defined contributions.

I called for the risks and fees to be publicised but that suggestion was not accepted. Current rules allow ordinary occupational schemes as well as PRSAs to be wound up without paying any benefits at all. Employees have no confidence in the pensions industry and the Pensions Board is not doing anything to ensure people will have adequate pensions when they retire.

I have read the entire ESRI report and the section on who benefits from the saleable tax treatment of private pensions is extremely important. The Minister, however, has given us conflicting figures. He qualified them by stating that the statistics are from 2000 but the tax forgone to support the private pensions system in 2000 and 2001 was €1.5 billion, amounting to almost as much as direct expenditure on the public pension system for the elderly, €1.6 billion in 2001. In November 2004 and March 2005, however, the Minister told me in this House that the figure for the tax forgone to occupational pensions was €2.5 billion. The Minister is giving

us misleading information and he should correct that in his response.

On a subsequent occasion in the House, the Minister reiterated that in 2004 the State contributed €2.5 billion to occupational pensions while contributory and non-contributory pensions cost it €2 billion. Many of those pensioners are living in poverty. I have already suggested to the Minister that if he were to withdraw the tax reliefs on occupational pension scheme contributions, overnight he would double the old age pension and still save €0.5 billion. What is happening with the occupational pension schemes? The Minister understands this because he has spoken on the matter on two occasions, as recorded in the Official Report. I am concerned that he did not give accurate information to the House on those occasions.

I go along with the conclusions of the ESRI report, including giving tax relief as a tax credit rather than at the marginal rate of tax, phasing out the tax-free lump sum, lowering the income cap and contributions allowable for tax purposes and tax on the returns on pensions and investments. Many countries have introduced these recommendations. These suggestions from the ESRI must be examined. I hope the Pensions Board will get its act together to deliver a proper pension for all and encourage people to save. Ireland is a nation of savers, as shown by the SSIA scheme. However, the pensions industry simply wants to get its hands on the SSIA money, which the Minister stated amounts to €15 billion. He must not let the industry get its hands on this unless it can guarantee the money will be preserved, not spent on management fees and feeding the fat cats.

**Mr. Ross:** Hear, hear.

**Ms Terry:** That is what has happened to date. I wish the Minister well in this regard as I believe he is on the right track.

**Ms Cox:** I am delighted to welcome the Minister for Social and Family Affairs to the House. The ESRI report makes interesting reading. I recognise Senator Terry's knowledge and valid concerns in this area. However, coming from a business background, one issue of concern to me is the taking away of tax reliefs on pension saving schemes or PRSAs for those working and contributing part of their salaries to matched company funding. If this cannot be provided for in future partnership, people will quite rightly revolt. Several years ago, the Tánaiste stated that if a level of expectation has been built up among people, one cannot pull the rug from under them. I pay money into a pension fund on a personal basis and provide for a pension contribution for my employees, matching it from a company point of view as part of benefits. However, if suddenly the Government tells me that such contributions will no longer be tax free, forget all talk about partnership. It will have gone out the door.

**Ms Terry:** That would not need to happen. The system is inefficient at present.

**Ms Cox:** Unless there is a better way to market this, it will not work. Most people do not understand that for every €10 put into a pension scheme, this is subsidised by the non-taking of tax by the Government to the extent of 20% for those on the lower rate and 40% for those on the higher rate.

**Ms Terry:** It only benefits the well-off.

**Ms Cox:** It does not.

**Ms Terry:** This was shown to be the case in the ESRI report.

**Ms Cox:** Everything benefits those who have money.

**Mr. Ross:** No, it does not.

**Ms Cox:** This is a rerun of the relative poverty argument of the people with more money versus those with less. The problem will be that those with more money will feel hard done by and they will stop making it. We will then become a country of little widgets with no entrepreneurial skills and people feeling there is no need to strive to do better for their children, their children's children, their country and their economy. We must continue to foster a competitive environment, a sense of recognition of success and entrepreneurship and a sense that it is equitable to provide for the less well off. We must strive to be all inclusive. Our systems must not be just for the wealthy and not just for the poor. If we cater only for the poor, there will not be enough money to look after them.

Some women start working at 18 years of age, while those who go to college might get their first job and make a lot of money a little later. At 29 years of age, many women begin to have children, and may choose to job-share or leave work altogether. They contribute less in PRSI and pension funds but make their contributions in another way by looking after the family for which they receive no recognition. On reaching 65 years of age, many may be dependent on a spouse. In other cases, such as those of divorcées, there may not be enough provision for old age. More concentration on this aspect of women's pensions is required, as is greater recognition of their contribution in this area.

From an employment point of view, the compulsory and mandatory nature of new provisions to provide for pensions in the future must not be perceived to be or become a tax on employment. Our country faces competitiveness challenges on a daily basis. We are moving away from a country where it is easy to run a business, and people are encouraged to do so, to one where businesses are forced to fight daily with the bureaucracy and regulations forced upon them. It is impossible to run a small or medium-sized enterprise, creating

employment for five to 40 people, and not be driven crazy dealing with this and that Department or regulation and paying tax. The proposed solution to the pension problem will be perceived as a tax on employment and will result in no employment and, therefore, a bigger pension problem.

While I did not read the Small Firms Association's comments on this issue, I read those of the Irish Small and Medium Enterprises Association. I also know about this from my experience as owner-manager of a small company with a turnover of €6 million, 50 people employed and an annual wage bill of €1 million. On top of the 10.75% PRSI contribution, I may now be expected to pay more money for employees' pension provisions. This is not my responsibility. It is my responsibility to participate in it but not, as an employer, to be the main provider. If this tax on employment is introduced, the multinationals will go out the door. Most multinational employers provide fantastic pension schemes for their employees in terms of contributions. I will not get into the argument about how pensions are managed. However, if asked as an employer to provide for pensions, my reply will be that I already pay my wage bill, PRSI and a pension contribution of between 5% and 10% of wage costs as part of my employees' remuneration package. To have additional mandatory costs would not make sense. Organisations must be allowed to choose what to do in this area and should not be forced on a particular course. If companies are not forced to do this in Switzerland, Scotland or China, then they will choose to locate in those countries.

A mandatory scheme will not work but packaging and marketing will. Let us produce a documentary, send a copy to all tax-registered companies and ask them to play it. A CD *12 o'clock* could be sent to every house, just as we sent out iodine tablets, registration forms from the Adoption Board and so on. The CD could be sent to everyone with a PPS number. People should be told about the reality of reaching the age of 65 and having only €200 weekly. People aged 40 should be told how much they will be able to buy in 20 years time, in 2025, even if they have some sort of pension arrangement. Matters should be spelled out more clearly for people, so that they understand what is at issue. I do not know what it will cost to have the lifestyle I want when I am 65. I have not thought about that because I am too busy rearing a family to worry about it. I would like to sit down on a Tuesday night at 8.30 p.m. and watch on prime time television a half-hour documentary, paid for by the State. It could be paid for through advertising, as long as people are shown the reality.

The means in which pensions are organised should also be made clear. If a sum of €10 is deducted weekly from my wages towards my pension, that is State-subsidised by means of taxation and by the 10.75% PRSI paid by the employer,

as well as the 8.75% PRSI I pay as an employee. All that needs to be outlined.

Regarding SSIA's, a great number of people have found over the past four or five years that they can save €254 monthly. As a couple, my husband and I have been saving that. I did not even notice it gone from my income. I am now thinking about what else I can put that money into because I do not want to stop saving it when the SSIA scheme ends. I might have great fun spending the €19,000 I will get in my back pocket but I want to keep saving €254 monthly. However, the savings scheme must be marketed to me as something worthwhile for me and my future. Marketing is the essence.

The Pensions Board is doing a reasonable job in some areas but it needs to make people aware of problems. As an owner-manager of a small business providing employment, I ask the Minister not to make the contributions in question mandatory because if that were the case it would not be worth doing business in this country. We must provide for a proper economy in the future.

**Mr. Ross:** I wish to share time with Senator O'Toole. I welcome the Minister to the House and I welcome the vigour with which he has addressed the subject before us. It is typical of his approach to any ministerial portfolio he attracts. He addresses difficult subjects with a great deal of energy. I hope however that the results here will be more successful than in his last portfolio. Although the Minister has hit the right buttons by seeking a report, I suggest that more radical efforts are needed, as is more immediate action if he is to fulfil his promise.

I will take up some points well articulated by both previous speakers. The Pensions Board is a pretty sick, inadequate body. We have a problem currently with pensions because we have a fairly sleepy Pensions Board. The board is made up of political appointees who represent various vested interests in the pensions industry. They are the last people who should be on the Pensions Board. The pensions industry is a sick and greedy honey-pot. It involves a mountain of money in which people have had their greasy paws for a long time, and they do not wish to remove them.

**Ms Terry:** Hear, hear.

**Mr. Ross:** The Pensions Board is a failure because the members want to maintain that situation without change. The first thing the Minister should do is fire them, because they have vested interests. The board is fundamentally flawed and has failed. It has been inadequate and has failed on PRSAs and on radically tackling the pensions industry. A structure should be set up whereby politicians can no longer appoint political powers to a vital industry of this sort because, otherwise, board members will continue to take decisions which inevitably led to utter inertia. That is one the problems we face in the pensions industry. If

the Pensions Board were replaced, we would have a much healthier industry.

One need only look at the number of consumers on boards of this type. It is characteristic of State agencies and of this nation that the number of consumers on semi-State bodies or State agencies of this sort is negligible. I am open to correction as I did not check this matter before arriving in the House, but I think there is only one consumer representative on the Pensions Board. Millions of consumers are affected by pension issues while only one of the 12 members of the Pensions Board is a consumer.

The Pensions Board is not run by pensioners, who have a pitiful input, but by the industry and by those who want to keep it going. It represents those who have their hands in the pie. Unless the Minister fires the board members, or sets up a new structure into which pensioners have an input, he will not solve the problem. He will have the same old problem, with the board members playing games.

I was shattered to read the Minister's speech and find out that the pensions review being carried out by the Pensions Board is not due until the end of 2006. What on earth is this going to be — the *Encyclopaedia Britannica*? Why can the board not produce the review in five or six weeks? These people are supposed to know the business. They spend years identifying what is wrong with it. They have been making decisions on it — mostly wrong ones — yet when it comes to reviewing the industry, it seems it will take them over two years to do so. That is ludicrous.

The ESRI report is very welcome because it seems to ask most of the right questions. It makes some quite constructive suggestions, not all of which — in the nature of things — the Minister will take on board, although hopefully he will accept some of them.

The problem identified in the report which has attracted the most attention relates to people in the private sector who can put away large sums of money and obtain very substantial tax relief. Undoubtedly, this is the last of the great tax breaks, and we must decide if this is good or bad. The €1.5 billion cost to the Exchequer is phenomenal. I will leave that issue aside for the moment, although it is very unfair on the lower paid that the better off should benefit from this arrangement. All of us who can take advantage of it do so, as it is legal, but it discriminates in favour of the better off.

There is one particular wrong which the Minister might address, and on which he need not wait for the Pension Board to report. I refer to the position of proprietary directors. Every week at this time of year, we see annual reports arriving from big business — the worst offender being Cement-Roadstone Holdings — showing directors annually contributing sums of over €1 million of company money to their pension funds. There is no restriction on proprietary directors doing this quite legally. As the Minister knows, directors paid on the PAYE system must restrict such

[Mr. Ross.] investment to approximately 30% of their incomes. Some proprietary directors have built up personal pension funds of more than €10 million. This is a gross social injustice. It is wrong that this can be done by very rich people to make them even richer in their retirement. However, it is widespread and everybody who can is doing it. It would be simple for the Minister to introduce a straightforward capping mechanism whereby nobody can put more than X amount per annum into their pension scheme. If there is one flagrant social injustice, it is this one.

The Pensions Board is doing nothing about this situation. It is just sitting on this extraordinarily lucrative industry and people are exploiting it fully. I refer not just to the people on middle incomes who are exploiting the 42% tax break but also to proprietors and the industry itself. I will name the industries who are doing so well out of this. Stockbrokers are making a mint out of other people's pensions by turning them over. Fund managers are making even more money out of other people's pensions by losing money and performing extraordinarily badly for them. There are fund managers who take hundreds of thousands of euro in income from the industry but who are losing pensioners' money. Lawyers, bankers, actuaries and all sorts of other bogus professionals are doing well out of it because a mystique has built up around this industry.

**Mr. O'Toole:** I thank Senator Ross for sharing time with me. I wish to dissociate myself from the negativity he heaped on the Pensions Board, an easy target for the Senator.

**Mr. Ross:** The Senator will get another quango. I believe it will be his fourth.

**Mr. O'Toole:** It was beneath the Senator. The Pensions Board is composed of hard-working people with a hard-working chief executive who do their best under extraordinarily difficult circumstances. If I had the time, I could speak further on this. However, I agree with Senator Ross about the people who are making money out of pensions, particularly about his crowd, that is, the stockbrokers, actuaries and investors. He was right in that regard but wrong about the rest.

**Mr. Ross:** The quango king speaks; he is the champion of the quangos.

**An Leas-Chathaoirleach:** Senator O'Toole without interruption.

**Mr. O'Toole:** I congratulate the Minister on generating a significant debate on pensions. It is a job well done. This issue has been discussed in the House previously and certainly with the Minister, Deputy Brennan, present on one occasion.

I only have time to make three fundamental proposals. It might be worthwhile if the Minister's public relations or media consultants telephoned RTE to ensure that the next time somebody in

RTE discusses with pensioners how hard it is to live on a pension, he or she asks the pensioners if they made any arrangements for their retirement pension. The debate has gone too far to one side. I am one of those who will argue that the Minister should increase the old age pension. It should be larger and I will fight for and demand that. However, I also demand that people make provision as well. For that reason, I support the concept of compulsory pension arrangements. I have argued for it within the trade union movement for many years.

The establishment period before people get involved in such arrangements should be short but any period of employment longer than six months should have an equal and opposite level of pension contribution or pension arrangement. I will argue with anybody who takes a different view. How that is done, who should pay into it and what the responsibilities of the employers, workers and the State should be are matters for negotiation and argument. That is about implementation but the general principle must be accepted.

In my first couple of years as a Senator in the late 1980s, I took great satisfaction in negotiating the right of former Members to get their pensions back. Many Members who lost their seats cashed in their pensions. This is the quickest cheque people will get from the Department of Finance. If people seek to cash in their pension, the money will be sent almost by return post in case they change their mind. The Department wants to be rid of them. Now, anybody who is a Member of the House for more than a year must have preserved pension arrangements. It does not apply for lesser periods.

That is the compulsion issue. The second requirement is the introduction of significant flexibility in pension legislation. We need to examine the issue of "bridge" jobs. I could have predicted the response the Minister got last week because I have been there and dealt with it. The first response of people is: "I do not want to work until I am 70". It is an instinctive response. However, one of the groups who demand pensions is teachers, the people I represent most of the time, and they will be the first to say that although they do not wish to work until they are 70, they do not want a situation where they work full time to a certain day and are retired the following day. We must introduce flexibility. This has been done in the United States, where the legislation has been changed.

There must be flexibility for both social and practical reasons. Take the example of people who work for the ESB and who reach retirement age. They have built up a huge store of experience and knowledge in that industry. They would like to contribute more but not on a full-time basis. As they are drawing their pensions, they can no longer work for the company because the legislation does not allow them to draw a pension and also be employed. They therefore go to work for Veridian or some other company. In other

words, they can bring all their experience to the opposition because we do not provide the flexibility to allow them to work for half the year, day or week. People should be able to go on reduced pension. They could continue to draw that pension and a salary and have a proportion of the salary apportioned back into their pension to allow it to grow. In other words, people would slide out of work into retirement.

My final proposal is the introduction of inflation-linked Government bonds. The case for doing so is compelling. I am aware of the arguments for and against their introduction and I have studied the issue for some years. We must introduce them. It would reduce the cost of private sector pensions by at least 5%. The Minister need not waste his breath talking to the Department of Finance because it will only offer reasons for not doing it. There are solid arguments against it but the arguments in favour are overwhelming and compelling.

Ireland is probably the only Western European country that does not have Government inflation-linked bonds. We have the old bonds which were issued in 1970 to mature in 2015 at a certain percentage rate. The cost of buying them simply increases or decreases to reflect what is happening in the marketplace or with interest rates. We need inflation-linked bonds which will attract investment and have more flexibility. I am aware of the pressures they put on governments but they are a reality in Canada, the United States and even Italy, of all places, which has a huge pensions problem. Between 20% and 30% of their government bonds are inflation linked. This creates a huge new market and one that is worth examining. We need to take that decision.

I have gone over my time and I would welcome another opportunity to discuss this with the Minister. I have made three proposals. The first is compulsion, where everybody should be required to pay into pension arrangements. The second is the introduction of legislation which would allow bridging, where people could bridge the period between full-time employment and full-time retirement. The final proposal is that the Government introduce Irish inflation-linked Government bonds.

**Ms K. Walsh:** Poverty in an affluent society is a serious and pressing issue across the developed world. Poverty persists and the causes of poverty and child poverty must be pursued and addressed. The issue before the House today is the ESRI report on pensions and the effectiveness of the pensions system in preventing poverty in old age. Although this is not the main purpose of the report, it is the aspect on which I wish to focus.

The most pertinent finding in this regard is that the average income of a pensioner is just over half the average industrial income. The main source of retirement income is provided by the State. State pensions provide an income for more than nine out of ten pensioners. Occupational

personal pensions provide an income to only one third of pensioners. These provide perhaps one quarter of the average income during retirement. The fact is that older people depend on the State for old age pension and personal or occupational pensions which are not providing significant incomes. The report does not find that a significant income is provided to older people who put their money into investments. The finding was that investments provide an income for only a minority of pensioners during retirement. The average amounts received are quite small. There is considerable variation in pensioners' incomes. The report found that the upper category of pensioners received approximately five times the income of pensioners in the lowest group. As a result, our pension policy must be progressive.

The Government has a record of improving income support for pensioners. I am proud that in an area on which we have concentrated, the personal rate of old age pensions was increased in the last budget by €12 per week, an increase of over 7%, which brought the old age pension to €179.30 per week. We promised to increase the State pension to €200 per week by 2007 and we are well on the way to meeting our target.

Let us see how far we have come. In 1997 the old age pension was just €99 per week. In 2005 it is €80 per week higher than that, which is an increase of over 80%. We are making great progress on our promise. Old age pensioners will receive deserved improvements in their living standards. However, as I said, our pension policy must be progressive. State pension schemes pay benefits on a flat basis.

The report found that the average amount paid in State benefits is broadly the same for each group of pensioners, regardless of income. The difference between high income and low income pensioners is that those with a high income have an occupational or personal pension and, to a lesser extent, earnings. We must work to ensure that people are aware of possible future problems and are encouraged to take action now.

**Mr. McCarthy:** I welcome the Minister, Deputy Brennan. I also welcome his initiative in opening up a debate on pensions. As one of the youngest Members of the House it is particularly important that I contribute to this debate and provide an insight into the mindset that exists in regard to participation in pension schemes.

I wish to focus on a point referred to by Senator O'Toole and other speakers, namely, the issue of compulsion. The Minister is aware of this matter as he has asked the Pensions Board to conduct a review on it before September.

It is difficult to explain to people in their mid to late 20s the importance or economic necessity of taking out a private pension scheme, which takes more of their gross income. We are paying enough for cars, mortgages and child care. We must find a way to convince people to give more of their earnings to pension schemes. The current approach is in some way responsible for the low

[Mr. McCarthy.]  
take-up of pension schemes, especially among young people.

The figures released by the Minister in recent days show that 900,000 people do not have supplementary pension provisions in addition to the State pension. That is most worrying, not least because of the cost of living and lifestyle choices. We have become accustomed to certain luxuries. That people are living longer will create a difficulty in terms of their financial resources when they retire.

The Minister's initiative of exploring the possibility of allowing people to stay in the workforce after the age of 65 is interesting. In some cases that may be economically necessary but in other cases people will consider they have done enough — worked hard enough, reared and educated their families, built houses, paid mortgages — and they will not wish to remain in the workforce for an additional five or six years. That in itself has its own difficulties.

The nub of the problem goes back to the mindset that exists in regard to pension uptake. We must establish the factors underlying why people are slow to get involved in pension schemes. The slow uptake in PRSAs is a case in point. We must find out the reason for such a low uptake. If compulsion is the solution to the problem then we should consider it.

I welcome the proposal to tap into the savings culture that is evident from the significant uptake in the SSIA's. Many people have become involved in that scheme and developed a habit of saving money. Senator Terry made this point in her contribution. SSIA's have helped to foster a culture of saving which should be extended to pensions.

We live in an age where the workforce is mobile. People often go abroad for a number of years and return. People who have paid PRSI here for 20 years and then go abroad for whatever reason discover when they return at pension age, that they do not have enough contributions for the contributory old age pension although they may qualify for a reduced non-contributory old age pension.

The State encourages people to get involved in pension schemes but it gives with one hand and takes away with the other. If, for example, one has a private pension scheme which would provide €150 per week but one does not have enough contributions for a contributory old age pension then the private pension will militate against one receiving a non-contributory old age pension. This matter must be addressed. It may be worthwhile to give a person with 50% or 75% of the required number of contributions a corresponding amount in pension entitlements. It is necessary to overhaul the present arrangement.

It is important to ensure there is an incentive for people to take out private pensions. If people think that investing in a private pension scheme will inhibit their ordinary entitlement they will not be interested in investing in private schemes.

At present there is a vicious circle which is not productive.

I would be slow to dismiss the ESRI report. The tax break issue is an important one, albeit that the position is contradicted by the Irish Association of Pension Funds. Tax relief is costing the State upwards of €1.5 billion and this should be examined.

The greatest difficulty relates to people's mindset. We must penetrate the mindset of people in their mid to late 20s who are in the workforce. That is the point at which people need to invest in private pensions. If an element of compulsion is necessary, this is worth considering as it would lead to a satisfactory financial situation for people when they retire.

I accept what the Minister is trying to do and I welcome the fact that he has opened up a debate in this area. I wish him well in his endeavour. I hope the review he has sought from the Pensions Board by September will be worthwhile. I look forward to the opportunity to debate the issue again at that stage.

**Ms White:** I congratulate the Minister on highlighting the serious issue of pensions and concur with what he said about SSIA's. Senator Cox referred to the benefit of SSIA's in terms of creating a willingness to save. We are not good at saving but the SSIA's showed that we can do it. I do not include myself in that category as I am a spender rather than a saver.

**Ms K. Walsh:** The Senator can change.

**Ms White:** No, I am not going to change. The pattern has been set. People are looking forward to the cash they will get into their back pockets. A challenge exists for the Minister to market pensions and to involve the Pensions Board in that endeavour.

When this issue appeared on our work programme last week I met with Gerard Hughes and Dorothy Watson from the ESRI in order that they could explain the background to this significant document. The way forward presents a serious challenge for the Government. At present, there are 460,000 people over the age of 65 years in Ireland. By 2036 that number is projected to be 1.2 million because based on births to date, there will be a certain trajectory growth in the numbers of those aged over 65. That puts the problem in perspective.

Reforming pensions is one of the biggest challenges of the 21st century. All OECD countries must adjust to the aging of their populations and rebalance retirement income provision to keep it adequate and ensure the system is financially stable. Every country has this problem, not just Ireland. Modern medicine——

**Ms Terry:** According to the OECD, Ireland has the worst record in that regard.

**Ms White:** I will come to that. It is no harm to reiterate the questions raised in the ESRI report. What are the sources of income during retirement for pensioners? How effective are the public and private components of the pension system in providing income during retirement? How do pensioners' incomes compare to the incomes of the working population?

I had given no thought to this until it was put on the Seanad agenda for this week and I had read the report by Dr. Gerry Hughes and Dr. Dorothy Watson of the ESRI. Most people in Ireland do not think about the problems presented by pensions in terms of dealing with what their lives will be like when they are no longer working. The results of the ESRI study show that the average income of a pensioner in 2000 was somewhat more than half of gross average industrial earnings.

The main source of retirement income is provided by the State's pay as you go pension schemes, contributory and non-contributory. The study shows how much income pensioners have and how effective are the public and private components of the pension system in replacing income from work. The key word is "replacement" of income from work. The State pension provides an income for more than 91% of the population. Occupational or personal pensions provide an income for only one third of the population. The ESRI report shows that between 1994 and 2000, the average growth replacement rate in the first year of retirement for pensioner couples was 51% of pre-retirement earnings, while for single people it was 43%.

What is the purpose of the State pension scheme? It is to redistribute income towards low income pensioners and prevent poverty or destitution in old age. It is to help workers maintain living standards during retirement by replacing income from work at an adequate level. However, as Senator Terry has indicated, there is a large variation across countries in achieving a balance of emphasis between these two objectives. Irish pensioners get the worst deal in Europe. An OECD policy document of March 2005 shows Ireland at the bottom of a list of 30 countries, in terms of gross replacement.

I do not seek to justify why we are at the bottom of the list or to explain why other countries are doing better. However, while there are many reasons why countries such as France and Germany have problems with their economies, one of them is the huge social welfare payments they provide. I am not saying one approach is better than another, but it is part of the reason there is so much unemployment in those countries. There is a good deal of taxation and high pressure on costs and companies. Looking at it in a barefaced manner it is sad to see this trend but it is a component of these countries' economic problems about which we constantly hear. We are getting richer while they are getting relatively poorer. Our economy is growing at 5%, while their economies are not. At the same time they

are paying out a great deal. From an equity point of view such matters must be addressed.

According to Dr. Hughes and Dr. Watson in the ESRI report, the system requires serious reform. Further examples of replacement income may be gleaned from the OECD charts. Luxembourg's replacement rate after retirement is 100%. Austria, Hungary, Italy, Spain and Turkey provide high pensions to lifetime workers. Average replacement earnings in Austria, Hungary and Italy are 75%.

**Acting Chairman (Ms O'Meara):** The Senator's time has concluded.

**Ms White:** I am not finished yet. The Chair has to be somewhat——

**Acting Chairman:** The Senator has eight minutes, according to this morning's agreed Order of Business.

**Ms White:** How much time each Senator gets depends on who is sitting in the Chair.

The issue has been raised as regards tax relief on private pensions. Looking at the €1.5 billion a year it is costing at face value, there is no doubt that a pension of €200 a week, the target rate for 2007, is a totally inadequate income for anybody to live on. Imaginative inducements must be provided to people to take out private pensions. However, to reduce the high rates of tax relief for those who pay into private pension schemes, would be a no-go area as it would remove an incentive which would not be appreciated. We want to encourage people to save, work or do whatever they do. It would be wrong to lower the income tax relief rate from 42% to 20%, especially in the context of seeking to encourage people to make an effort to address pension provision.

Pensions is a complex issue. I agree with Senator Ross's comments about the greed of people in large corporations, whom we constantly read about in the newspapers, for whom contributions are provided by the companies for their retirement. That is totally unjust and wrong.

This issue is a major challenge for the Minister for Social and Family Affairs, Deputy Brennan, but I am confident he will take it on. People are pleased to hear him airing this issue. They listen when they are told of approximately 1 million people doing badly in terms of their pension provision, something they find difficult to believe.

I wish the Minister continued success. It will take some months to devise a correct policy and it will not be easy. However, the bottom line is how people may be encouraged to participate in private pension schemes. They must realise they must prepare for the time when they are over 65 year of age to avoid disappointment that they cannot have the same standard of living in retirement. I apologise to the Acting Chairman for speaking beyond my allocated time.

**Dr. Mansergh:** I welcome the Minister and his officials and I also welcome the debate. Notwithstanding the statistics that have been cited, we can be quite proud of what we have done in Government over the past 20 or 30 years to improve pensions. In the late 1970s and early 1980s there were significant disproportionate increases in pensions and since 1997 there has again been a policy of detaching pensions from other social welfare benefits.

It also needs to be borne in mind that a wide array of free schemes are not reflected in the comparative statistics while generous tax exemptions are provided, which have been steadily increased. However, I fully agree that even €200 a week is tight for anyone to live on. There is an underlying recognition that the State can only do so much directly and people need to be encouraged to make other provisions for themselves.

This is a major economic problem in many European countries. When I lived in Germany in the mid-1970s, the administrators saw the pension problem looming but did not quite know what to do about it. That is probably still the case. Ireland is fortunate in having a better demographic profile and we have an opportunity to make decisions before we are under pressure. There are so many demographic uncertainties that it is hard to say what precise pressure we will be under. The social costs are crippling the French and German economies in many ways. We must be careful in our desire to improve the position that we do not land ourselves in a situation from which others are trying painfully and without much success to extricate themselves.

The Minister raised a few questions at the end of his contribution. He referred to whether there should be mandatory private schemes. I would be inclined to be cautious about going that far. Every encouragement should be given but, once such schemes become mandatory, they will add to the fixed costs of an employer. Many employers are in a position to respond to an enlightened policy but, equally, others operate at the margin of profitability.

The ESRI raised the equity question in terms of whether pension payments should be deductible at the 42% tax rate. I was a supporter of providing for mortgage interest and VHI relief at the standard rate. I would be more cautious about doing this for pensions because of the effect it could have on the pensions industry. It also comes down to the philosophical question of whether one is levelling down or levelling up.

**Ms O'Rourke:** Is it half empty or half full?

**Dr. Mansergh:** I would be cautious about going down the ESRI route. People have statistical arguments regarding equity and suggest, for example, that Germany is a more equal society than Ireland. They would like to return to 11% unemployment to have more equality. One must think about the macro-economic effects, which translate into human consequences. We are fortu-

nate to have a very buoyant economy in which unemployment as of yesterday has reduced to 4.2%. We must be careful about doing something that will send us headlong into problems. That is why I have reservations about aspects of CORI's approach, Inchydoney notwithstanding.

One must also consider the level of equity. The head of the Combat Poverty Agency once said a little sadly that things were much better in 1986 and 1987, even though the unemployment rate was 18% because things were more equal than they became when we had a dynamic economy and full employment. There are uneasy trade-offs in this issue.

People who are able bodied and in reasonable health want to work and contribute, but not necessarily at the same intensity, after the age of 65. The trend of loosening and becoming more flexible in working arrangements has much to be said for it. Perhaps older people are a little like the student population in that they are anxious and willing to contribute on a part-time basis. People who supplement their incomes in that way should be encouraged given that they are needed. In these days of full employment, many shops and shopping centres might not have too much to do if pensioners were not available to staff them during the day. The income of the post-65 age group is an important factor in our economy. We naturally need to encourage people to provide for their income. Perhaps the tax system can be refined, building on the SSIA's, but there has not been a significant take up of PRSAs. However, exhortation, encouragement and, perhaps, incentive rather than compulsion are the way forward.

**Mr. Ryan:** I had not intended to contribute but I observed from my office that the numbers were a little scarcer than I thought and I would like to make a few comments.

The Minister deserves to be complimented because he has kicked out a ball and forced people to debate issues such as compulsion that they were circumnavigating. I am not sure we will be as laudatory when he proposes his solutions. It is extremely important to separate the issue from the propaganda of the pensions industry.

I do not need to remind a member of the present Government about the folly of ignoring a problem in the hope that it will disappear. The Government faces a bill of between €5 and €1 billion for nursing home charges because various people ignored it in the hope that it would go away.

We have time to deal with this problem and avoid a number of undesirable consequences. We must be careful not to create a culture in which older and retired people are perceived as a burden. This issue requires management but it is not unmanageable and will neither overwhelm us nor disappear. There is a feint underlying suggestion in much of what has been said that for people on a low-wage income retirement means movement from moderate poverty to worse poverty and that is not acceptable. We must, and can, work out a

system to ensure adequate provision for everybody.

This country claims to be able to provide a new model of partnership for the rest of the world using a method of doing business whereby the Government has a role, individuals have a role and, unequivocally, employers also have a role. I was astonished to hear one of my colleagues suggest that employers could not be required to have a role in ensuring their employees had security of income in the longer term. I am open to suggestions on how that should be done. Employers in this country have one of the lowest levels of employer's PRSI in the EU. There is no PRSI in Denmark and I am unsure about the levels in the accession countries. However, the level of taxation in Denmark would horrify any Irish employer. We also have low levels of corporation tax, and there are other issues involved in this matter that are not within the hands of Government.

I am tired of the rhetoric about the burden of regulation, and that once people get something it becomes the norm and they want more. In language that I dislike, every international evaluation describes Ireland as one of the "freest" economies in the world. According to various indices where the United States is rated first, we are second or third along with Singapore. If there is a burden on employers in this country, it is one of the lowest in the developed world. If we are to sustain a partnership economy, everybody has an obligation to take responsibility for these issues.

**Ms White:** The costs are among the highest in Europe.

**Mr. Ryan:** I accept many of Senator Mansergh's corrections but I do not want him to leap up yet again. In one of the richest countries in Europe in terms of—

**Ms O'Rourke:** Particularly his poetic ones.

**Mr. Ryan:** —in terms of current income per head it is inevitable that costs will rise as, otherwise, 25% of the population will be forced to sit still while everybody else gets rich. To have any fairness in society people on lower wages must advance.

**Ms White:** It is not just wages.

**Mr. Ryan:** That will push up the costs. Other costs are due to appalling inefficiencies in our society because of the lack of competition in areas such as banking, insurance and the failure to invest in infrastructure, but I do not wish to be diverted.

The fundamental issue, and I do not understand the hostility to this, is that the only way to provide for people in their retirement is by funding it from the day they start work. When I started work, 6.5% of my salary was deducted for my pension. If I had been given a choice I would

have postponed it for a year, and then for another year and another year after that.

I have no ideological baggage and I am open to persuasion on how this can be done. However, we need independent evaluation of the efficiency of the use of any money used to fund pensions in the future. I share with Senator Ross the view that the Pensions Board is not qualified, competent or able to win confidence to do that. My union, the TUI, has a long-standing dispute involving retired members about the advice they got on pensions from allegedly competent and qualified fund managers. Much of this kind of thing goes on and there is much confusion and uncertainty.

None of this gets away from the fact that pensions must be funded from the day people start work. That cannot be done by persuading people to voluntarily hand over money. It must be part of their social obligations. If it is compulsory people will see it as a tax and if it is optional they will not, but we should not make the idea of having a pension optional.

There is an intermediate position on extending working lives, whereby those who want to continue to work are allowed to do so for a marginal financial benefit. A blanket decision to change retirement ages is neither economically necessary nor socially desirable. Some people are unable to continue, some would love to continue and some would need a transitional period of time between work and retirement. This question will only be solved if everybody, including employers, accept their responsibilities, if it is compulsory and if State and private pensions are integrated in a way which gives people maximum flexibility in securing a reasonable income in retirement relative to their working experience.

**Ms O'Rourke:** I welcome the Minister to the House and suggest that he can forget about airport terminals and Aer Rianta as if he does this correctly it will be a lasting monument to him. He has the innovation, energy and ingenuity required to deal with it, as we all know that a Minister will never have a "one-size" solution to fit or please everybody. We are not yet demographically in a crisis situation but we will be, as many people will reach a certain age at the same time, so early planning is important.

I do not know enough about the Pensions Board to characterise it in a particular way but I have heard enough said in this House by people I regard as extremely able and trustworthy to believe that it is worthy of severe criticism. Senator Terry has made strong statements on that issue on several occasions.

The issue that most vexes people is that of people over 65 who wish to stay at work. I heard the Minister state clearly on television that it is entirely a matter of personal choice and that he will not lay out rules that a person must work. Senator O'Toole spoke on that earlier and stated that people do not want to go from full employment

*1 o'clock*

[Ms O'Rourke.]  
to no employment in one fell swoop. The availability of part-time work with *pro rata* payments might solve that. I made the point when I spoke on the pensions debate that there are many people who are alive, well, strong, in full possession of their mental faculties and well able to work beyond 65 years. Why should they not do so? It is quite amazing. Lloyd George introduced a state pension to commence at 70 when life expectancy was 60 years. Now one is not expected to die until 85.

**Labhrás Ó Murchú:** If one is a woman.

**Ms O'Rourke:** Fair enough. Why not allow people to work by choice until 70? I concur with Senator Ryan that there is an underlying theme in the ether, though it is not perpetuated by the Minister, that older people will become a significant bother. One feels almost like saying, "If that is the case, why not bump them all off?" People tut and indicate that they will have to take strong measures to address the problem of an aging population.

I take my cue from the phone calls I receive and according to them, the Minister can continue to talk about his initiative. I have had many calls from people saying "three cheers" since the Minister spoke on television about allowing people to choose to work after 65. They are fed up hearing on retirement, comments like, "It is time to put your feet up, Dear". They want to put their feet on the ground rather than up and continue to be part of the working population. The Minister has done me a great favour and I will say around Longford-Westmeath that my *raison d'être* in standing for election is to obey him.

**Ms Terry:** Go Mary, go.

**Ms O'Rourke:** I do not intend to obey people who say, "Put your feet up, Dear" while I have strength, energy and know-how. I hate the use of the word "Dear".

**Ms Ormonde:** Hear, hear. The Leader is a role model.

**Ms O'Rourke:** The people who called me said they never thought they would cheer Deputy Brennan, but they are doing so. The Minister may take it as a compliment or not. The Minister's initiative is a very positive one and I will be his pin-up woman for it. I will adorn his next book if he wants me to.

The Minister spoke also about SSIA's. We speak in the House from a position of privilege as we are all in State pension schemes. I do not know how long such pensions will continue because while the fund is guaranteed, the bill is growing significantly. We will all receive quite generous pensions and glad we will be of them. The SSIA scheme has strongly fulfilled the wish of former Minister for Finance, Mr. McCreevy, that it would encourage people to save. An

attractive product will have to be formulated for SSIA holders because people are looking forward to the splurge. Certainly, I am. While I do not know what I will do exactly, I guarantee that I will not put my feet up. I will be busy whatever I am at.

I do not know how the Pensions Board can target young people. When one tells a young person that one hopes he or she is thinking of his or her pension, one is gawped at as if one were a heretic. They say pensions are for people like me but they are wrong. Pensions are for people who are earning a living, but they continually have to contend with the expenses of a lively life such as mortgages, cars and having children. A very attractive product will have to be formulated to encourage young people entering their first jobs after college to take out a pension. I would be inclined to adopt a compulsory approach to pensions as they are for people's ultimate good.

**Ms Terry:** Not unless the return is guaranteed.

**Ms O'Rourke:** I accept that. Strong language will have to be used to encourage young people to take out pensions. A combination of Government employees and individuals are involved. I was horrified by the comments of the nice man who is head of the Small Firms Association who said pensions had nothing to do with his members. While one would think from his comments that employees were robots, they are real people who will need pensions. The Minister should forget sexy images and the physical, tangible results of his tremendous work and make a success of his pensions brief. If he succeeds, people will still be singing his praises in 40 years.

**Mr. Norris:** I am glad to have the opportunity to speak on this important matter. I approve very much of the prudence the Government has shown over the years in making provision for pensions in the long term. It is unusual behaviour for a Government as parties in power tend never to think outside the five-year electoral box. As there are no guaranteed political rewards for acts which will benefit citizens in 30 years time, the establishment of pension fund contingencies by the Government is very interesting.

Like the Leader, I agree with Senator O'Toole's proposal to introduce a compulsory element in our approach to pensions. When people are young they feel invincible and fail to consider the matter.

**Ms O'Rourke:** They are never going to get old.

**Mr. Norris:** Yes. They do not realize they may have family commitments or fall into a poverty trap. A great many people are outside the pension system except for the State pension, which can be a great burden to them. It is not easy to live on the State pension.

Over the past year or two, a couple of specific matters have been drawn to my attention. The

first is Army pensions, which may be only marginally relevant to the debate. We ought, as a matter of principle, move away from the mean-minded, cheese-paring attitude which leads us to subtract the old age pension from other State pensions. It is neither fair nor right. I remember raising on the Adjournment the matter of a post-graduate student at Trinity College who on being awarded a scholarship to complete a PhD had the amount subtracted from his local authority allowance for being blind. It is not the way to encourage people to work but rather to encourage laziness. People will take State benefits if they see no point in acting when their intellectual initiatives are discouraged.

A similar scenario has developed in the context of Army pensions. I received a letter last Christmas.

**Ms O'Rourke:** It was read out on Joe Duffy's radio programme.

**Mr. Norris:** Then the Leader knows what I mean. Perhaps the Minister is also aware of the case of a man who was employed as a member of the Defence Forces for 31 years. When he retired from the Army, he received a pension organised on the basis of 21 years service and an extra year for every year of extra service. He received an extra ten years worth of pension entitlement, but when he reached 66 his birthday present was to be told this was to be reduced by €344 per month. It was very wrong. The old age pension was to be taken out of the pension he had earned and paid into as a member of the Army. This anomaly, which affects a small number of people, is mean minded and should be investigated.

One of my constituents, a retired Church of Ireland clergyman, lived and paid taxes in this State for more than 30 years. He and his wife, upon suffering ill-health in their 70s, moved to the North of Ireland in order to avail of that region's superior social services. Due to the couple's ill-health, they cannot drive south to visit their two children living in Dublin and Wicklow. The clergyman believed that he could retain his entitlement to free travel, which was introduced precisely because of this type of situation. Our all-Ireland ambitions are put into question if one of our citizens, upon moving to the North of Ireland, is rewarded for residing on territory which we claim and among citizens whom we try to protect by the denial of free travel. The clergyman knows of wealthy people living in the North who, by virtue of affording holiday homes in Donegal, retain their entitlements to free travel because they can supply an address in this State. That does not appear fair. People in the North of Ireland who have paid taxes in the South throughout their careers might not expect free television licences or fuel allowances but should be entitled to free travel. Connections between the two parts of this country would be improved by this means. I also ask the Minister to explore the anomalous situation where €344 is deducted

from an Army pension due to old age. That is mean spirited and, given the present state of the economy, unnecessary.

**Labhrás Ó Murchú:** I compliment the Minister for tackling a time bomb which many people would like to ignore. The dictum that old heads cannot be placed on young shoulders contains an element of truth in the context of pensions schemes. Some years ago, an exceptionally lucrative pension scheme I offered to a young lady was refused. Due to our difference in age, I could not understand her refusal. Her response is typical of young people. If the special savings scheme of the former Minister for Finance, Mr. Charlie McCreevy, was constructed on the basis that the scheme's unbelievable benefits were not accessible before the age of 65, it would not have been successful. One of the reasons for the scheme's success was that light could be seen at the end of the tunnel. People could envisage accessing their money. We must factor a change of culture into our actions. If attitudes do not change, we will continue to face this problem. I had the mischievous thought that, even if a scheme is successfully put in place, the Minister will win little political kudos from a certain age group. We live in affluent times and disposable incomes have been committed to mortgages or second cars. Thought is not given to providing for a rainy day. This cultural problem must be investigated. People will have to step back from their methods of spending. I have repeatedly spoken on the absence of a thrift culture among young people. I am of a similar age to the Leader, although I will not mention the number of years.

**Ms O'Rourke:** Not at all.

**Ms White:** President Reagan was 76.

**Ms O'Rourke:** I am not 76.

**Ms White:** I was not talking about Senator O'Rourke.

**Acting Chairman:** Allow Senator Ó Murchú to continue without interruption.

**Labhrás Ó Murchú:** People will not mind if we reminisce in this House. I grew up in an era of relative deprivation. I remember that in my home money was placed near the Child of Prague for the milkman and for insurance and other bills. A sense of thrift existed and a small sum was always left over. Everybody likes to discuss his or her first job and the wages that it brought. In my first job as a law clerk, I received 35 shillings per week. I managed to put savings into the post office and to pay instalments on my auto-cycle. When we were less well off a greater culture of saving existed because we remembered the bad old days and the challenges which arose when least expected. We saw these challenges in our homes and communities. Senator Ross made a valid comment on invincibility. We seem to

[Labhrás Ó Murchú.]

believe that, because we are well off, difficult times will not lie ahead. We should have used the money released from the saving scheme as a kick start in some way.

A great difficulty exists in discerning between employee and employer. I have outlined the situation as it pertains to employees. Senator Mansergh was correct to point out that good tax incentives are available for pension schemes. That in itself will not persuade people to action. On the other hand, an employer who scrutinises every outlay is not prepared to spend more and will look to the State to make provisions. Unsustainable economic pressures will result from the State providing extensive support. I do not know how to make people interact. The solution does not rest with employer, employee or State alone. A partnership approach must be involved.

Since I was young, I have believed that mandatory retirement at 65 is wrong. It represents a death sentence for many people, not only at retirement but also during preceding years. Anecdotes are often told of people going downhill after retiring at 65 because they were unprepared for the end of a routine and structured lifestyle. This is not a humane situation. Early retirement was introduced for economic reasons. There were high levels of unemployment and people wanted jobs.

We are now in the position of being unable to fill certain jobs. The economy needs people with expertise. While I concur with Senator Ryan that it should not be a matter of forcing somebody to work until he or she is 70, I have no doubt the majority of people would continue working, albeit not necessarily in the same manner. Flexible options, such as part-time hours, should be available. One of the reasons we balk at this is because we see the difficulties of administering it, but we should tackle the issue. If it is necessary to look at the different requirements of people throughout their lives, then we must be prepared to do that.

To some extent, I am in favour of the mandatory approach to pension schemes. The average young person is not willing to switch his or her projected disposable income from its current direction. I do not blame young people because house prices represent a considerable burden. There must be some mandatory element to provisions for pensions but we need both a carrot and stick approach. The incentive and the compulsion must be combined. Perhaps "compulsion" is not the best term. We must be careful with language and use words that are more appealing to people. We need an element of requirement as well as incentive. If we do not adopt this approach, the possibility of making any progress on a national level will be limited.

We have no choice on these matters. There is no point in running away from the time bomb — we must tackle it. We must engage with people on the issue of adequate pension provision.

However, the culture and mindset must change if we are to have any success.

**Ms O'Rourke:** It was agreed on the Order of Business that these discussions would terminate at 1.30 p.m., but I am aware that Senator Ulick Burke wishes to contribute. I ask that the time allocated be extended, if necessary, to allow the Senator to speak and the Minister to reply.

**Acting Chairman:** We may have adequate time as it stands, because if Senator Burke speaks for two or three minutes, that leaves over five minutes for the Minister to reply. However, if we do not have enough time, we can extend the sitting.

**Mr. U. Burke:** I appreciate the Leader's efforts to extend the time allowed for this discussion.

I wish to raise an issue that runs against the trend of all the previous contributions in this debate, which dealt with encouraging people to make pension provisions, particularly to private pension schemes. Farmers made contributions to such schemes, but with very restricted conditions relating to their age at a particular date, namely, 1968. When farmers reached the maximum age for participation in the schemes, they were not allowed to buy back their contributions or to continue with payments. They were caught in a strait-jacket from which they could not extricate themselves.

I ask the Minister to consider giving the farmers a buy-back option. Teachers, for example, have had the opportunity to buy back credits over a number of years and other public service employees were also given that option under specific schemes. Those farmers who were caught out by the age restriction, who number only a few, were totally excluded. They received nothing and their contributions were refunded. At best, some farmers got a half pension. I ask the Minister to examine this issue with a view to offering the people caught in this catch-22 situation an opportunity to make contributions to the pension schemes, which they were willing to do. By virtue of the conditions of dates and age, over which they had no control, they lost out.

**Minister for Social and Family Affairs (Mr. S. Brennan):** This has been one of the best debates I have heard on this subject, or indeed any other subject, for some time. I have listened very carefully to the contributions. We have touched many fundamental chords and scratched the surface of the question of where the country is going. I detected different trends in the discussion as it ranged across the various philosophies, if not theologies, about the role of the State in pension provision.

Given that time is limited, I will resist entering into a discussion on many of the subjects raised, although I would like to revisit them at some point. I will deal with some of the specific queries raised.

Senators referred to the Pensions Board and questioned its effectiveness, which is a matter for individual judgment. However, it is important to point out that the board is made up of representatives of ICTU, IBEC, the Department of Social and Family Affairs, the Department of Finance, the Insurance Federation, the Senior Citizens Parliament, as well as actuaries, accountancy bodies, pension lawyers, the Director of Consumer Affairs and two nominees appointed by me. The board comprises people who care about this matter who are representative of the wider population.

Senator Terry asked about the costs of the tax breaks and quoted the conflicting figures of €1.5 billion or €2.5 billion. The difference between these figures is capital taxes. The figure of €2.5 billion is correct if one includes the fact that tax relief is given to the output from pension funds. The €2.5 billion includes capital taxes, whereas the ESRI figure of €1.5 billion only includes income tax and employer contributions. Both figures are correct but if one examines the issue in its entirety, the overall relief extended by the taxpayer to the pensions industry is in the order of €2.5 billion.

Reference was made to the assertion by the OECD that Ireland is at the bottom of the league in terms of pension income. However, the OECD only analysed State pension income and did not include income from other sources, like occupational pensions. Furthermore, it did not take into account that Ireland is unique in that it has a very high rate of home ownership, unlike many other countries, which have high levels of rental. The OECD also failed to take into account the household benefits packages or free schemes. Such schemes, for example free electricity and telephone services, are unique to this country and are quite valuable.

While the OECD is technically correct in placing Ireland at the bottom of the pension income league table, it does not include three important factors, namely, home ownership, household benefits and income from other sources. Therefore, the statement that Ireland is at the bottom of the OECD league must carry a health warning. In raw terms, the placement is accurate, but the reality is somewhat different. We are not the worst by any means. The basic State pension in the UK, for example, is between £110 to £115, whereas the State pension here will be €200 by 2007. We are doing a lot more than many other countries in terms of pensions.

I agree with the Senators who argued that we should not consider elderly people to be a problem. I am in favour of getting rid of the phrase "old age pension" because it does not capture adequately the situation of a 65 year old today. At some point in the future we should examine the possibility of changing the name of the pension.

**Mr. Ryan:** Hear, hear.

**Mr. S. Brennan:** That is something I intend to do soon.

The basic principle is that people of a certain age should be seen as a resource or asset and not as a problem. People over a certain age can make major contributions to this country because they are experienced and have often learned things the hard way. To lock such people into a passive pension area, and to insist they stay there and do nothing else, is not right.

Another issue of concern is that non-contributory pensioners who are in receipt of the basic State pension are taxed on that benefit if they attempt to earn any other income. I do not have any answers on this as yet and I am always attacked for thinking out loud. All I can say is that, in many cases, thinking aloud is better than not thinking at all. It is clear that if one is a non-contributory pensioner it means one has passed a means test and has no worthwhile means. A pensioner may be as fit as a fiddle but if he or she earns some extra money the State will start to mess with the annual State pension of €7,000. I am examining that situation, although I do not want to make any commitments because I do not know the extent of the problem or what costs are involved.

For example, 86,000 people are in receipt of non-contributory pensions at a cost of approximately €600 million. In addition, approximately 113,000 people are in receipt of contributory pensions at a cost of €1.9 billion. Overall, we spend €2.5 billion on both types of pension. It may be a coincidence, but it is interesting that this is exactly the figure we give in tax reliefs. One must take an overall view of that. Tax breaks are valuable and have contributed much to the growth in the economy, including the tourism sector. Senator Mansergh was right in saying that we must be cautious in dealing with tax relief and cannot treat it lightly.

A number of Senators referred to the issue of introducing mandatory provisions to the pension system and I was heartened to hear the open-minded opinions that were expressed. I have formally asked the Pensions Board to study that issue and to let me know of its thinking before September. The matter deserves to be studied.

Senator Ó Murchú said we should choose our language carefully in using words such as "compulsory" and "mandatory". While I accept his point in that regard, we should still examine the matter. In my own extended family, there are 20 year olds whose eyes glaze over when one discusses pensions with them. They have no interest in the subject whatsoever. I have discussed pensions with many young people, including my own family's friends. They are inclined to feel that if pensions were organised, tax deductible and affordable, they would be grateful years later for having exercised that option.

**Dr. Mansergh:** We should do that soon.

**Ms Terry:** Not unless it is guaranteed.

**Mr. Brennan:** I accept the Senator's point but I wish to correct any impression I may have conveyed earlier on this matter. I have asked the Pensions Board to examine the issue of mandatory provisions in the pension system but there are a number of aspects to that. One could not make something mandatory regarding a private pension if one did not have some security of funds concerning the industry's management of it. However, we do that with regard to motor insurance, which is mandatory but where vehicle owners must obtain cover from the private sector.

The Pensions Board will also examine what role the State can play in this. I cannot see any mandatory system emerging in which the State did not play a fairly central role. At this point, however, I have an open mind on the matter and I want the board to examine the prospects.

I thank Senators for their contributions to this wide-ranging debate. I wish to thank Dr. Gerard Hughes and Dr. Dorothy Watson for their fine report from the ESRI. I have learned a considerable amount by listening to this debate. While the debate was necessary, I believe we can now move it on. I look forward to the debate coming to a conclusion when the Pensions Board provides me with its report. At that point, I will be able to bring proposals to Cabinet with a view to implementing whatever decision the Government may take. In this regard, I hope to bring proposals before both Houses of the Oireachtas without undue delay.

*Sitting suspended at 1.35 p.m. and resumed at 2.30 p.m.*

#### **Safety, Health and Welfare at Work Bill 2004: 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. Killeen):** The Safety, Health and Welfare at Work Bill 2004 seeks to modernise health and safety laws. It is significant legislation which affirms the Government's commitment to upholding the protection of workers. The Bill updates and amends the provisions of the Safety, Health and Welfare at Work Act 1989, which was steered through the Oireachtas by the Taoiseach when he was Minister for Labour.

The Bill aims to consolidate safety, health and welfare primary legislation into one statute and includes provisions of Framework Directive 89/391 on safety and health and the directive on fixed term and temporary employees. The primary focus of the legislation is on prevention. It also provides for significant increased fines and penalties to deter the minority who flout health and safety laws. It includes a scheme for on-the-spot fines through regulations and provides that directors and managers can be held liable if complicit in deaths and accidents.

Taken with the Personal Injuries Assessment Board legislation, the Bill sets the scene for both prevention and compensation and will have beneficial effects on the economy, workers and employers. It includes additional new duties on employers and employees and strikes a balance between the interests of both groups. The Bill also provides for protection for employees against penalisation for exercising safety and health rights or duties, considerably strengthens safety consultation and safety representatives and recognises safety committees.

The Bill proposes to change the name of the National Authority for Occupational Safety and Health to the Health and Safety Authority, the name by which it is, in any event, *de facto* known. It also updates the rules on corporate governance in the authority.

I gave a commitment in the Dáil to commission an assessment of the impact of the legislation on competitiveness. Initial proposals were submitted to the Department at the end of last month by several economic consultants and we hope to be in a position to appoint someone to conduct this research in the near future.

Inspired by the tripartite commission of inquiry chaired by Mr. Justice Barrington, the 1989 Act applied safety and health laws for the first time to all employment. The latest figures from the Health and Safety Authority show that 50 people died arising from work activities in 2004. Although this constitutes a reduction of more than 25% in the rate of deaths at work since 1989, the figure remains unacceptable. The authority's figures for 2004 for non-fatal accidents at work show that the main cause of injury, accounting for almost one third of all such accidents, is manual handling which includes lifting or carrying, with loss of control of animals or machinery, at slightly more than 20%, accounting for the second highest number of non-fatal accidents.

In 2002, the latest year for which figures are available from the Central Statistics Office, the national estimate is that 117,800 people suffered injury at work or occupational illness arising from work activities. This resulted in the loss of 3.16 million work days among those in employment compared, for example, with 21,000 days lost to industrial disputes in 2002. Days lost to industrial accidents and illness in 2002 alone exceeded those lost through industrial dispute over the previous ten years. Between 1999 and 2002 the rate of injury and illness among those employed decreased by 15%, despite the growth in employment. Nevertheless, the human cost arising from death, pain and suffering undoubtedly makes the case for ensuring our social legislation in this area is relevant to changing conditions of work. Slightly more than 2 million people are employed compared to 1.2 million in 1989 when the original Bill was passed.

Injuries at work create costs for the economy, including direct costs to State health services, social insurance and costs to employers such as insurance. Injuries and ill health cost the econ-

omy approximately €1.6 billion per annum. Given that the absence of a key worker may have serious consequences for a small company and its workers, measures to reduce accidents and illnesses make good economic and business sense.

Safety and health policy is influenced by developments in the European Union such as the introduction of the framework directive of 1989 and a range of other directives. Ireland played a part in negotiating the principles at work in these directives. Since the introduction of the Safety, Health and Welfare at Work Act 1989, many of the stakeholders have contributed and taken initiatives to underpin its success. Employer and trade unions bodies as well as the professional and education and training bodies have given it much support, as have non-governmental organisations such as the National Irish Safety Organisation. The Health and Safety Authority has also done a good job.

The Bill is a framework which focuses on broad general duties and the organisational and structural arrangements necessary to improve safety and health. The detail in many instances will continue to be included in regulations.

The Bill is organised in eight parts and seven Schedules. Part 1 deals with preliminary and general matters and includes some important new definitions such as “competent person”. It provides the basis for the repeal of older health and safety statutes, depending on review and possible replacement with regulations. It also provides limited exemptions as regards prisons and the Defence Forces and applies health and safety laws to self-employed persons.

Part 2 sets out a range of general duties on various stakeholders. It repeats the 1989 Act duties and requires employers to manage and conduct work activities so as to ensure safety, health and welfare and prevent any improper conduct or behaviour likely to endanger safety, health or welfare. Employers must also determine and implement the necessary safety, health and welfare measures, having identified hazards and carried out a risk assessment or when preparing a safety statement. In addition, they must report accidents and dangerous occurrences to the authority.

In compliance with Framework Directive 89/391, a number of sections elaborate on the requirements as regards information to be given to employees; the instruction, training and the supervision of employees as regards safety and health; and dealing with emergencies and serious and imminent dangers.

Chapter 2 of Part 2 sets out a number of general duties of employees and persons in control of places of work such as landlords. It imposes new requirements on employees which oblige them not to be under the influence of intoxicants to the extent that they put their safety or that of others in danger and to submit to tests for intoxicants if this is set out in regulations. I gave a commitment in the Dáil to bring a draft of these regulations before the Committee on Enterprise and

Small Business and will do so as soon as it becomes available and following wide-ranging consultation.

Employees must also, if required by the employer or set out in regulations, undergo safety and health training and assessment. In addition, those seeking employment must not misrepresent themselves as having undergone training as may be required under regulations.

Chapter 3 of Part 2 places duties on several other stakeholders, including persons involved in construction work, specifically those who commission or procure construction work, design such work or carry it out. This provision will underpin the regulations which implement the EU directive on construction. Given that construction continues to be a high risk sector which accounts for a disproportionate number of accidents and deaths, it is appropriate to place special emphasis on the construction industry.

Part 3 places a special emphasis on protective and preventive measures and sets out the methodologies to be applied to reduce accidents and ill health at work. This is an important element of the Bill given that there will be a strong focus on prevention in future. Employers must identify hazards and assess the risks presented by any hazards in the place of work. Having done so, every employer must prepare a safety statement which also sets out the protective and preventive measures necessary.

The Bill provides for regulations which can require employers who contract for services with another employer to check that the service supplier has an up-to-date safety statement. Regulations will be likely to focus on large organisations, including those in the public sector which buy in services extensively.

Recognising the practical difficulties faced by many small employers in meeting the safety statement requirements, the Bill provides a basis whereby employers employing three persons or fewer can comply with the safety statement if they meet the requirements of a code of practice published by the Health and Safety Authority. Guidelines have already been published covering several low risk employment sectors.

Surveys conducted by the Health and Safety Authority in 2003 reveal that while 90% of companies employing 50 or more people had a safety statement, the figure fell to 56% in companies employing fewer than 50 people. The safety statement is the management tool for managing safety and health at work. Employers also have a duty to co-operate with each other when they share a workplace.

Health surveillance must be made available to workers by employers based on Framework Directive 89/391. Regulations can also be made requiring workers whose work presents critical risks to the safety and health of others to undergo an assessment by a doctor as regards fitness to carry out the work. Full consultation with employers, unions and other interests will take

[Mr. Killeen.]

place before any such regulations are made to apply to particular work activities.

Part 3 includes an important new provision enabling employer organisations and trade unions to enter into joint safety and health agreements which will be recognised by the Health and Safety Authority. This will support agreements emerging under the social dialogue arrangements in the European Union.

Part 4 refers to consultations on worker health and safety and remains central to reducing accidents and illnesses at work. The first section in Part 4 is devoted to safety representatives, who need additional support in their challenging role. Several new provisions are included both here and throughout the Bill to strengthen the roles. Surveys conducted by the Health and Safety Authority in 2003 showed that in 74% of companies employing 50 or more people, workers had appointed safety representatives. In companies employing up to 15 workers, however, this fell to 15%.

Part 3 also re-enacts provisions on the consultation of workers and important new provisions whereby an employer cannot penalise an employee for acting in good faith in the interests of safety and health. An employee can make a complaint about penalisation to a rights commissioner who can direct the employer to take a specific course of action or to pay compensation. A decision of a rights commissioner can be appealed to the Labour Court and a determination of the Labour Court can be enforced in the Circuit Court.

Part 5 of the Bill is devoted in two chapters to the Health and Safety Authority. The authority is to be renamed, there is provision for the establishment of subsidiaries, the board's membership is to increase from 11 to 12 persons and there are provisions on corporate governance arrangements for both board and staff. Chapter 2 of Part 5 covers staff matters within the authority.

Part 6 of the Bill deals with legislative matters and enforcement. Chapter 1 covers the making of regulations and codes of practice and chapter 2 covers the appointment of inspectors by the authority and their enforcement powers, including the service of notices and applications for High Court orders closing down unsafe places of work. There is also a new provision whereby a person on whom a notice is served must bring it to the attention of any person affected and must also display the notice in a prominent place at the place of work. Latest figures show that the authority has sought nine High Court orders to date.

Part 7 covers offences and penalties. The Bill strikes a balance between encouraging the prevention of accidents and ill health at work, through structures and mechanisms such as the safety statement and safety consultation, offences and penalty provisions to deal with the few that insist on flouting health and safety laws.

There are two categories of offences. The first applies to less serious matters and the second

covers all of the more serious offences under health and safety laws. The first category can be prosecuted in the District Court with a fine of up to €3,000. In the second category, on summary conviction in the District Court, a fine of €3,000 or imprisonment of up to six months or both can apply. On conviction on indictment in cases taken by the DPP with the support of the authority, the maximum fine is €3 million or imprisonment for up to two years or both. On-the-spot fines can also be introduced through regulations, not to exceed €1,000.

Company directors and managers carry significant social responsibility to protect safety and health. A provision in the 1989 Act has been highlighted in the Bill. Already directors and managers have been prosecuted. The Bill will alert directors and managers to their responsibilities and focus their minds on compliance and on engaging competent persons where necessary to advise them. Corporate manslaughter is another issue and the Government awaits the report of the Law Reform Commission.

Part 8 covers several miscellaneous matters. The opportunity is being taken in the Bill to amend the National Standards Authority of Ireland Act 1996 to rectify a legal deficiency that is preventing the Director of Consumer Affairs from enforcing a number of product safety orders, mainly made under the Industrial Research and Standards Act 1961.

There are seven schedules to the Bill. Schedule 1 lists associated statutory provisions upon which the authority can comment. Schedule 2 lists remaining health and safety statutes and regulations made under the European Communities Act 1972. Schedule 3 sets out the general principles of prevention based on the EU framework directive on safety and health. Schedule 4 sets down conditions attaching to safety committees. Schedule 5 deals with appointments to and procedures for the board of the authority. Schedule 6 deals with the appointment and functions of the chief executive of the authority and Schedule 7 lists matters which can be covered in regulations.

This Bill provides a framework for prevention for the foreseeable future. I look forward to debating it with Senators on Committee Stage. The Health and Safety Authority will be committed to ensuring the highest possible standards of compliance. The system must be underpinned by competent safety representatives and safety practitioners and upheld by the highest standards. This will give greater ownership of the system to employees and employers. Companies developing corporate social responsibility will develop workplace performance indicators on absenteeism, accidents and ill health, complaints and compliance, and training and development.

Incentives are important and the insurance industry, as a major stakeholder, should look at health and safety performance as a criterion in the selection of sub-contractors and in the marketing of products. New risks need attention,

including psycho-social problems, and it is critical to re-energise this sector.

I look forward to hearing Senators' comments and to a stronger health and safety regime.

**Mr. Coghlan:** This Bill comes against the backdrop of the Health and Safety Authority report which shows that in 2002, 61 people lost their lives in workplace accidents, almost 8,000 workplace injuries resulted in a loss of four or more working days and there were a stunning 13,000 claims for occupational benefit.

Fine Gael recognises that this Bill is an honest attempt to deal with that dreadful set of statistics which, although improving in recent years, remains far too high. There is much to be said for this Bill; no one opposes safety, health and welfare. My party will gladly support it on Second Stage with a view to a thorough debate on Committee Stage. A thorough debate is what is needed because many of the clauses may have the opposite effect from improving safety and welfare.

This Bill seeks to update the Safety, Health and Welfare at Work Act 1989. Fine Gael, IBEC, SIPTU, the ICTU and everyone involved in industrial relations recognise it is appropriate. Ireland's industrial landscape has changed beyond recognition, the number in work has multiplied and new technology has revolutionised workplace practices. Where once we exported workers we are now the beneficiaries of net immigration. With industries like construction and pharmaceuticals booming like never before, and like nowhere else in the world, we need an updated code of practice to prevent the injuries and deaths which continue to blight Ireland Incorporated.

The 1989 Act was a workable and practical framework that has been relatively successful in its aim. It injected a culture of safety and compliance that was badly needed, especially in the 1990s when the economy took off and an unregulated industrial sector could have spelt disaster for workers, business and Ireland's economic reputation. The danger with this Bill, however, is that in the rush to tighten areas that need to be tightened, the Government might be too prescriptive and inflexible. It is, perhaps without us realising it, replacing a framework for safety with a strict set of rules which are difficult to adhere to and easy to break.

Juxtaposed against those rules is a total absence of any policing strategy that would ensure these rules are not bent or broken together with total silence on the issue of funding. How much in extra resources will the Health and Safety Authority receive upon enactment of this legislation? I ask the Minister of State to avoid statements of intent because, as we see from the Department of Foreign Affairs, promises equate with aspirations so aspirations must equate with barely nothing in his Government's view.

SIPTU has expressed its concerns in this area. If the new legislation is to have any chance of

achieving its aim of reducing workplace injuries and deaths, the HSA must be properly funded. Instead of improving the resources which the authority needs to carry out its functions, they have been steadily reduced. In the construction industry, for example, out of a target of 8,000 building sites due for inspection by the HSA every year, the figure has been reduced to 4,500. With the increased number of inspectors pursuing cases through the courts, as a result of pressure from unions, their presence on building sites has fallen. This is not good enough. There is real concern that the benefits of this Bill will not be felt; nobody will adhere to it because there will be next to nobody to police it.

I do not intend to go through the Bill with a fine tooth comb. There is much to be welcomed, but much to be ironed out as well. I would, however, bring a number of issues to the attention of the House.

Section 18(4) is an example of the Bill's overly prescriptive nature. It states:

Where there is a competent person in the employer's employment, that person shall be appointed for the purposes of this section in preference to a competent person who is not in his or her employment...

While it may be a mistake, an oversight or it may be deliberate, one wonders why the Government has decided to interfere in companies' internal human resources processes. Similarly, by the time the Bill reached this House, it surely should have been possible to placate the trade unions on the issue of checking employees for evidence of intoxication while handling dangerous machinery. While there is a civil liberties aspect to this, the Fine Gael Party does not contend this argument should take precedence over the need for safety. However, adequate assurances must be given to workers on this matter, which has not yet happened.

This leads to only one conclusion. There has, it seems, been a lack of adequate consultation with employers and trade unions on this important Bill. No Bill, no matter what its content, can hope to succeed without the presence of good will on the part of those affected by it. That is not to say the Government must cave into the demands of vested interests. However, the media briefing, spin and counter-spin from various groups would have been avoided had the Department taken on board the views, concerns and expertise of those in the know.

Section 8 sets out the general duties of employers with the overriding duty of ensuring, as is reasonably practicable, the safety, health and welfare at work of his or her employees. Employers are, therefore, obliged to exercise all due care by putting in place the necessary protective and preventative measures, having identified the hazards and assessed risks to health and safety. However, an employer does not have to put in place any measures that are grossly disproportionate, having regard to the unusual, unfore-

[Mr. Coghlan.]

seeable and exceptional nature of any circumstances or occurrence that may result in an injury or accident at work. This is fair and reasonable.

However, it is not fair and reasonable in the case of an employer obtaining staff through an agency where he or she must specify the occupational qualifications necessary for the positions as well as the specific features for which the employee is required. The employer is also obliged to ensure the agency provides this information to the temporary employee. If an employer retains an agency to recruit temporary staff, it is arguably unreasonable for an employer to ensure the agency carries out its statutory duties under the Bill. Why should the employer be held liable for a third party?

Section 10 has been drafted in such a way as to render it almost meaningless. It states instruction, training and supervision is to be given to staff and the employer must take account of an employee's capabilities regarding health, safety and welfare. Does this mean an employee is to be permitted to refuse to work simply because he or she claims it is detrimental to his or her welfare?

There are many good reasons to cheer this Bill. However, those cheering may consider the onus it puts on businesses. Fine Gael has no objection to this in principle. Safety is costly and businesses must pay their fair share. However, has the Government calculated the fair share? While I appreciate there are some very profitable large-scale industrial players who can absorb these costs, what of small businesses? Is there a danger of imposing unnecessary and restrictive regulations on small and medium-sized enterprises which are already regulated into the ground?

The Chambers of Commerce of Ireland launched a blistering attack on how small and medium-sized enterprises have been abandoned by the Government regarding the funding of local authorities. If the Government is priming itself for another fight with the small business sector, may I advise against it? Ultimately, if proper consultation is engaged in, the legislation will be better. I, therefore, advise the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Killeen, to listen carefully to what IBEC, ICTU and others have to say on this Bill and reflect that on Committee Stage. He is a reasonable man and I have no doubt he is listening to these concerns.

This is not a Dickensian call for the scrapping of business owners' responsibility in this area. It is imperative for the State to make crystal clear what it expects from those who make profits from their workers. As the saying goes, one may profit from the sweat of one's employees, but not their blood. My main concern with this Bill is that some provisions impose needless rules. It has been brought to my attention that the Bill may compel an employer to display improvement notices on every vehicle he or she owns, while impeding the implementation of certain safety measures. Section 26 confusingly states

employers must consult with employees on such measures. If something is not safe, it is not safe; consultation sounds like a recipe for dither and delay to me.

While the Bill is flawed in many respects, it is fundamentally sound. I look forward to Committee Stage when I hope the Minister of State will listen to and take on board our concerns.

**Mr. Leyden:** I welcome the Minister of State and his officials to the House. I commend them on the drafting of the Bill and I wish it a speedy passage through the House. There is an urgency in this area and the longer legislation is delayed, the more people are not protected by it.

The Bill provides the legal basis to ensure Ireland has the most up-to-date approach to health and safety at work in Europe. It will introduce new liabilities for directors and senior managers, resulting in the considerable tightening of health and safety at work environment. It strikes a balance between imposing duties, encouraging better consultation, providing better prevention and increasing fines and penalties. Up to 85% of employers have fewer than ten employees. Regrettably, high levels of workplace accidents happen in these microenterprises.

The Bill provides some relief for smaller organisations that may have experienced difficulties putting together a safety statement due to lack of resources or expertise. The Health and Safety Authority will provide special codes of practice for specific industries. An organisation with three or less employees will now meet the safety statement requirement by adhering to the code relevant to their industry.

There are over 200,000 workplaces in the State. To date in 2005, 23 people have been killed in work-related accidents, making it the worst start to a year in this decade. While agriculture accounts for 9% of total gainful employment, 33% of workplace fatalities occur in the sector. I am concerned that lessons have not been learnt and people are dying needlessly, simply because proper measures have not been taken to ensure safety in the workplace. It is not acceptable that a worker could lose his or her life by simply doing a job. The Bill ensures the necessary steps are taken to make workplace accidents a thing of the past.

Safety statements and risk assessments, however, only add value if they become working documents for all employees and management. Breaches of the legislation will incur on-the-spot fines, the provision of maximum fines of up to €3 million and terms of imprisonment of up to two years. Company directors and managers may be held liable in circumstances where they are found to have contributed to any offence and may be prosecuted. Employees will be guilty of an offence if they report for work in an intoxicated condition or under the influence of drugs. They may be subject to testing by their employers to ensure compliance. While it does give rise to con-

cerns regarding individual privacy, it must be remembered that lives may be at stake.

The farm is one of the most dangerous workplace environments. Coming from County Clare, the Minister of State will have considerable knowledge of farming. For example, *3 o'clock* two Members of the Lower House have experienced accidents on their farms. Even when people act responsibly, there are great dangers. Everyone must be particularly careful when dealing with animals. As a result of modern farming methods, there is less handling of animals than in the past. Single suckler cows which have never been handled or fed directly by an individual are a much wilder breed than in the past and must be handled with great care. Even when domesticated, they are basically wild animals, and very powerful. The farming community must be very careful with regard to farm safety.

Many farmers know that when calving, a cow can be particularly dangerous and can turn on people. People have died needlessly because they felt they were safe in such an environment. I commend the farming organisations, which have worked closely with the Minister of State, along with the Health and Safety Authority, in this regard. Compliance with the safety statement prepared and circulated is not great. A reminder is better than a prosecution. Persuasion and encouragement are important through the national organisations, the Department and the health and safety organisations.

Such persuasion would be more effective at this stage in getting people to review their farm working arrangements, particularly with regard to slurry tanks. Thankfully, people are now more conscious of the toxins and gases the tanks emit. Many more people died as a result of those than do now. People are becoming more careful. Open slurry tanks are less prevalent than they were, yet they claim many lives, with young children in particular dying needlessly. There are also safety issues involving tractors and other farm equipment. The situation of children coming up behind farm machinery occurs far too regularly. The fact that the Minister of State is promoting this Bill and highlighting the safety issue will save lives.

It is extraordinary to think that an estimated 117,800 people suffered injury at work or occupational illnesses arising from work activities, resulting in the loss of 3.1 million work days. That is an extraordinary figure. We currently have 2 million employed, which is also a staggering figure. This Bill is particularly important now because of the number of people at work, compared with 1.2 million in 1989. That is a phenomenal increase in employment and is a credit to this Government, whose work resulted in the increase of more than 1,000 people per week at work over the past ten years. Since Fianna Fáil came back into Government, there has been a phenomenal increase in the numbers employed.

It is important that we couple the legislation before the House today with the fact that this Government has created jobs. The Minister of

State is promoting this Bill in order to give protection to those employed to ensure they are safe at work.

A building site is probably one of the most dangerous places for employees. More stringent precautions than heretofore have been taken in the area. I was involved with the building industry before being elected to this House and used to visit building sites. If a building site is not well controlled and managed, there is nowhere more dangerous. Over the years, I commended contractors for their neatness on a job. In the past, a serious problem involved workers walking on rusty six-inch nails sticking out of planks. The footwear used by workers was not adequate to protect them from this danger. Greater precautions are now taken in this regard. Young builders are much more conscious of safety. They all wear hard hats on site and do not allow anyone on site without proper equipment. Appropriate signs are now erected on most building sites, and protective railings surround those sites. All this helps to reduce the number of fatalities in the building industry.

All industries have risks and they must all comply with this legislation. A great deal of consultation has rightly taken place because one must have the goodwill of all the organisations representing workers, unions and employers to ensure this Bill works well. Those consultations are now complete. The survey conducted by the Health and Safety Authority in 2003 revealed that while 90% of companies which employed 50 or more people had a safety statement, this fell to 50% in companies employing up to 50 people. The safety statement is the management tool for managing safety and health at work.

The Minister of State may clarify this on Second Stage but I understand this document has been circulated to all Irish farms. There nevertheless remains the issue of managing this issue, or even locating the document on a farm and complying with it. Teagasc and the farming organisations could become more active in this regard. The documents were issued possibly a year ago and going by my experience, people read them and then lay them aside to be completed on a rainy day, which in many cases never comes, so the safety statements are not complied with. I ask the Minister of State to ensure that a reminder is sent to all to comply with the safety statement on farms.

This Bill has been flagged for some time. Many Ministers and Ministers of State in this Government have been involved in the drafting of the legislation, including the Taoiseach and the Minister for Enterprise, Trade and Employment. Deputy Fahey was also involved at one stage. It is now the responsibility of the Minister of State, Deputy Killeen, to see this Bill through the Oireachtas and he has the capacity to ensure it becomes law very quickly.

Since 1989 onwards, many Ministers and Ministers of State have brought forward legislation in this area. They include the Taoiseach, Deputy

[Mr. Leyden.]

Cowen, Senator O'Rourke and Deputies Fitzgerald, Kitt and Fahey. All had an input in this regard. I compliment all the Ministers and Ministers of State involved. They have all taken their roles seriously. This Bill is the culmination of their work and that of the various organisations. I thank the Minister of State for bringing the Bill before us and I thank his senior officials for being present to guide us in bringing the Bill through the House.

**Mr. Feighan:** I welcome the Minister of State to the House. As an employer for many years, this legislation highlights how complacent we can become. Over the years, when one heard of many farmers killed in accidents, and of building site fatalities, one more or less thought it was part of the trade. We accepted that the building trade was dangerous. It is significant that we now have the Celtic tiger and the resources, and are thinking of health and safety at work. Sometimes it has taken European legislation to make us focus on the fact that we can make a difference.

I welcome the Bill. Prevention is better than cure, and the Bill is good for employers and employees. It strikes a balance. We recognise this Bill as a honest attempt to deal with the statistic which shows that in 2002, 61 people lost their lives in work-related accidents. Many people have been maimed when working in various industries. This legislation will be a help.

The main issue is resources. The Health and Safety Authority must have sufficient inspectors. We discovered with the Gama incident that there are not enough inspectors. There was a knee-jerk reaction to that. Sometimes I welcome such reactions. I often say that politicians do not act but react. We reacted to the serious situation of an alleged fraud against workers in Gama. Everybody has a knee-jerk reaction to loss of life or the maiming of people at work. Signs are immediately put up on the premises and helmets are worn, with people resolving to do better.

It is difficult to legislate for every eventuality and some jobs and professions are more dangerous than others. I have a newsagents shop, which is not a dangerous environment although machines must be cleaned and so forth.

**Mr. Leyden:** It is a fine premises in Boyle.

**Mr. Feighan:** Some Members of the House might come from agricultural backgrounds. They might work on the farm or be in the enjoyable position of having others do the work for them. Senator Leyden correctly highlighted the situation in agriculture where there have been many accidents resulting in the death or maiming of people, especially children. Are children included in the statistics for work-related accidents? They are not deemed to be workers and accidents affecting them might just be seen as unfortunate. Time and again one hears of children being killed

on farms as a result of being on tractors or helping with various jobs on the farm.

The Chambers of Commerce of Ireland have launched a blistering attack on the Government for the way small and medium sized businesses have been abandoned with regard to funding for local authorities. I am a past president of Boyle Chamber of Commerce. We cannot put a price on safety for workers and employers. Employers tend to see the bottom line while employees see the issues that must be resolved. If something is not safe, the Government has a moral obligation to provide the right framework to deal with it.

This can be a difficult issue for employers. Business is all about the bottom line and economies of scale. It is difficult to implement the same health and safety procedures in a small business that employs nine or ten people as in a larger business such as Tesco. Has the Minister taken note that smaller businesses could be penalised? People will say one can claim expenses back through taxes and so forth but if one's bottom line is not strong it is difficult to claim back taxes. Smaller businesses might be put at a disadvantage. This is not to take away from the fact that safety must be a paramount concern.

Is an employee permitted to refuse to work simply because he or she claims it is detrimental to his or her welfare? When will the extra health and safety officers be recruited? It is little use introducing legislation if the proper procedures to implement it are not in place. My party supports this Bill and looks forward to a thorough debate on Committee Stage. We intend to table some amendments. They are not significant but they would benefit the Bill and assist in its implementation.

We have gone past the stage of accepting that loss of life can occur with some professions. We cannot accept that in any occupation. When the Bill is passed funding must be put in place to ensure the Bill's provisions are enforced and policed. In the 1970s and 1980s we tended to accept that loss of life and maiming was an occupational hazard when certain machines or tools were in use. I am glad we are trying to address this attitude. I look forward to a reasoned debate on the Bill.

**Mr. Dardis:** I apologise to the Minister of State, Deputy Killeen, for the fact that I was not present to hear his introductory remarks but I have read them. I was impressed by the figures he quoted for the number of work days lost as a result of injuries. He said 117,800 people were affected in 2002 resulting in a loss of 3.16 million working days. This problem, therefore, is of great significance not just for the people who are affected but also for the economy and the knock-on costs for the State in terms of health services and so forth. That is an important dimension of the Safety, Health and Welfare at Work Bill.

I welcome this legislation. The number of days lost as a result of strikes is far lower than the number lost as a result of injury. This underlines

the scale of the problem. Furthermore, it is a problem that is not highlighted. Strikes get great attention but the effects of injury do not. There was some discussion this morning and yesterday on the Order of Business about the Personal Injuries Assessment Board. There was a general welcome for the fact that awards had been accepted and there had been a tenfold decrease in the legal costs associated with the awards. Hopefully, the board will have an active role to play in dealing with claims that might arise from work injuries.

The minimum expectation people have when they go to work is that they will be safe there and will return home safely. That applies equally to people who come to the relatively safe environment, physically, of the Houses of the Oireachtas and who work in more dangerous places such as farms, construction sites and quarries. Even those who work in dangerous environments, and I spent a good deal of my working life on a farm, tend to be quite blasé about injury. The more one becomes familiar with the job at hand, the more risks one tends to take. One might not even know there are risks.

However, we have left behind the days when people stood on the drawbar between the tractor and trailer. I can remember when there were no cabs on tractors. Many people were killed as a result of the tractors overturning. Happily we have moved on from there although we still have some way to go. As I said, the dangers depend a great deal on the place of work. We must accept that some workplaces are more dangerous than others and try to minimise the possibility of people getting injured whether it be in agriculture or on construction sites. Sea fishing is also a dangerous activity even in terms of the physical environment in which those people work.

Twenty three people were killed in work-related accidents in 2005, which is one of the worst starts to the year for a decade. That would appear to indicate that lessons are not being learned and that people are dying needlessly because the proper measures have not been taken into account, put in place or enforced. For that reason I welcome the Bill before us.

The Bill specifically sets out the duties of the employer and the employee in terms of compliance with the legislation. I welcome the acknowledgment that both the employer and the employee have responsibilities in regard to the safety of the workplace. New and increased penalties are being introduced for non-compliance, which is to be welcomed in light of the tragic statistics recorded to date this year.

There is more to this matter than just fines and penalties. It is important that there is a degree of ongoing employee consultation, which can have a positive and long lasting effect. It is critical that the employee be consulted in terms of health and safety at work and that there is a general level of co-operation and participation between the employer and employee. The Bill provides protection for employees from penalisation as a

result of raising a concern regarding their health and safety at work. That is an important issue because people may feel vulnerable and fear they would be seen as troublemakers should they raise a concern, which could have a detrimental effect on their career well-being. Workers know their work environment better than anyone else and they should be the people to help to sort out any problems that may exist. It would be a most unwise employer who did not try to ensure that the needs and concerns of employees were taken into account.

The large multinational corporations we have happily attracted here have reached world class standards by recognising that the difference between a near miss and an injury or fatality is a millisecond or a millimetre. However, accidents still occur in these enlightened companies. I hasten to add that there are also enlightened domestic companies. Employees must be encouraged to highlight problems in the workplace without fear of penalties.

A central aspect of this matter is education. Perhaps some of the things that have happened in the past have been due to deficiencies in education. Experts have shown that moving to world class safety standards means moving beyond safety audits and physical interventions such as protective clothing, barriers, harnesses and so on to the achievement of best practice. The key to all of this is education. It is somewhat similar to road safety which we discussed in recent weeks. Individuals must take responsibility. Individual behaviour is a critical element in reducing accident rates both on the roads and in the workplace.

I welcome the requirement that every workplace must have a written safety statement which identifies its risks and hazards. That is one of the key elements of the enforcement side. It is easy to identify that there is a problem in a workplace if it does not have a safety statement. If that does not exist, it follows that other more important aspects may not be in place either. Employees must be educated and trained with specific regard to the workplace environment and to the associated hazards within the industry in which they work. Some work environments are dangerous by their very nature, such as farms and quarries, and special care must be taken in regard to these.

I spoke recently to a person who used to rent out chainsaws; he had to stop because people stated they would not use the safety equipment which he offered to them. He was in a difficult position and stopped renting out these machines because of his concern about people's lack of care. In some cases the people renting chainsaws gave them to employees to do the work which was obviously a serious situation.

The general provisions which include a €100 on-the-spot fine, increased fines and sentences, the naming and shaming by the HSA, testing for intoxicants, employers' duties, safety statements, codes of practice, safety representatives and prohibition notices are all to be welcomed. Enforce-

[Mr. Dardis.]

ment is a crucial aspect of the legislation. We have had a raft of legislation in this area and others. It all comes down to how well it will be enforced; whether the resources will be invested to ensure that enforcement is carried out; and whether, when deficiencies are discovered, they will be pursued vigorously and rectified. It is difficult to enforce on-the-spot fines in this kind of environment.

Will initiatives be put in place to target problem sectors? Cowboy operators are a continuing problem. It is well known in the construction industry that companies disappear after working on a particular project. The same person will then form another company and so on which leads to a difficulty in establishing liability. Such companies often do not have resources. I am aware that company directors can be held responsible and that there is a degree of individual responsibility which is to be welcomed but a vigorous approach must be taken to cowboy operators who hold no assets and are probably not even tax compliant. They may not even register on Revenue's radar. These people are some of the biggest culprits in the area of health and safety and their sites appear to have the greatest potential for injuries and fatalities. When companies fold up and disappear, it is difficult to have legal redress if things go wrong. The shortage of craftspeople and tradespeople has encouraged those who are not qualified to set up as builders which leads to employers as well as consumers being left exposed.

The HSA's fatality figures show the same sectors are the worst offenders time and again. The construction industry tops the list this year along with agriculture. Nine people have been killed in the construction sector which is up from seven in the same period last year. Seven people died in the agriculture sector which is an increase on four in the first four months of 2004. It is unfortunate that these things happen but there is a dual responsibility on the worker and the employer. The protection against penalties for those who highlight problems is important. Other welcome measures relate to enforcement, education and the targeting of specific sectors and locations.

My next point does not come strictly within the terms of the Bill. I live in an area outside the town of Newbridge in which there has been significant housing development. One estate was built across the road from where I live. Every few weeks I had to pick up the litter that was generated there. I accept that building sites are messy places but what is not acceptable is construction site workers who park on the side of the road throwing their lunch wrappers out the windows of their vans. That happens all the time. Bottles, cans and papers are all left strewn about. I accept this is a matter for local authority litter wardens to enforce but something should be done about it.

Some companies move on to building sites and only put up health and safety signage weeks later. That is a matter on which the Health and Safety

Authority must be active. In one case where a fatal accident took place, the company owner was fined in court. However, he immediately went to another site where it again took a long time before health and safety signage was erected. One would have thought he would learn what was required from his first experience. I telephoned him to inquire why his signs were not up.

If a farmer transports a load of beet, grain or silage, he has to clean up the road after him but construction companies appear to have impunity when it comes to leaving muck on the road. In my area there is mud from Athgarvan to Newbridge because of the carry-on of these people. If there is not mud, there is dust. I recall when the motorway was being constructed along the Newbridge bypass the mud and the dust was cleaned off every day. A contractor was employed on this at all times. However, these fellows seem to be able to carry on without let or hindrance. They leave the roads in a state of minimal repair and when they have cleared off it is up to the local authority, several months later, to put matters right. The State is picking up the tab and that is not acceptable. There are issues for the planning and local authorities with regard to litter. While I accept these are outside the scope of the Health and Safety Authority, perhaps it might have a quiet word to get them to ensure that some of these sites are at least maintained to an acceptable standard.

A balance must be struck in all of these matters, however. People must work, frequently in dangerous environments. If such environments are over-regulated or over-restricted, then the work itself and output is affected. Nonetheless, safety of the employee and of the public must be dominant in our thinking. For that reason, the Bill strikes the right balance and I am happy to support it.

**Mr. Moylan:** I welcome the Minister of State, Deputy Killeen, to the House to debate this important Bill. I compliment officials of his Department and the Health and Safety Authority for their outstanding work. As a former board member of the authority, I appreciate the outstanding work that its inspectorate and staff have done over several years. This includes seeing at first hand their work in ensuring that the rules as laid down are being complied with. Sometimes their work is difficult, for example, when they have to visit sites after fatal accidents, etc. At all times they deal with such events in a very professional manner.

We must recognise the improvements that have taken place. It is easy enough to highlight the number of fatalities. Even one fatality is one too much, but when one looks at the number of people currently at work as against ten or 15 years ago, and the amount of large machinery on building sites, I believe excellent work is being done to ensure health and safety issues are held to be of paramount importance.

There have been some improvements on building sites, where many accidents happen, but the need for maximum levels of safety must always be emphasised. One is always worried, on looking in on a building site, as to what one might find. There should always be pre-development preparation on a site. The location of electrical services, particularly those underground, should always be known. These should be marked on maps and available to a contractor when he or she moves on site. Once building starts on a site overhead cabling should be removed. In 90% of cases it has to be removed afterwards and ideally it should be taken away before construction or work on the site begins. Perhaps the HSA could agree with the local authority that this should be a prerequisite as regards planning.

Despite the improvements, there is still room for further change. In the case of noise levels, for example, the protection exists and is available, if used. Many companies are very good in dealing with eye and noise protection measures, improved safety, security gear, etc. This has to be welcomed. However, quite a number of people attend accident and emergency units in hospitals as a result of accidents on building sites. This cannot be lost sight of and must be improved on.

Other Members, including Senator Dardis, who has first-hand information in this area, referred to the issue of farm safety. This must be continuously reviewed. Farmers have made enormous improvements on their farmyards as regards power drives with simple plastic covers that only cost a few euro, etc. Such measures should be put in place to obviate or reduce the risk element from much of the machinery being worked on.

There is another area of concern, namely, the use of quad motors, on farms and in general. Action must be taken to deal with them. Quads are similar to a small four-wheel drive tractor but with no roller bar, which was compulsory even on very old tractors that could not do more than 5 mph. These quads are well capable of doing 30 mph or 40 mph. There is no protection whatever and they contribute to an enormous number of accidents. Last year, a prominent member of the Irish Farmers Association was seriously injured in such an accident and he is only one of many. I hope this will be reviewed without delay so that something may be done about it.

With regard to slurry on farms, the current topic is the use of open earthen bags. That is the last thing we want. We should ensure that slurry is gathered and controlled in properly covered concrete tanks. Farmers spent possibly 20 years in doing away with, and covering in, many of the old outside earthen tanks. That must be changed in the interests of security and safety on farms and as quickly as possible. While chainsaws are a useful item on a farm, in most cases they are used without any protection of any kind and are the cause of a very large number of accidents.

With regard to articulated lorries, something must be done about long loads which do not carry advance warnings, speed, safety chains and secur-

ity loading. If a garda has to stop a truck of any type on the road on safety grounds an inspection of tyres, tax, insurance, weight, tachograph, licences and insurance will take up to two hours. That is too long. Despite some improvements, many of these vehicles leave much to be desired.

I also compliment the Health and Safety Authority on the improvements on which it has insisted and which have taken place at many stadiums around the country. Large numbers of people were gathering at such forums and there was a risk of major problems, and possible disasters. However, both the HSA and insurance companies have insisted that safety must be paramount in the development of many of the country's new stadiums. The cost of insurance claims following accidents, whether they occur on a farm or elsewhere, is passed on to consumers, who have difficulty paying their insurance premia.

The HSA inspectors have an enormous responsibility and they carry out their duties very well. I always appreciate their unannounced workplace visits because employers have a duty of care to ensure they adopt the best safety practices for their employees. Prevention is the way forward and the Minister of State and his officials are doing a good job in this regard. The importance of safety committees in the workplace must be recognised. Safety committees and safety officers work well. They adopt a hands-on approach to foresee problems before they develop and ensure all precautions are taken to make sure safety statements are in place and safety equipment is used. There is not much use in an employer providing safety wear if employees fail to use it for whatever reason.

I refer to the responsibility of local authorities to make dangerous buildings safe given that many accidents occur in them. The issue of dangerous buildings must be examined to make sure the HSA puts more pressure on local authorities to monitor these buildings in every town and villages. Many minor accidents occur in them which result in many children getting hurt. Such buildings should be properly secured so they cannot be accessed by children.

Employers and employees should study the legislation and comply with all its provisions. Significant improvements are provided in the legislation. It is about time appropriate fines were introduced so that those who do not comply with the regulations are penalised. I do not know whether the Department of Justice, Equality and Law Reform and the Health and Safety Authority is responsible for monitoring motorists and other road users whose vehicles break down. All road users should have illuminated vests in case of a breakdown. It should be made compulsory. I thank the Minister of State for introducing the legislation and I wish him and his officials well with it. I appeal to all employers to take extra steps to ensure our workplaces are safer for employees.

**Mr. McDowell:** Seo an chéad deis agam tréaslú leis an Aire Stáit as ucht a cheapacháin. Is dócha gur chuir cúrsaí moilliú ar an gceapachán ach tá sé tarlaithe agus is maith an rud é, go háirithe do mhuintir thuaisceart chondae an Chláir, áit sa tír a bhfuil bá agus ceangal agam féin léi. Go n-éirí leis.

I am pleased to have the opportunity to contribute on this important legislation, which has been around for some time. While it is largely a consolidating Bill, nonetheless it contains important new initiatives, which my party welcomes and supports, not least, for example, the introduction of on-the-spot fines, which replace the cumbersome enforcement system in place. The statistics provided by the Minister of State are staggering. Approximately 117,000 people were injured at work in 2002 resulting in the loss of 3.16 million days compared with 21,000 days lost to industrial disputes. This gives the lie to the primary criticism by employers of legislation similar to this who say this is the nanny state introducing regulations for the sake of it, which impose unnecessary and unreasonable costs, particularly on small businesses.

The argument, however, is done down by those statistics, which make it crystal clear that the cost of injury and fatal accidents at work far outweighs the cost of implementing safety legislation which seeks to prevent such accidents. It costs employers through increased insurance premia and replacing employees who are out of work because they are sick, and it costs the State, which must pay occupational benefit. All these costs are preventable if accidents are prevented and that is the primary thrust of legislation such as this.

Employers who make the case that the legislation is a waste of money or that unnecessary regulation is being imposed on them are extremely short sighted in their analysis not only from the point of view of the State and employees, but also from their own point of view. It will cost them more in the long run if they do not observe and embrace the legislation's provisions.

There is broad agreement between the social partners regarding the measures that consolidate the 1989 Act and subsequent directives and regulations and that is how these issues should be progressed. It is important that there should be co-operation not only on a national level between IBEC and ICTU, but also on an individual industry and enterprise level where the workforce and employers can work together to ensure a safe working environment.

The legislation provides for a framework within enterprises where this can be done. IBEC has been slow to embrace this framework saying it should be a legislative matter and not an industrial relations matter. IBEC is again taking a short-sighted view. If these issues can be progressed through co-operation and agreement within a workplace, provided that does not involve cutting corners and observes regulations and high standards, that must be the way forward.

If that means, for example, that in the construction industry, the CIF is obliged to sit down with the various trade unions that represent workers within the industry and reaches an agreement on how the framework can be implemented and enforced, so much the better. That must be good for all concerned and I very much welcome that approach.

The HSA will remain the primary body responsible for enforcement. The debate reflects the thinking that underlay the debate on the treatment of migrant workers last week. It is great, important and necessary to have a legal framework but enforcement is needed. Regrettably, however strong the regulations may be and however much we increase fines and provide for deterrents, some employers will not observe them. We must be in a position to ensure inspectors are available to enforce the regulations. I understand approximately 160 people work in the HSA. I know the Minister of State was influential in ensuring that number was retained but there is a clear need to increase the number of inspectors available as although they currently number approximately 100, not all of them are available for on-site inspections at any given time.

That figure dates back to a time when the workforce in this country was 1.1 million or 1.2 million but it is now 1.9 million and heading for 2 million, which is an increase of approximately 40% in the past ten years. The number of inspectors available to the HSA has not increased at all or has been increased by a very small number.

In industries that are particularly susceptible to accidents at work, employment has increased even more. We have been remarkably successful in attracting and developing clusters of chemical industries, as we sought to do. With that come the challenges which accompany the chemicals industry, by definition an industry which involves handling and dealing with hazardous substances and waste.

It is important that we are in a position not only to implement EU directives but also to enforce them. The REACH directive is still awaiting implementation. That will be a serious challenge for the HSA because it requires a level of expertise and manpower it does not currently have. We must acknowledge that the success in attracting the multinational chemical industry to this country comes with a new challenge to health and safety at work which requires additional resources to be made available to the HSA.

The extraordinary increase in the construction industry workforce in recent years provides another challenge. I was astonished to read the second most recent Central Bank report which pointed out that approximately 12% of the entire workforce is in the construction industry, which means that approximately one in eight people in this country are directly or indirectly linked to the construction industry.

The Minister of State is aware that in the early and mid-1990s many corners were cut by small and large enterprises in the construction industry

in this country. My father-in-law is a retired small builder in north Clare and he is not short of stories about competitors undercutting their opposition by not paying attention to issues such as health and safety at work. Similar stories and anecdotes are common throughout the country and most of us would have no difficulty in finding one.

Through its advertising campaigns and inspections, the HSA has managed to impress on some operators that this is not the way forward and that there is a cost involved. However, some horrific accidents have occurred — thankfully there are fewer now than there were five years ago — which clearly illustrate the need to continue with those campaigns and inspections.

It is not just small builders that are involved. One or two big companies that were very active in Dublin in the mid-1990s — most people will know to whom I am referring — specialised in building ramshackle structures cheaply and quickly. One of the costs of that was in terms of health and safety and some horrific accidents occurred that attracted significant public attention and action from both trade unions in the industry and the HSA. Unfortunately that was not before lives were lost.

I wish to comment on certain specific provisions of the Bill and I hope my information is not out of date. On Committee Stage the Minister of State was reluctant to change the provision that gives power to employers in reasonable circumstances to oblige an employee to take a test for intoxicants. I confess to being in two minds on this issue. It is self-evident that in an industry where a person's safety depends on others, it is important that employees are certain their colleagues are not under the influence of drink or drugs. However, in most cases it would be evident if someone was under such an influence and the current situation is that the employer would send that person home.

I am concerned that the introduction of mandatory testing is unquestionably an issue of intrusion into an individual's privacy and rights. I know the Minister of State has stated that he is reasonable and that there will be no difficulties in complying with the regulations he will introduce, but not everyone in his party or in other parties is as reasonable as he is and we cannot be sure how regulations might be interpreted in the future. Perhaps we will get an opportunity to discuss this further.

I was struck by what Senator Moylan said about public events because some high-profile fatal accidents have occurred in recent months and years at such events. Strictly speaking public events do not constitute a workplace and so do not come within the ambit of the Department or this Bill, but nonetheless there is a need to examine the concept of imposing standards on public events, such as where two non-professional sporting clubs play each other or where people or children play in a ground run by a voluntary sporting club. We must find a mechanism of implementing

standards in terms of equipment and buildings in such places that fall outside the context of the workplace. We can examine this on Committee Stage.

The issue of corporate manslaughter has been raised by the trade union movement in recent years. The Law Reform Commission was asked to examine this issue and it recommended that in certain extreme circumstances a charge of corporate manslaughter would be appropriate. This Bill represents the time to introduce it into legislation. Nobody expects such charges would be brought easily or regularly, but circumstances have attracted public attention where the level of reckless neglect in a particular company is such that, in my view and that of the Law Reform Commission, it would have justified such a charge as corporate manslaughter. The Minister of State should re-examine introducing such an offence in the context of this Bill.

We must give some time to the issue of the public sector. Examining some literature before today's debate, I was struck by the extent to which the public sector has been found to be neglectful of its duties. It suits those of us who choose to examine issues from an employee point of view to consider that this is about neglectful or unscrupulous employers, but the State has not been a shining star in this matter, and there have been many incidents where it failed to ensure the safety of people working for State institutions or the public service.

In his speech on Second Stage in the Dáil, the Minister of State pointed out that violence in the workplace is now a real issue in terms of people's interaction with the public service.

*4 o'clock* Recent controversy about accident and emergency departments is a perfect example. This issue requires a specific response from us. It falls within the ambit of this Bill but perhaps needs to be spelt out in more detail.

My party welcomes and supports this Bill and I look forward to teasing out the issues in more detail on Committee Stage.

**Mr. Dooley:** I welcome the opportunity to speak on this Bill, particularly as it is the first opportunity for the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Killeen, to bring legislation through the House. I am delighted Deputy Killeen, from County Clare, is here with such important legislation and I compliment him on his input to the Bill. As Senator McDowell stated the legislation has been around for quite some time and there is no doubt Deputy Killeen's stamp is on it. It is part of a range of measures designed to protect workers, which is something the Minister of State has been to the fore in doing.

I compliment the Minister of State for his recent increasing of the minimum wage on foot of recommendations but against the advice of some employer groups. I was surprised by some of the comments on the decision, especially those of

[Mr. Dooley.]

IBEC and the SFA. One would have been forgiven for thinking they would not have objected to it, but they did. I was especially surprised by the reaction of the Chambers of Commerce of Ireland given that the money earned by employees on the minimum wage is generally circulated in local communities within a very short period of time. It was very short-sighted of the Chambers of Commerce of Ireland membership to take so negative a view and to mount so personal an attack on the Minister of State. Some outrageous and reprehensible comments were made by the director general of the organisation which showed little understanding of the socially progressive regulation being brought forward. The Minister of State deserves the full credit of the House for his decision.

There is no doubt that real health and safety problems need to be addressed. The Bill deals very well with them. There has been a great deal of talk today about building sites and Members are familiar with the kind of circumstances which can develop on them. Many Members have worked on building sites and seen significant changes take place since the late 1980s. Senator McDowell referred to his father-in-law who has a small building business in north Clare and spoke about practices in the industry in the 1980s and early 1990s. I contend that such practices were the result of a desire to cut corners and expenses due to the inability of the economy to meet the costs associated with certain safety measures. Unfortunately, the negative practices which have developed recently are based on the greed associated with the Celtic tiger and the desire of unscrupulous operators to fast-track jobs and move on to the next site to reap even greater rewards. Such practices must be stamped out.

In a buoyant economy and construction sector, it is only right to put in place the necessary safety measures to protect those who work on building sites. A by-product of the slipshod approach to health and safety on building sites is a general ethos of untidiness and sloppy work. We will all suffer in the long term as a result. While quality control is not directly addressed in the Bill, people who take a slipshod approach to health and safety also take a slipshod approach to the quality of their work. It is regrettable that poor quality work is taking place on building sites with all that implies for the life expectancy of many of the properties currently being constructed. Tradesmen no longer take the level of pride in their work they once did, but are only interested in getting in and out of a site as quickly as possible to maximise profits.

A by-product of the Bill will be to address the problem of quality by ensuring that builders follow set procedures thereby creating an ethos of greater care and attention not only to health and safety but to the quality of the work they carry out. FÁS, which operates under the aegis of the Department of Enterprise, Trade and Employment, runs the useful Safe Pass programme to

provide basic knowledge of health and safety. There is potential to enhance what is currently a day course. The Minister of State should consider reviewing the course with the intention of establishing a pass-fail system rather accreditation based on attendance.

There have been comments on farm safety, which is of paramount importance. In his short time in office, the Minister of State has actively promoted greater safety on farms through the farm-safety week. The Minister of State's regular contact with farm unions and representative bodies in this context has been very welcome. Farm practices have changed over the years. Most Members will remember days on which they travelled from the bog on top of a load of turf. Sadly, while tractors can transport loads at greater speeds, their increased size means it is more difficult to see people around them. Some of the tractors one sees now bear little resemblance to the tractors of 25 to 30 years ago. Front wheels are now larger than the back ones, which is the reverse of how we used to understand a tractor to be constructed.

The sophisticated nature of modern machinery makes it especially important to take children and minors out of the equation and away from the farmyard. It is disappointing to continue regularly to see farmers travelling in tractors with young children and dogs. It compromises the farmer's visibility and the safety of those within and without the machine. It is a matter which must be addressed.

Senator Moylan referred to proposals to deal with sewerage under the nitrates directive and the possibility of developing lagoons. I agree with the Senator that lagoons would represent a very retrograde step. We are all aware of cases in which farmers and children have lost their lives in slurry tanks. While tanks are generally well covered, farmers remove grids for the purpose of agitating slurry. In such circumstances, children and farmers have fallen into the tanks. It would not be acceptable to facilitate open lagoons which would create a much more serious health and safety hazard.

The Bill goes a long way in protecting workers. Concerns have been raised about the attitude of some local authorities to workers in the fire service. I understand that members of the service who would previously gone on day training courses will no longer be paid for the hours of travel associated with them as a result of changes in working practices on foot of the benchmarking process. The change will act as a disincentive to attend to the temporary firefighters who provide a great level of service to the community. While local authorities have sought to limit costs in implementing benchmarking, the ultimate cost will be that firefighters fail to receive the level of training they require on an ongoing basis. It is an issue which must be addressed.

The Minister of State will be aware of a pharmaceutical plant in County Clare which had difficulties in terms of its emissions and which have

been of concern to workers as well as the wider public. An important by-product of the Bill's provisions to protect workers will be that the information on the effects of emissions with which they will have to be provided will also be of assistance to the general population.

The Department of the Environment, Heritage and Local Government does not take an active role in providing information on emissions to the public as it sees the function as the responsibility of the EPA. Unfortunately, the EPA considers its role to be one of licensing, regulation and the pursuit through the courts of those who breach the conditions of their licences. That is not good enough for the public. While there may not be problems associated with certain emissions, concern and anxiety is generated by a lack of knowledge about supposed potential effects. Following the recent court case over a plastics company in the region, people in Senator O'Rourke's constituency are familiar with these concerns over emissions. This matter should be investigated. I thank the Minister for State and wish him well with the Bill.

**Ms O'Rourke:** I concur with other speakers in welcoming the Minister of State to the House. I have discussed this Bill with him for a long time. He is the right man for this job and is scrupulous in taking notes. His speech was informative and sensible but not wordy. I have an interest in the Bill because I was formerly Minister of State with responsibility for labour affairs. At that time the Health and Safety Authority, which is an excellent body, was under the leadership of Mr. Tom Walsh. Mr. Walsh, who is now a consultant, is very capable, knowledgeable on health and safety matters and impressed me by his dedication to work.

In 1989, the first health and safety legislation was introduced in response to an EU directive. The current Bill forms part of the codifying process in this area. It is welcome that fines, which were derisory, will be increased with the passing of this Bill. Formerly, fines did not keep pace with inflation or correspond with the seriousness of an accident. Heed will be paid to these more stringent penalties. The board of the Health and Safety Authority includes a good mix of employers, employees and Government nominees.

Harrowing accidents, often involving children, occur in the agricultural sector. It is sometimes inappropriate for a three year-old child to be present when farm work is being carried out. Slurry pits and machinery are the two greatest dangers on farms. It is difficult to maintain a constant watch on children but this must be done.

Tripping on a non-stick mat can result in severe injury or death. It is to the detriment of the economy that a significant amount of time has been lost due to a lack of attention in the work environment. Many firms employ health and safety officers to provide information. These officers sometimes meet on a social basis, when they hold

quizzes and go on nights out. I was lucky to attend a number of these enjoyable events.

The EU is sometimes accused of being intrusive but its emphasis on workplace health and safety is worthy. Workers are empowered through access to information. It is important that members of the workforce take an interest in health. I am glad that the Minister of State is taking an active role in this matter. His Department includes many diligent officials who have a keen interest in legislation. I commend the Bill to the House and thank all who have contributed to its passage.

**Mr. Mooney:** I am pleased to have the opportunity to contribute to the Bill. I concur with the Leader's remarks on farm accidents. My wife, who grew up on a farm, often remarked that those from an urban background do not appreciate farming culture. However, in the context of the use of high technology on farms, it is tragic to hear of young children who fall off or are pinned under tractors. This happens on a regular basis and is widely publicised. I do not understand why parents do not ensure that children are strapped into safety harnesses. I raise this issue because the Minister of State noted the need for promotion of the concept of health and safety. The new health and safety body will presumably address this issue, perhaps through an advisory committee.

I first became aware of workplace health and safety as a teenager while employed by the Initial Towel Company in London, which controlled 97% of the market in washing facilities in Ireland and the UK. The company existed because of an Act which obliged employers to provide washing facilities and a certain degree of safety in the workplace.

The content of this Bill reveals how far we have advanced in the area of health and safety. While Ireland can boast of a proud record in this area, EU initiatives have also made a significant contribution. I sometimes wonder whether the public is aware of the daily impact of the EU on our lives and the manner in which directives are introduced. While the Government has an input into legislation through the Council of Ministers, it is ultimately a matter of incorporating EU initiatives into Irish law. I often wonder if the general public is aware of the growing importance of European institutions in our daily lives. I hope that all of us who are supportive of the EU constitutional treaty will take the opportunity in the forthcoming debate to inform and remind the public of the importance of these institutions.

Lack of health or safety provisions directly affected a young man from my home town of Drumshanbo, County Leitrim, Shane McGettigan, whose father Charlie McGettigan represented Ireland in the Eurovision Song Contest. Incidentally, this year's entrants, who are from the Leader's home town of Athlone, are going to Kiev this week and I wish them well.

[Mr. Mooney.]

Shane McGettigan, who was 21, went to Boston five or six summers ago seeking employment, like many other young Irishmen. He and a young man from Dundalk worked on scaffolding in Quincey, outside Boston. They were employed to remove worn bricks from the side of an apartment block. Nobody told them anything about safety and they were not wearing harnesses while on the scaffolding. Their employer had been convicted of non-compliance with health and safety regulations. Both Shane and his friend fell from the scaffolding when the weight of the bricks toppled the platform and they both died. They died because their employer did not comply with the limited health and safety regulations that operate in the United States. There, the mighty dollar seems to be in the ascendant and health and safety measures are not always introduced. It is said there is a lack of education and awareness of health and safety in America. This Bill places great emphasis on ensuring greater awareness of these issues, although there is already a high level of compliance in this country.

Senator McDowell referred to the fact that the social partners and employers are supportive of this Bill, which is positive. There is not much point in the Government introducing legislation of this kind, which impacts directly on competitiveness and on the economic engine of the country, unless the partners comply with it.

I welcome the legislation and believe it is another building block in the efforts to improve health and safety at work. In 1989, when the then Minister for Labour, Deputy Bertie Ahern, introduced the first legislation in this area, the workforce numbered 1.2 million. Today, the workforce is approaching 2 million. There are cranes all over the country and much evidence of Ireland's economic progress, but with that progress comes responsibility, both for employers and employees.

Recent newspaper reports have stated that health and safety inspectors are taking a more proactive approach because they believe sufficient legislation is in place to allow them to pursue those who are not complying with the regulations. That is a welcome development and this House strongly supports the actions of the Minister of State in this area.

**Ms White:** I welcome the Minister of State. In my experience of business, a good employer looks after his or her employees. This Bill is designed to punish rogue employers who do not cherish their employees. In my company, we value our staff highly. When my partner and I started the company, our staff motivated us. We had a flat management structure in place and our approach was maternalistic, in that we cared for our staff.

There are issues which cause concern for employers such as employees who have a record of getting into trouble at work. If an accident happens in a company, employers must determine if the accident is genuine or contrived.

Certain procedures must come into operation in the event of an accident. In my company, for example, an ambulance is called immediately. There are rules and procedures in place and we regularly practise the drill in the event of an accident because accidents can destroy a business if there are any misunderstandings or mistakes.

The Minister said in his speech that the Bill modernises health and safety laws. He described it as a significant piece of social legislation which affirms the Government's commitment to upholding the protection of workers. In my company there is no differentiation between employers and employees. We have a successful business because we care for our staff.

The 1989 Act, inspired by the tripartite commission of inquiry, chaired by Mr. Justice Barrington, applied safety and health laws to all Irish employment for the first time. Coinciding with the new preventive, rather than reactive, approach significant progress was made. The progress was based on the Safety, Health and Welfare at Work Act of 1989 and was strongly supported by successive Ministers.

Significant awareness of health and safety has led to a reduction in the numbers of deaths and accidents at work, but more needs to be done. As the Minister of State pointed out, the latest figures from the Health and Safety Authority show that 50 people died arising from work activities in 2004. Although this is a reduction of more than 25% in the rate of deaths at work since 1989, it is still totally unacceptable. Many of the accidents we read about in newspapers happen because of carelessness. Employers, particularly on building sites, are taking unnecessary risks with scaffolding and so forth. That is abhorrent and repulsive.

The Bill is a vehicle to relaunch and promote worker health and safety, especially for new workers. The costs to the economy from injuries at work include direct costs to State health and social insurance services; costs to employers, including insurance; lost time; lost production; and lost orders. The Minister quoted a frightening figure in this regard — injuries and ill health costs the economy €1.6 billion each year.

When the former Minister for Enterprise, Trade and Employment, Deputy Harney, introduced the minimum wage, I wrote to congratulate her. I support the principle of a minimum wage and I commend the Minister of State, Deputy Killeen, on increasing the rate. I wish him well in his work and I recognise, as an employer, that this Bill is designed to tackle the problem of rogue employers, of which there are many, unfortunately.

**Mr. O'Toole:** With the agreement of the House, I would like to share my time with Senator Henry.

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

**Mr. O'Toole:** I welcome the Minister of State to the House and congratulate him and his officials on their Trojan work in putting this legislation together. While I have some reservations, I consider the Bill to be an impressive piece of legislation. There is nothing more important than for Irish workers to feel they are operating in a safe workplace and the Bill will achieve that.

From an early stage, reservations were expressed about aspects of the Bill, including the entitlement of employers to check that workers were not under the influence of any intoxicant. While there were some concerns that the provision might be abused, no one could object to an employer satisfying himself or herself that an employee was not under the influence of any intoxicant. That makes reasonable sense and as long as it can be implemented in a manner that is agreed and supported both by employers and employees, I do not see any difficulty with it.

The matching requirements of employers and employees are important. In his speech, the Minister of State said that employees also have an important role to play in ensuring health and safety in the workplace. As a trade union official, I often had to discuss with union members the fact that everybody has a responsibility in this regard. If there is some problem it should be pointed out and if the case is a reasonable one it should be dealt with. All health and safety legislation must be infused with large doses of common sense and pragmatism. That is the only way it will ever work because one cannot foresee every possible minor event that might arise. In this respect, people must be properly trained.

Section 10 provides that the training of employees will encompass the issues of health and safety and risk assessment, which is very important. It is only reasonable that employees must also undergo health and safety training and assessment. Nowadays, given the developments that have occurred in the workplace, the health and safety issue is everybody's shared responsibility.

As a trade union official for many years, I criticised employers for not having made this a serious issue. Now that we have moved to deal with it, we should make it clear that there is an equality of responsibility on people to ensure the workplace is safe. There is a requirement on employees to point out to employers what they think is dangerous. In addition, there is a responsibility on employers to act on such advice. The fact that people must prove that they have undergone health and safety training in certain areas is also important.

The legislation has changed in many ways since it was first published and it is so long since I first read it that I had forgotten certain aspects. While it may appear to be a minor point, the Minister should consider section 10(2) which states: "Training under this section shall be adapted to take account of new or changed risks to safety, health and welfare at work and shall, as appropriate, be repeated periodically".

This section refers to the need to adapt training periodically to respond to new or changed risks to safety. To put that in context, I am a member of the audit committee of Leinster House. Currently, that committee is undergoing an intense assessment of risks of all sorts — including financial and health and safety risks — attaching to the operation of the Houses of the Oireachtas. We are required to undertake such an assessment.

When the legislation was introduced, I understood there would be a requirement for an annual review of risk assessment, but it seems to have changed. Any audit should be required to deal with risk assessment. I hope that under the provisions of section 19, risk assessment will be reviewed by employers, at least annually. That would reflect the content of section 10(2), which should be formalised so that such an assessment would be made in the course of any year.

Section 20 should oblige employers to take action in this regard, taking into account what the risk assessment has thrown up. I will go into detail on this point on Committee Stage.

Regulation consultations are required between employers and employees because, while their responsibilities may not be equal, they are shared. If the Bill is going to work, there should be a requirement for consultation. In that way, an employee would be required to tell an employer about, for example, a risky fuse box or a potentially dangerous electric wire.

**Ms White:** That is a technical point.

**Mr. O'Toole:** I am using those examples to illustrate a practical point, which is to ensure that, as section 10(2) provides, training "shall be adapted to take account of new or changed risks to safety...". That should be done in a structured fashion comprising a regular consultation between employers and employees on safety and an annual review of any safety risks. The consultation and review could be undertaken together. I am not talking about a three-day meeting, but management and staff could deal with whatever health and safety issues need to be taken into account, whether they are doing things correctly, whether any dangerous matters are being overlooked and, if so, what needs to be done about them. I would like the Bill to provide for such a consultation and review.

Good employers would have no difficulty in accepting a proviso to consult with workers which, in turn, would place an onus on workers to identify safety problems. I hope to table an amendment dealing with this point on Committee Stage and in the interim I would ask the Minister of State to examine the matter.

This legislation is progressive and seeks to put in place strategies and policies to deal with health and safety issues. It recognises health and safety as important aspects of the workplace environment. Workplace health and safety are European issues that involve a cost to employers. It is important, therefore, that such legislation should

[Mr. O'Toole.]

apply across Europe. As part of the Minister of State's additional duties, he should ensure that the level of protection and safety envisaged in the Bill will also be available to workers in every other jurisdiction in Europe. Apart from anything else, it creates a level playing pitch for competition.

I congratulate the Minister for having brought the legislation before the House. I hope he will take on board the points I have made and I look forward to discussing the Bill further on Committee Stage.

**Dr. Henry:** I thank Senator O'Toole for sharing his time with me. I welcome the Minister of State to the House. The Bill is most welcome, as is the enormous progress that has been made in promoting workplace health and safety in recent years. I wish to address the problem of bullying that can occur in the workplace. Bullying is now recognised as a serious problem, not just for the individuals concerned but also for the organisations where it occurs.

On reading the Bill, I was glad to note in section 8(2)(b) that the general duties of the employer include "managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health or welfare at work of his or her employees at risk". In addition, as Senator O'Toole indicated, it imposes duties on employees, a welcome development. Section 13 which lists the duties of an employee provides, for example, in subsection (1)(e) that the employee will "not engage in improper conduct or other behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person".

Health and safety issues in the workplace should not be confined to addressing physical dangers. We must also consider that people can also suffer emotional distress in work. Great credit is due to Dr. Mona O'Moore and Dr. Jacinta Kitt in the anti-bullying research and resource centre of Trinity College Dublin for their extensive work on bullying in the workplace. They have discovered that a significant level of bullying takes place here and Ireland is no better than anywhere else in this regard.

One of the most distressing conversations I can recall with a patient involved a 54 year old man who told me he felt sick with fright at the prospect of going to work every day because of a person in the workplace with whom he had to deal. He decided not to take redundancy as his firm had hoped and was left in a position in which he was extraordinarily vulnerable.

Many bullying victims are men and whereas women are bullied by men and women, men tend to be bullied by men. Bullying is a most destructive behaviour which usually involves repeated aggression and verbal, psychological and physical abuse and can be carried out by an individual or group of individuals. Isolated instances of

aggressive behaviour, although they should not be tolerated, should not be described as bullying. Only inappropriate, aggressive behaviour which is systematic and ongoing is regarded as bullying.

Bullying does not only happen on the factory floor. Many of the case studies carried out by Dr. O'Moore and Dr. Kitt have been at the managerial and professional levels. Bullying has a dreadful effect on victims and impacts badly on the organisation in which it takes place. It may involve manipulation of the victim's reputation by rumour, gossip and ridicule. In addition, victims are often prevented from speaking or expressing themselves and are overlooked with loud voice criticism and obscenities. Social exclusion and isolation of victims is another problem. Manipulating the nature of the job or the ability of the victim to perform the work by overloading the amount of work he or she receives or withholding information, setting meaningless tasks or not allocating work to the victim can have serious consequences. Physical abuse and threats are also common.

The issue of suicide and associated problems were raised earlier. Unfortunately, in a significant number of cases of suicide relatives of the victim believe he or she was bullied either at school or work. The issue of bullying must, therefore, be addressed. While a safety statement may not be the appropriate forum for doing so, codes of practice, about which employers and employees must be conscious, could be introduced in the workplace.

I am concerned that we are not making sufficient progress in the area of bullying. I have been approached by people with adult children of academic brilliance who were bullied, in some cases by people who were less clever than the victim but held senior positions in various departments. Bullying victims suffer stress and ill health in their daily lives and are affected in numerous other ways, including by conditions such as depression and high blood pressure.

It has been found that organisations which have allowed bullying to take place suffer from reduced efficiency, quality and quality control, low staff morale, an atmosphere of tension and high staff turnover rates. Any employer with high staff turnover should identify problems in the workplace. High rates of absenteeism, declining productivity and profits, a lack of creativity and initiative and an increasing number of cases taken to industrial tribunals are the products of bullying. These factors demonstrate the serious impact bullying can have on productivity. If these matters were brought to the attention of employers, I am certain they would take great care to ensure bullying did not take place in their workplace. No one wants such behaviour on their premises.

Employers should publish and strongly promote a policy statement that bullying is unacceptable behaviour and develop procedures for reporting, noting and investigating incidents of such behaviour. They should also develop a

programme of support for those affected by bullying behaviour and introduce disciplinary procedures or rehabilitative measures for those who engage in bullying. These suggestions feature in a paper written by Dr. O'Moore on bullying in the workplace. It is interesting that she recommends rehabilitative measures as well as disciplinary procedures for those who engage in bullying. She also recommends regular evaluation of the effectiveness of anti-bullying programmes.

I welcome the Bill and hope my comments will be noted. I am certain the elimination of such anti-social behaviour from the workplace is part of the thrust of the Bill. Bullying is a major problem which has serious mental and physical effects on the victim and is of no value to the organisations in which it takes place.

**Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen):** I thank Senators from all sides who participated in the debate for their constructive and helpful comments and assure the House I approach this debate with an open mind and am open to accepting amendments tabled on Committee or Report Stages.

Senator Coghlan asked a number of important questions, including one regarding resources for the Health and Safety Authority. The authority's budget this year is €16.1 million, a substantial increase of 12% on last year. The Senator also asked about section 18(4). This subsection is intended to allow an employer to appoint a person as the competent person in the area of compliance in circumstances where such a person is available in the workforce. The view until now was that a person from outside the workplace had to be employed for this purpose. The new provision will permit a person from within the organisation to perform this role.

Senator Leydon welcomed the codes of practice for smaller operators which will be a major advance on the current position. He also referred to the number of deaths in workplace accidents to date this year. This figure is unacceptable and the Health and Safety Authority is making every effort to bring home to people that everybody has a role to play in ensuring we do not have further fatalities.

A number of Senators raised the issue of safety on the farm. I welcome the role played by the farming organisations, Teagasc and others in drawing attention to the difficulties in the sector and providing training in this area. Senator Feighan, an employer, mentioned an issue which I consider to be the real enemy of the health and safety ethos, namely, the sense of complacency which features to some extent in all workplaces. With regard to his question on children, they are included in the statistics.

The Senator also made a reasonable point that one cannot put a price on safety. It is incumbent on us to ensure all necessary action is taken to make people safe in their workplaces. This view has been reflected across the House.

Some concerns were expressed by Senator Feighan and others about the inordinate cost small employers believe attach to health and safety issues in their specific circumstances. The Bill addresses this issue by providing that employers with fewer than three employees will introduce a code of practice prepared for a number of sectors by the Health and Safety Authority. To comply with the requirements, such employers will be required only to carry out a risk assessment and tick off some boxes. This is a significant advance which will help employers to be compliant and, more important, ensure health and safety issues are given due care and attention in their workplace.

Senator Dardis welcomed the decrease in awards under the PIAB and it is important to remind employers that there are also financial benefits to a good health and safety regime. It is understandable that people refer to the costs involved but on the other side of the equation considerable savings can be made under a good health and safety scheme. Senator Dardis made the reasonable point that we all have the right to expect to return home safely from work but, unfortunately, that does not happen in many cases.

The Senator mentioned problems such as litter that illustrate an ethos of carelessness and a lack of consideration. Litter would not imbue a person with confidence in the health and safety regime of an establishment that operates in such a fashion. This forms part of the move towards a norm of being careful about the working environment.

Senator Moylan mentioned his own experience and made an important point on underground utilities, particularly electricity. Frequently, there are no accurate drawings to tell someone entering a site where the services are located. He also proposed that people should be required to remove overhead electricity cables before the commencement of construction. That is a sensible suggestion and we should look at it. He mentioned the danger of quads that do not have roller bars and that is a matter that requires consideration. Much work will be done when the Bill is passed to prepare regulations for the construction sector and we will have the opportunity to examine this in detail on Committee Stage.

Senator McDowell mentioned the staggering injury statistics. Regulation is vital in this area and the opposition we have encountered is short sighted. It is, however, an enormous step forward that the social partners are so proactive in the area of health and safety. I found them most cooperative in working on this Bill. Sometimes they had harsh things to say but if they made sense, I was prepared to amend the Bill in the Dáil and if there are more sensible amendments, I will accept them here.

The chemical industry was also mentioned by both Senator McDowell and Senator Dooley. The REACH directive is likely to manifest itself in additional responsibility for the Health and

[Mr. Killeen.]

Safety Authority and I assure the Senators that there will be additional resources if that is the case. It is an important area and horrific accidents can arise from cutting corners in this and other industries.

Senator McDowell expressed concern about the provisions in section 13 for testing for intoxicants. Prior to the introduction of regulations, I intend to have the Health and Safety Authority consult widely with the social partners, advisory bodies in the area and, subsequently, to refer the matter to the Oireachtas committee for further consideration.

Corporate manslaughter was mentioned. It is an issue that is being dealt with by the Law Reform Commission and further recommendations are expected in the autumn. I will await a Government decision before making legislative provision. The Senator reminded us that the State has not had a wonderful record in terms of its own obligations, something we should bear in mind when we lecture other employers.

Senator Dooley mentioned that in less affluent times, cost was a greater deterrent when it came to good health and safety practices. He also mentioned the need to revisit the FÁS training regime. A review of the procedures will be undertaken shortly. An enormous number of people have received Safe Pass training from FÁS, five times more than expected. Some deficiencies arose in the programme that were debated in the Dáil and we will learn lessons from them.

Many Senators referred to farm safety and Senator Dooley made specific mention of training for fire services. I will update the House on that when I get more information.

Senator O'Rourke acknowledged the role of the officials from the Department and I acknowledge the role she played when she was Minister. She mentioned the dangers involved when children are near machinery. Any of us who have worked on a farm have found it difficult to resist the entreaties of children who cannot bear to be left off the tractor. Unfortunately, many accidents result from behaviour of that nature. Senator Mooney suggested that a safety harness should be provided. We will refer this issue to the advisory bodies dealing with farm safety. Those bodies have done tremendous work and have been most helpful.

Senator Mooney referred to his experience in London and the health and safety regulations that were in place there long before the 1989 Act came into force here. He mentioned the positive role of the EU which *de facto* brought about the introduction of the 1989 Act through regulations.

Senator White gave the viewpoint of an employer and it was good to hear her stressing the importance of staff. She mentioned the minimum wage, as did Senator Dooley, and I welcome their comments. I caught some flak on that but there is only a small number of rogue employers and this legislation is designed to ensure they comply like everyone else.

Senator O'Toole also expressed reservations about section 13 and the provisions on intoxicants. He was not opposed to the measure, as he pointed out, but he was concerned about how we will go about this. Following consultation, we will draft regulations that will serve this purpose because there are some employments in which it may be necessary to have provision for testing of this nature. It will be brought before the Oireachtas committee, giving a further opportunity to debate it.

Senator O'Toole also asked about section 10(2) which deals with new and changed risks, and its connection with section 19 on risk assessment. I assure him that the risk assessment provision in section 19 addresses his concerns. He pointed out that there are costs involved but we should ensure everyone in Europe complies with the same regulations and pays the same costs. It has been interesting to represent the Government at Council of Ministers' meetings and to hear the different perspectives of some of our European partners.

I welcome Senator Henry's comments about bullying in the workplace. My predecessor, Deputy Fahey, commissioned a report from an expert group on bullying in the workplace. I hope to get that report within the next few weeks. I will publish it when I receive it and I will make proposals to Government based on its recommendations. Legislation may be required but I cannot say for certain in advance of seeing the document. The Senator made a fair point about the destructive psychological and physical effects of bullying in the workplace and the enormous damage it can cause. I have no doubt that many of the work days missed are a result of bullying.

I thank Senators for their participation and look forward to Committee Stage.

Question put and agreed to.

**Acting Chairman (Mr. U. Burke):** When is it proposed to take Committee Stage?

**Ms O'Rourke:** Next Tuesday.

Committee Stage ordered for Tuesday, 17 May 2004.

#### **Business of Seanad.**

**Ms O'Rourke:** I propose an amendment to the Order of Business:

That No. 2a on the supplementary Order Paper, an all-party motion, be taken now.

**Acting Chairman:** Is that agreed? Agreed.

#### **Human Rights Issues: Motion.**

**Ms O'Rourke:** I move:

That Seanad Éireann calls on the Government of Sudan to immediately release Dr.

Mudawi Ibrahim Adam and to allow him to travel to Ireland in time to receive the Front Line Award for his work on human rights in Sudan from President Mary McAleese on Friday, 13 May 2005.

**Mr. Ryan:** I second the motion.

Question put and agreed to.

**Anti-Social Behaviour: Motion.**

**Mr. Cummins:** I move:

That Seanad Éireann:

- notes the increasing incidence of anti-social behaviour in communities throughout the country and the growing public concern arising from the prevalence of anti-social behaviour;
- deplores the failure of the Government to implement any measures to deal effectively with the problem of anti-social behaviour;
- condemns the Government for failing to resource adequately the Garda, through manpower and finance, with the result that they are currently unable to respond to many incidents of anti-social behaviour and enforce existing laws against perpetrators;
- welcomes recent statements made by Opposition groups which have set out various proposals aimed at dealing effectively with the scourge of anti-social behaviour, and calls for the development of an action plan, which would:
- fully and immediately commence and resource all provisions of the Children Act 2001;
- appoint a Minister of State to co-ordinate a cross-departmental sustained fight against anti-social behaviour;
- launch a major public awareness campaign on anti-social behaviour;
- establish a localised problem-solving court which would operate under the principles of restorative justice; and
- set up within cities and towns a substantial number of local community policing committees.

Anti-social behaviour hurts our society. Every day in many neighbourhoods, it spoils the sense of community, degrades the environment and reduces the quality of life. It chips away at our sense of security, our civic pride and peace of mind. Anti-social behaviour ranges from petty incivility to outright criminal damage to people and property.

While the Government has spoken much about law and order and anti-social behaviour, its

actions have failed to match its words. Talk is cheap and the Government's inactivity has wreaked havoc in many parts of the State, where people are afraid to walk the streets at night and where elderly people and families feel imprisoned in their homes because of intimidation and fear of gangs of thugs and louts congregating in their estates. Failure to resource adequately the Garda in manpower and finance, has resulted in the force being unable to respond to many incidents of anti-social behaviour and enforce existing laws against perpetrators. A recent Millward Brown IMS poll revealed that 83% of the population does not believe young people are safe on our streets. The Central Statistics Office revealed that one in 20 households, some 250,000 in total, has experienced vandalism. These statistics are an alarming indictment of the Government and cannot be ignored.

The Minister for Justice, Equality and Law Reform, Deputy Michael McDowell, and sections of the media have focused on anti-social behaviour orders, ASBOs, as the solution to anti-social behaviour on our streets. While the Fine Gael Party believes ASBOs can play a part in tackling the problem, they can only be seen as a small part of a designated strategy. That strategy must see greater co-operation between the community and the Garda at local level and changes to Garda rostering. Garda rostering requires a major review to ensure gardaí are on duty where and when they are most needed.

Community policing must be resourced sufficiently. Within the force it must be seen as important and adequate promotion prospects must apply. How often is it the case where a shortage in any area of Garda manpower results in the community policeman or woman being the first to be withdrawn and allocated to other duties? This culture cannot continue if we are to build lasting trust between the Garda and communities in the battle against crime and anti-social behaviour.

Recently on a visit to Scotland Yard with Oireachtas colleagues, I saw at first hand the value the Metropolitan Police places on community policing and the resources put into it. We visited the London Borough of Bexley where a community safety strategy has been developed, leading to a reduction in youth and alcohol-related disorder and crime in general. The symptoms of crime are examined and preventative measures are put in place. It is important that Ireland examines and learns from best practice in community policing in other countries.

Great importance is placed on community policing by other forces. A sergeant and several constables will be based in various areas. A visible police presence working in a community is a proven crime deterrent. For example, the community police in Bexley are rostered to visit the local schools when people are bringing and collecting their children. It is a way of getting information and knowing what is happening in the community. However, a similar situation does not

[Mr. Cummins.]  
 exist with community policing in Ireland. It must be further developed and seen by gardaí as an area with promotional prospects rather than as a gap-filling assignment.

Last month, the Fine Gael Party launched a national campaign on anti-social behaviour, as did the Labour Party. Fine Gael believes it is time for communities to be given back to the people and the scourge of anti-social behaviour ended. Our campaign will tackle the issue of anti-social behaviour on five distinct fronts. These will involve a tougher, targeted approach to anti-social behaviour, empowering our communities, changing the way the Garda works to achieve maximum efficiency and putting in place preventative measures to deter others from engaging in this destructive cycle of behaviour. All these measures should be facilitated through an overall framework of major and radical initiatives at national level, including the appointment of a Minister of State who would co-ordinate, lead and drive an anti-social behaviour campaign.

We refuse to ignore anti-social behaviour and will stand against it, working side by side with those who refuse to tolerate harassment or intimidation of their neighbours or defacement of our shared public space. We intend to end the culture of poverty and low aspiration that fuels much anti-social behaviour. We need to promote programmes to help marginalised young people discover their role in society and reach their full potential, but at the same time we will punish those who flout the rules. We will make it clear to anyone engaged in anti-social behaviour that there will be consequences. It is the perpetrators, not the law-abiding citizens and community, who must pay the price.

The absence of a central anti-social behaviour fund means moneys used to tackle the problem are currently resourced from several areas of Government, and there is no coherent analysis of their effectiveness. Current funding appears to stand at approximately €25 million. Additional funding will be needed to tackle anti-social behaviour but that funding must be linked to clear policies, targets and outcomes.

There are a number of sources where additional funding is possible. For example, under the Proceeds of Crime Act, the Criminal Assets Bureau holds €73 million. Additional funding could come from moneys received under the dormant accounts fund and the national lottery. On-the-spot fines for anti-social behaviour would result in a steady stream of income which could be used to fund the fight against anti-social behaviour.

Constructive proposals from a number of sources have been made to the Minister. When will he be in a position to introduce legislation to tackle anti-social behaviour? There are a number of provisions in the Children Act 2001 which have not yet been acted on. They involve important aspects such as parental control and will clearly require funding. We are providing the Minister

with constructive suggestions on getting the funding. It appears that the Government is not even committed to the Children Act, passed four years ago, or convinced of the policies which it has introduced.

We are being constructive in our suggestions. The time for talk and press releases is gone. What we now need is action which will restore peace to our communities, ravaged by anti-social behaviour. We hope that when it comes to introducing this legislation, the Minister's actions will speak louder than his words.

**Mr. B. Hayes:** I second the motion. I welcome the Minister to the House and thank him for attending the debate.

This morning I spoke to a constituent of mine who recently had to leave her local authority home in my constituency because of the torrent of abuse she had to face as a young mother over the past few months. I told her that I would hopefully have an opportunity to speak to the Minister for Justice, Equality and Law Reform, and she asked me to put on the record her experience of the abuse she has suffered in her community and the reasons she had to leave her local authority home.

This woman is on her own with two children. She bettered herself by going to college and has provided a decent home and income for her family. However, she has had to leave her home in the past three weeks because of the sort of behaviour to which Senator Cummins referred. I said I would have an opportunity to speak to the Minister about what is going on in her community. The abuses include shouting, including verbal abuse on numerous occasions while her child was asleep; house burglary; personal items removed from her house; human excrement placed on her porch walls; junkie needles posted through the letter-box and thrown in the back garden while her children were playing; a child's bedroom and the mother's bedroom destroyed with blood; and the living-room and kitchen ransacked. All this was done by a small, targeted, well-organised group of thugs in her community. When a friend of hers who had a British-registered car called to see this woman, he suffered racist abuse, with the words "Brit scum, Brits out" written on his car. The paint work on his car was scraped and his tyres were deflated. Anti-social obscenities were uttered on several occasions. Street jobs were openly drinking in this woman's area. The Garda response was delayed, and assistance has not been obtained by the local authority.

I am not saying this is the experience of every person in similar circumstances in my community or countless other communities throughout the country, but it is typical of the kind of menace we face on an ongoing basis from anti-social activity. The bottom line is that matters are not improving but getting worse. The Minister might say that it is always the job of the Opposition to say that things are getting worse, while paradoxically, the

Government will say things are getting better. However, the headline crime figures from my own district in the Tallaght area alone show that from 2000 to 2004, there has been a 300% rise in violent assaults. They are not my figures but those of the Minister. While he might argue that headline crime per head of the population is decreasing, that does not properly reflect the level of intimidation and violence faced daily by entire sections of our community.

I know the Minister wants to tackle the issue — no Minister for Justice, Equality and Law Reform would not want to tackle it — but I ask him to put all his efforts into this area because this is the aspect of crime which is hurting communities. The high-profile cases, the very serious crime we see reported daily on television, represent a reality with which the Minister and the Garda must deal but the anti-social menace people face is a much more real-life experience in terms of their homes and workplaces and we must counter it strongly.

I have appealed to the Minister on a number of occasions to please include a particular project in my own constituency as part and parcel of the Garda youth diversion project. I know that more money has been devoted to this latter project in recent years, but the stay-in-school project in St. Aengus's parish in my own area of Tallaght does exceptional work with about 50 youngsters. They might well be out on the tear and out of control were it not for this excellent programme which intervenes, encourages them and ensures that they have some educational opportunity. We are waiting for the Minister's Department to include this project as part of the Garda youth diversion project. Though the Minister no doubt receives many such appeals, I ask him to again consider the application because I can give first-hand testament to the work which this community is doing through the stay-in-school project.

There are some issues which we need to address. Senator Cummins is right to say we need more Garda visibility. That may well require a rostering change in terms of the availability of gardaí on the ground. My own area, Tallaght, has the same population as Limerick city, which has four Garda stations compared to one in Tallaght, and twice as many gardaí. There is no proper proportioning of the available resources within communities, particularly those affected by crime.

Community policing is one of the most important aspects of policing, yet too often where a member of the force is placed in a community, taps into it, recognises the hassle points in it and understands the troublemakers he or she is hived off into another aspect of policing within two years or even 18 months. Community policing must be at the heart of policing work in terms of engaging with communities.

Another issue which should be addressed is repair orders. I am aware of many private individuals whose houses and gardens are in a poor state of repair. Local authorities should have the power to tell those individuals that they must

clean up or improve those dwellings or they will be fined. The problem is that youngsters hang out in these places because they are in a state of disrepair. Local authorities should be able to impose an immediate sanction on any private individual who does not keep a house and garden in good repair to ensure these places do not become hang outs for people who wish to cause trouble.

Restorative justice is important. Great strides have been made in other EU countries in implementing restorative justice. Nobody is talking about putting children behind bars. That will only lead to a revolving door syndrome in terms of those children acquiring knowledge of more heinous crime through the prison system, although there are cases where a child must be taken into custody as a means of protecting him or her, the family or the community.

We need to develop restorative justice in this country. The victims of crime want to see an effort made by the perpetrator to give something back, to commit to society and to show that he or she is wrong. The problem is that so many of these out of control youngsters are so brazen in their attitude. They laugh at the gardaí and at their parents, who might be doing their best to bring them up well. They laugh at authority in general. We must encourage the principle of restorative justice if we are serious about this problem.

Finally, I reiterate a point I made on Committee Stage of the Garda Síochána Bill, that a radical Garda recruitment programme is required in the most disadvantaged communities in this city. There are 7,000 local authority houses in my constituency. Not one person from those houses has joined the Garda in recent years. The best way to change the attitude between the community and the Garda is through a radical programme of recruitment in the communities worst affected by crime. The Patton principle should be extended to recruitment procedures in the Republic. Where a community is disengaged from gardaí and feels no sense of loyalty to them, vigilantism and the threat of paramilitarism will fill the void.

A radical programme of recruitment in these communities could be implemented by stipulating that 10% or 15% of all new recruits should come from disadvantaged communities. That would help to break the bad attitude that often exists between such communities and the Garda.

This motion is composed of suggestions from Fine Gael and the Labour Party. More must be done to tackle this problem.

**Mr. J. Walsh:** I move amendment No. 1:

To delete all words after "Seanad Éireann" and substitute the following:

"—welcomes the initiative of the Minister for Justice, Equality and Law Reform in proposing a system of anti-social behaviour orders in December 2004 for inclusion in the Criminal Justice Bill;

[Mr. J. Walsh.]

- notes the subsequent expression of support in April 2005 for these measures by the larger parties in Opposition;
- commends the Minister for his proposals in the Criminal Justice Bill 2004 to enhance the powers of the Garda Síochána in the investigation and prosecution of offences, in particular his proposal to provide for a fixed charge procedure in relation to lesser public order offences;
- congratulates the Government on the range of measures it has already introduced to deal with public order offences and public disorder;
- welcomes the fact that, despite more precise and accurate recording of headline crime figures by the Garda Síochána, the crime rate in Ireland has fallen from 28.4 crimes per 1,000 in 1995 to 24.4 crimes per 1,000 in 2004;
- welcomes the improving public order situation reflected in the downward trend of assaults causing harm and public order offences since the beginning of 2003;
- welcomes the Government's decision to increase the strength of the Garda Síochána to 14,000 members and the progress which is being made in bringing this increase about;
- notes that the number of gardaí actually fell between 1994 and 1996;
- welcomes the increase by over 90%, from €599 million in 1997 to €1.1 billion in 2005, in the financial resources made available by the Government to the Garda Síochána;
- welcomes the Government's commitment to continued implementation of the measures and interventions provided for in the Children Act 2001 aimed at young offenders and those most at risk of offending;
- welcomes the increase in Garda youth diversion projects from 12 in 1997 to 64 in 2005;
- supports the Minister's proposals in the Garda Síochána Bill to provide for the establishment of joint policing committees and local policing fora as a means whereby local authorities and the Garda Síochána can work in partnership to combat such behaviour;
- welcomes the recent report of the Oireachtas Joint Committee on Justice, Equality and Women's Rights on community policing;
- welcomes legislation already sponsored by the Minister for Justice, Equality and Law Reform to combat such behaviour, includ-

ing legislative provisions to combat abuse of intoxicating liquor;

- welcomes the proposals of the Minister for Justice, Equality and Law Reform to update and modernise the licensing laws with a view to improving compliance and enforcement and combating drunkenness and disorderly conduct, as well as under age and binge drinking; and
- welcomes the further increase in judicial resources provided by the Minister in the Civil Liability and Courts Act 2004."

I will speak later on the amendment.

#### **Minister for Justice, Equality and Law Reform**

**(Mr. M. McDowell):** I thank the House for inviting me this evening to discuss the important issue of anti-social behaviour orders or ASBOs. I abhor the behaviour mentioned by Senator Brian Hayes. It is by no means normal but it is also by no means unheard of.

There are people in society who behave in an anti-social manner. We cannot avoid that fact. There are various remedies available to us but to use the criminal law as the only sanction is not always effective. Article 40.3 of the Constitution states:

1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

It is not simply a question of the State establishing a criminal law to prohibit certain behaviours but of taking active steps to protect the victims of anti-social behaviour from the consequences of that behaviour.

To rely purely on the criminal process, which involves proving things beyond reasonable doubt in trials conducted in courts, is unfair to the victims. The reason it is unfair is that the wealthy in our society, should they be confronted with an anti-social neighbour of the type described by Senator Brian Hayes, would hire a private detective to find out the names of the people involved, get a solicitor to secure an injunction against those people and would, inevitably, be in a position to ensure that somebody who breached a court order in the form of the injunction would be sent to jail for contempt. That course is theoretically available to people under civil law where criminal prosecutions, for one reason or another, are not sustainable. However, it is not available to ordinary people unless they have extremely thick wallets. It is open to everybody to dine in the Savoy Hotel in London provided they can afford it. It is wrong to claim that our criminal law, or our civil law, is adequate to deal with anti-social behaviour.

This is not something new. Mr. Justice Rory O'Hanlon said in the High Court, in a case in 1994 involving Deputy Gregory among others, that a person who is the victim of abusive, intimidating or violent language or behaviour on the part of another person should be able to invoke the protection of the legal process without waiting for an actual assault to take place and without having to embark on costly legal proceedings in search of an injunction. He said it seemed reasonable and proper that a person who has been guilty of some form of outrageous behaviour or language should be asked to give guarantees in an appropriate form that it will not be repeated in the future. He went on to point out that this has been the course adopted by the courts for so many centuries that the origin of the jurisdiction is buried in the mists of the common law. He was talking about the right of justices of the peace to bind people over and require them to put up surties for their future good behaviour.

The concept of a non-criminal intervention to prevent people from making other people's lives a misery already exists. Critics are lining up, particularly in one newspaper, to claim there is something wrong with anti-social behaviour orders. They should get real and talk to people in communities where these are important issues. They should get out of their leafy suburbs, the halls and corridors of their universities and their lawyers' offices and talk to people who must put up with this type of behaviour every day. A coalition against ASBOs has been founded by a group of people who clearly are not on the receiving end of anti-social behaviour. They do not know anybody and would not know how to talk to anybody in the position described by Senator Brian Hayes.

Last December, I announced in the Dáil and at a meeting of Dublin City Council that I intended to take the ASBO option. For Senator Cummins's information, I said at the time that I would table amendments to the Criminal Justice Bill, which is currently before the Houses, to introduce into Irish law a system of anti-social behaviour orders. I make no apology to any coalition or aspiring coalition for my initiative. We must provide adequate protection for people who are subjected to such behaviour.

It is not enough to advise people to get an injunction or to state that gardaí should be able to prevent it through policing. Anti-social behaviour practitioners can text to each other the location of gardaí on an estate, if they are there. The gardaí cannot be there when the beer can is thrown at the window or stand guard at every gable wall to prevent the house resonating as soccer is played against it until midnight while the poor old woman who lives in the house is terrified. They cannot be in all these places at all times to prevent this type of behaviour. It is delusional to think they can.

However, they can do what has been done in Britain, which implements a system of law that applies not merely to juveniles but also to adults.

A recent House of Commons report identified that the majority of ASBOs made in Britain related to adults. It should be possible to bring a person before a court to say he or she has been loitering in the front garden of Mrs. so and so who is a widow and drinking cans and throwing them against her wall or syringing blood into her room or whatever the case may be. It can be made clear that if the person is near this woman's house again in such circumstances he or she will be committing a criminal offence. In such circumstances a person can be prohibited from certain categories of behaviour so as to protect the rights of the woman in question. Nothing could be more civilised or more fair than such a jurisdiction. It did exist in common law in the form of the right to bind people over to keep the peace and be of good behaviour without criminal conviction and without proceeding to prove cases beyond reasonable doubt, as is required for due process in criminal law.

I make no apology for going down the ASBO route to this group of people who I would put at the pointy-headed intellectual end of the spectrum. They know nothing about the effect that anti-social behaviour can have on people who have no protection in the absence of some means of enforcing a degree of decency on neighbours from hell or people from the neighbourhood who are making their life a hell. I make no apology for the proposal to adopt ASBOs. This approach has been tried in Britain and the House of Commons has reviewed its effectiveness. I invite those people who think there is something wrong with the system to consult those reports.

I will not slavishly follow the British model. I do not believe that it is correct for an ASBO to be imposed for a minimum of two years. A maximum of two years would be a more effective system. I do not believe it is possible to have an ASBO system that is at variance with our system of juvenile justice as set out in the Children Act. It has to be married to reality in the case of people who are under the age of 18. The system cannot be one which is designed for adults and applied to juvenile justice in exactly the same way.

People over the age of 14 should be amenable to ASBOs in the ordinary course of events. A person of that age is of sufficient maturity, of sufficient physical maturity in particular, to intimidate neighbours. Fourteen to 18 year olds should be amenable to being brought before juvenile courts for the purpose of a hearing as to whether an ASBO should be made in regard to them. That does not criminalise young people because there is no conviction in having an anti-social behaviour order made against one. Where one does commit a crime is if one breaches that order. However, having been brought before a court and been shown the yellow card, if one deliberately breaches that order then in those circumstances one should be liable to further punishment. In appropriate cases relating to younger persons, parental supervision regimes can be put in place.

[Mr. M. McDowell.]

I make no apology for the principle of this matter. It is well overdue that it should happen. When I announced proposal this last December there was not too much fuss about it. It was only when Fine Gael and the Labour Party showed some agreement with me on the subject in April that a coalition against ASBOs came into existence.

**Mr. Finucane:** We created a sense of awareness which the Minister was not able to do.

**Mr. Bannon:** The Minister is speaking as if he is a Member of the Opposition.

**Mr. M. McDowell:** It was they who evoked this opposition.

**Acting Chairman (Mr. Leyden):** The Minister should be allowed to speak without interruption.

**Mr. M. McDowell:** I congratulate them most sincerely.

**Mr. Bannon:** The Minister is in a position of power and he has not delivered.

**Acting Chairman:** The Minister should be allowed to speak without interruption.

**Mr. Bannon:** The Minister should have been in Ballymahon last Monday morning to see what happened a family there.

**Acting Chairman:** I request Senator Bannon to refrain from interrupting the Minister.

**Mr. M. McDowell:** I congratulate those parties most sincerely for seeing the light and for coming on board. There is a slight difficulty in that the Green Party with whom they hope to do business has come out solidly against this proposal.

**Mr. Bannon:** That is more propaganda.

**Mr. Minihan:** The coalition is gone before it starts.

**Mr. M. McDowell:** That is not propaganda, that is the case.

*(Interruptions).*

**Acting Chairman:** Senators should please allow the Minister to speak without interruption.

**Mr. M. McDowell:** I wish to move on to some other points.

**Mr. Ryan:** It is a pity the Minister did not provide us with a script. It would have been helpful.

**Mr. M. McDowell:** Anti-social behaviour orders are not of their nature, and cannot be, the only answer to the problem. More community

policing is essential and that is a point on which there appears to be agreement across the House.

**Mr. Bannon:** It is important to have a responsible Minister.

**Mr. M. McDowell:** I believe the Senator will be slightly disappointed to hear that the record of the party of which he is a member is sadly deficient in regard to policing. In the years 1994 to 1996 there was a decline in the number of police in Ireland. There were——

**Mr. Finucane:** There was not a murder every day.

**Mr. M. McDowell:** ——and this went down to 10,804 at the end of 1996.

**Mr. B. Hayes:** What was the headline crime rate?

**Mr. Bannon:** The crime situation was outlined by Senator Brian Hayes earlier.

**Acting Chairman:** I will have to ask Senator Bannon to leave the Chamber if he does not desist.

**Mr. M. McDowell:** The annual policing budget in 1997 was just short of €600 million, it is now €1.1 billion. I want Senators to absorb those facts.

**Mr. Finucane:** What was that as a proportion of GNP?

**Mr. M. McDowell:** In terms of numbers——

**Mr. B. Hayes:** It has actually gone down. In real terms the budget has gone down.

**Mr. M. McDowell:** The force has grown from roughly 10,800 in 1997 to 12,150 today.

**Mr. B. Hayes:** What about headline crime?

**Mr. M. McDowell:** The force will reach 14,000 with people in training and those fully qualified as early as the end of 2006. I am delivering on the Government's commitment to expand the Garda Síochána. Unlike other parties I am not presiding over a period when the number of gardaí went down——

**Mr. Cummins:** The Minister was shamed into it.

**Mr. M. McDowell:** ——year after year while they were in office.

**Mr. B. Hayes:** And headline crime has doubled.

**Mr. M. McDowell:** I also remind Members of this House that the Opposition parties did not make any commitment in 1997 or in 2002 to increase the number of police. On the contrary——

**Mr. B. Hayes:** We got rid of the drug lords.

**Mr. M. McDowell:** —the former Deputy Shatter wrote a cynical letter suggesting it could not be done and would not be done. What is more, the Labour Party was entirely silent on the issue. In fairness to Fine Gael in 2002, it took a constructive position and stated it would put in place a commission to look at the question of increasing the strength of the Garda Síochána.

**Mr. Finucane:** The Minister should look at his programme for Government.

**Mr. B. Hayes:** That is also a bit wobbly.

**Mr. Cummins:** The Minister should not talk about reports, the Cabinet must be living on them.

**Mr. M. McDowell:** The strength of the Garda Síochána is now at an all-time high and will be——

**Mr. B. Hayes:** And the headline crime rate.

**Mr. M. McDowell:** ——over 14,000.

**Mr. B. Hayes:** And the headline crime rate.

**Mr. Cummins:** It will go up as well.

**Mr. Bannon:** When will the Minister honour his commitment?

**Mr. Finucane:** What is the Minister doing about the criminal gangs in Dublin?

**Acting Chairman:** The Minister should be allowed to speak without interruption.

**Mr. B. Hayes:** He is provoking us.

**Mr. M. McDowell:** It is the case that the headline crime rate has fallen from 29 per 1,000——

**Mr. B. Hayes:** The Minister does not believe that.

**Mr. M. McDowell:** Can I just——

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

**Mr. Finucane:** They are starting to throw hand grenades in the windows in Limerick.

**Acting Chairman:** In fairness to the Minister I have to intervene. He should be allowed to speak without interruption.

**Mr. M. McDowell:** In 1995——

**Mr. Finucane:** By his nature, he is confrontational.

**Mr. Cummins:** The Minister was blamed for every murder back in those days.

**Mr. M. McDowell:** When the Senator's party was in office, the headline crime rate was 29 per 1,000 of the population.

**Mr. B. Hayes:** The Minister should give us the real numbers.

**Mr. M. McDowell:** Last year it was 25 per 1,000 of population.

**Mr. B. Hayes:** The Minister should give us the real numbers.

**Mr. Cummins:** Lies, damn lies and statistics.

**Mr. B. Hayes:** And the three-card trick.

**Mr. M. McDowell:** Headline crime has gone down emphatically since then.

**Mr. B. Hayes:** The Minister knows that is a three-card trick. He should give us the real numbers.

**Acting Chairman:** If Senators do not cooperate I will have to call for the Cathaoirleach.

**Mr. B. Hayes:** The Minister will not debate the issue.

**Mr. Bannon:** The Minister is the worst coward in the House. Every community in rural Ireland——

**Acting Chairman:** I ask Senator Bannon to withdraw that comment.

**Mr. Minihan:** I demand that comment be withdrawn.

**Acting Chairman:** I call on Senator Bannon to withdraw his comment. I heard it.

**Mr. Minihan:** I also heard it. I want that comment to be withdrawn.

**Acting Chairman:** I ask Senator Bannon to withdraw his comment.

**Mr. Norris:** The Minister is well able to survive. He has a big smile on his face. Political cowardice is a legitimate charge.

**Senators:** Hear, hear.

**Acting Chairman:** There is decorum in this House. The Senator made an allegation against the Minister which was unfair and unfounded.

**Mr. Bannon:** Unfair on the issue.

**Acting Chairman:** Does the Senator want to repeat it?

**Mr. B. Hayes:** The Acting Chairman should tell the House what he said.

**Acting Chairman:** He accused the Minister of being cowardly.

**Mr. B. Hayes:** That is mild by comparison with what the Minister accuses the Opposition of. Let us move on.

**Mr. Finucane:** The Acting Chairman is protecting the Minister.

**Mr. Norris:** Everyone knows the accusation is not true. In any event, the Minister does not mind.

**Acting Chairman:** I do not believe it is very fair or honourable of Senator Bannon.

**Mr. M. McDowell:** I am very grateful for the Chair's valiant attempts to uphold the dignity of this House.

*(Interruptions).*

**Acting Chairman:** I am sorry, but it is not a matter for the Minister to decide. The Chair believes it is an unfair comment to make to a member of the Cabinet. It is incorrect and Senator Bannon should withdraw it, in fairness. He made a statement to the effect that the Minister was cowardly. That is not fair and he should withdraw the allegation.

**Mr. Bannon:** I am not withdrawing it. I did not use the word "cowardly".

**Acting Chairman:** That is an unfair comment to make against a Minister, in particular this Minister. It is up to the Senator.

**Mr. B. Hayes:** The Minister can give as good as he gets any day. I am sure he is not offended.

**Acting Chairman:** On reflection, I believe the comment is not justified and the Senator should withdraw it.

**Mr. B. Hayes:** I thank the Acting Chairman. This is fascinating. Next.

**Acting Chairman:** If the Senator is not prepared to withdraw it, that is fair enough.

**Mr. Finucane:** The Acting Chairman has often made tough comments himself.

**Mr. M. McDowell:** The fact is, and this House knows it well, that anti-social behaviour must be dealt with on a number of fronts. It must be dealt with in terms of disadvantage and the education system — keeping those children who are most at risk in education by all possible means. It must also be dealt with through community policing, as has been said. I was glad my Department was in a position to assist the Joint Committee on Justice, Equality, Defence and Women's Rights in sending a delegation recently to Britain to see how

community policing is working there, as part of the preparation of the report that has been produced on that issue. It is a useful and constructive report.

In addition to all the extra policing resources, the reform of the Garda Síochána, the changes as regards laws on intoxicating liquor, which have happened and will happen, and the changes I have introduced to do with public order offences, we must have provision for an anti-social behaviour order as part of the available series of remedies for those people who are being let down by the state of our laws. I am quite happy to bring that forward.

Garda youth diversion projects are, of course, a matter of great importance. As the Government's amendment points out, the number of such projects has grown from 12 in 1997 to 64 in 2005. Youth diversion projects and other strategies such as those contemplated by the Children Act are the way forward as regards most forms of juvenile delinquency. There is still a hard core of people, both adults and teenagers, who pose a serious threat to the well-being of their neighbours. They make their neighbours' lives hell and make it difficult for people with decent standards to bring up their children in some localities because even to stand up for decency is in itself to become the target of abuse and intimidation. It is undoubtedly true that those people deserve the protection of our law and that is why anti-social behaviour orders will be put in place.

I agree with Senator Brian Hayes that the Garda Síochána must have links and roots in every part of the community. Most people who have an interest in criminal justice can recall what Michael Staines, the first Commissioner of the Garda Síochána, said as to how the civic guards he was establishing in the pangs of a Civil War would have to operate with the support of the people as an unarmed force. That is, most certainly, the way forward for the Garda Síochána. We have seen in Northern Ireland what happens when a police force becomes alienated for one reason or another from the communities it serves.

I believe the linkages between the Garda Síochána and local communities need to be strengthened. One of the ways to do this is through community policing. Another way, as Senator Brian Hayes pointed out, is to ensure that ethnically, geographically and socio-economically, a broadly representative police force is recruited. We are on Committee Stage of the Garda Síochána Bill in Dáil Éireann. Last night I was discussing these issues with the Opposition spokespersons and I indicated that one of the amendments we propose to make to the Bill, which has been debated at length in this House as well, was to make provision for that type of criterion to be fed into the recruitment process, lest it should be said that some form of positive discrimination to do with ethnic, geographic and socio-economic representivity was excluded or *ultra vires*, for some technical reason. This could happen, for example, if someone were to claim it

was purely to be done on the basis of how many points were obtained in the leaving certificate, or whatever, as a more objective standard for the evaluation of recruits.

We must have a volunteer Garda reserve force. It is essential for a number of reasons. In every parish or community in Ireland there are some people who have a direct involvement with the Garda Síochána and who are available to come and assist gardaí in the carrying out of their duties. In the past the representative associations have feared that this would be to introduce some form of "yellow pack" policing. This is not the case in the United Kingdom, New Zealand, Canada or Australia. It is not regarded in those countries as having that function.

In our situation, it is a tangible link between the Garda Síochána and the community it serves. Just as much as the former FCA, now the Reserve Defence Force, is a pillar of support in the community for the Army, so would a volunteer reserve force be for the Garda Síochána. It would be a tangible link for it in every community in Ireland. It is a good idea that in every two or three roads there will be one or two people with uniforms they put on at weekends or whenever necessary, to come out and assist the Garda Síochána in enforcing the law. It is a good, not a bad idea. It would be greatly to the benefit of the Garda Síochána if such a force is created, as is provided for in the Garda Síochána Bill, which has gone through this House and which, shortly I hope, will have gone through Dáil Éireann as well.

Far from weakening the leverage or the strength or importance of the Garda Síochána, it will strengthen that force and build up new links to the community, which are necessarily weakening now in an era where people commute 30 and 40 miles by car to police communities with which they have no connection. The truth is that in Northern Ireland, for security reasons, members of the police force had to live away from many of the places they had to police. There is no reason for that type of phenomenon in Ireland, but house prices, new socio-economic habits and a different lifestyle have led to a situation where many people are policing communities in which they do not live. We have gone past the situation where one could require the young garda recruit to live in the barracks until the day that he married, the John McGahern era in Irish policing. Members of the Garda Síochána are entitled to live where they want and we cannot require them to live in State-provided accommodation, or anything like that. However, substitute linkages with the local community can be provided so that policing in communities is not entirely of a commuting nature.

I welcome cross-party support for the initiatives we are taking on anti-social behaviour. I emphasise that ASBOs cannot of themselves be 100% of the solution or a majority part of the solution because more deep seated issues must be dealt with. I will address a number of them in the

near future with exciting proposals to radically reform the way in which our educational infrastructure is used to deal with disadvantage, both before and after school, to ensure children who are being failed by the education system are assisted by means of breakfast and homework clubs. This will help them to stay in touch with and involved in the education process and ensure they are not found loitering around estates with nothing to do in the afternoon when the devil makes work for idle hands.

I also strongly believe that the Garda needs to be substantially reformed. The Garda Síochána Bill 2004 is not the be all and end all of reform of the force but it is the sure foundation upon which reform can happen. The new emphasis on community policing and a stronger emphasis on the value of highly visible policing in the community must be pursued. That requires the additional numbers I am recruiting to the force. They must still be highly trained, which means that I cannot click my fingers and produce them just like that, but they are coming on stream and more than 14,000 members will be in uniform by the end of 2006. However, it is not enough to increase budgets and strength; the effectiveness of policing must also be increased. Effectiveness in many cases requires a new respect and value for front line policing in the community and deeper links between gardaí and the communities they serve. Those initiatives will go some way to dealing with ASBOs and will make a substantial contribution.

The ASBO proposal will not be a slavish repetition of what happened in Britain. However, it worked there and the House of Commons report indicates it is an effective way forward. The proposal will be dovetailed into our juvenile justice system but, in the case of adults, it will provide a solid new power for the courts. We will, by means of all these initiatives, change the climate in Ireland and give those people who are under siege in their communities a strong sense of hope that there is a society which offers them solutions to their problems.

When many people in our society see Article 40 of the Constitution, they think of the accused, the offender and so on. However, this article applies to all citizens and we are concerned with all their rights. Article 40 protects one's right to lead a decent life and is not solely something for lawyers to invoke as part of the criminal process when their clients are accused of an offence. It puts an obligation on the State to protect those who uphold and abide by the law in the enjoyment of their constitutional rights. ASBOs, in particular, are not merely necessary but they are effective and fair in striking the balance between the interests of those who abuse other people's rights and those who have inadequate defences and resources to assist in vindicating their rights.

While I welcome a debate on this subject and while I may have been dismissive of those who have formed the coalition against ASBOs, by all means let us have a political conversation and a

[Mr. M. McDowell.]  
vigorous debate on the issue but, in the last analysis, let us be real and let us talk about the people who are in the front line. Senator Norris had his difficulty with the tax inspectors.

**Mr. Norris:** I put them out of business.

**Mr. M. McDowell:** I do not know whether he wants to have ASBOs to prevent people from using his front door as a lavatory. Law-abiding people such as Senator Norris are entitled to the protection of the law just as much as everybody else.

**Mr. Norris:** It is a privilege to share a debating chamber with the Minister. This is vintage McDowell and I relish it. Although I did not think it was necessary for the remark to be withdrawn, I cannot think of a more inept characterisation of the Minister than that of a coward. Whatever else he is, he is not a coward. I suspect him of being a bit of a pointy head because he has a razor sharp intellect and has the capacity to make his views very clearly, firmly and unambiguously known, which I welcome. We should not be so dismissive of intellectual inquiry but it is a great old phrase used by the Reagans in America.

I also very much enjoyed the characterisation of people emerging from the leafy suburbs and ivory towers. I refer to the letters page in today's edition of *The Irish Times*. The majority of letters on this issue supported the Minister. A number were written by a Dr. Hanley of The Rise, Mount Merrion, County Dublin, and a Jason O'Mahony of Coppinger Glade, Stillorgan, County Dublin. The leafy suburbs and a few of the pointy heads are coming out in support of the Minister.

I also welcome a number of comments made by the Minister towards the end of his contribution. I have always thought it a dreadful notion that we should slavishly follow United Kingdom legislation and I am relieved and pleased, but not entirely surprised, that the Minister will not slavishly follow the UK example but will tweak the provision. In the tweaking of the provision lies its possible beneficial results, although I am suspicious of it and have genuine concerns. However, the Minister's objective to put an end to anti-social behaviour, which is a serious problem, is shared throughout the House. I wish there was machinery for recording dissent whereby I could record that I did not vote on this because there are items of merit in both the motion and the amendment but there is also lamentable political partisan point scoring, in which I do not want to indulge.

**Mr. B. Hayes:** It is beyond the Senator.

**Mr. Norris:** I would like to abstain and have my abstention recorded to show that I took a substantial interest in the matter.

**Mr. M. McDowell:** Abstaining is most uncharacteristic of the Senator.

**Mr. Norris:** I will not be seduced down that particular leafy glade.

The ASBOs are directed against behaviour that causes harassment and they are applicable to anyone aged over ten. My worry concerns what the Minister described as the possible criminalisation of children and I am not at all as happy as the Minister that such orders have been successful. A total of 2,600 have been granted in the UK since the beginning of last year; 42% of which were breached. Approximately 50% of those who breached the orders ended up in prison. However, they were put in prison for offences which are not criminal and that worries me, particularly because, under the British model, hearsay evidence is accepted. In other words, it is possible that where a grudge exists between neighbours, hearsay evidence could be accepted.

The publication of names, addresses and photographs of accused people occurs a great deal in our newspapers and that is a lamentable and unfair punishment. This can happen in Britain under these ASBOs. Somebody accused of a matter that is not a criminal offence may go to jail on an accusation and have their name, address and photograph printed in newspapers. That is a pity.

We must listen to people such as Mr. Geoffrey Shannon. I am not sure about the shape of his head, but he is somebody who is listened to with respect, although people may not always agree with him. He is concerned it is a knee-jerk reaction rather than a considered attempt to tackle juvenile crime and that we must stop panicking. I am not suggesting the Minister is panicking but reputable people have concerns.

I can quote Dr. Andrew Ashworth, another academic with whom the Minister is probably more familiar than I am, who stated that the combined effect of ASBOs has been that they turn the criminal law upside down as people are sent to prison for committing a non-criminal act, such as entering a part of town from which they are banned or for an offence that has a maximum penalty of a fine. The Minister is introducing a new principle into Irish law whereby people can be sent to jail for these matters.

There is also the question of people with diminished responsibility. There is a lot of anti-social behaviour and I see it in my area but I pity some of the people engaged in it because they are victims of mental distress or alcoholism. The Minister, who is a caring person, is aware of this problem. If one examines the existing prison population one sees a much higher incidence of mental illness already within it. That is worrying because it raises the question as to how appropriate it is to exclusively take this approach.

I will wait to see how the Minister tweaks and tailors this and how he fits it into the existing system whereby vulnerable offenders can be diverted into the social system and the use of community gardaí. I am glad the Minister is interested in the concept of a reserve Garda force.

I see the Minister is leaving but I am glad I was here for his speech and that he was here for part of mine. I am sure he will take note through his representative of the points made.

The alternative to ASBOs is fully implementing the Children Act 2001 and acting on it. This should be done before we introduce ASBOs. It is outrageous that it has not been enacted fully yet. Under that Act if young people commit criminal offences they can be brought before the courts, which have the power to use diversionary mechanisms such as the Garda juvenile diversion programme. In light of the failure of the ASBOs revealed in the statistics I have put on the record, it is interesting to note that the juvenile liaison programme has an excellent success rate whereby 90% of children do not reoffend as children. Its role ought to be strengthened. The Garda has 64 diversionary projects throughout the country through which it intervenes to prevent young people from getting involved in criminal activity. This involves conferencing with gardaí, parents and family, and community sanctions.

We are all in favour of community orders rather than imprisonment. It costs €250,000 per annum to send someone to a juvenile detention centre. Apart from anything else, that is expensive. Other measures in the Children Act include community service orders for 16 and 17 year olds, probation orders, day centre orders, probation training or activities orders, probation intensive orders, residential supervision, suitable persons, parent supervision, mentor, family support, restriction on movement orders and dual orders.

May I say *en passant* that I should have known that the capacity of a judge to bind someone to the peace is gone and the Minister should examine reinstating it. I had not realised it was gone and it is a frightful shame as in my opinion it would be far more effective than ASBOs.

Under the Children Act, parents can be brought in and made undergo training in parental skills. They can be ordered to pay compensation for offences by their children, so there is an entire range of sanctions. I simply state that I wait to see how the Minister tweaks these provisions. I am suspicious because he is introducing new principles into Irish law but for the time being I will give him the benefit of the doubt, as he should give to those of us with reservations. He should be prepared to take what we say with a certain degree of seriousness. I enjoy the banter — nobody enjoys it more than I do — but we must consider the welfare of the entire community. We should not slavishly follow the United Kingdom.

**Mr. J. Walsh:** I welcome this timely debate as anti-social behaviour is undoubtedly a problem in inner cities and towns throughout the country. The Minister and the Acting Chairman were subjected to a minor aspect of it this evening with the unruly behaviour in the Chamber, and the Acting Chairman had great difficulty in bringing it under control. It shows the difficulties that victims of

such behaviour encounter, sometimes on a daily basis.

I was taken with what the Minister stated on the effects of anti-social behaviour on victims. Unfortunately our criminal law rarely if ever takes account of victims. I welcome the Minister's emphasis on the effects on victims, and wish to see it extended to the entire criminal law. We have debated that issue both here and at the Joint Committee on Justice, Equality, Defence and Women's Rights.

I know time fades the memory but when we were growing up I am sure we were all guilty of causing aggravation to people by playing football on the streets or handball against the gable end of a house. Anti-social behaviour is not a new phenomenon but perhaps the accessibility of stimulants makes it more severe than it used to be.

The long-term effects of not addressing anti-social behaviour are as serious as its short-term effects. Anyone that has observed such behaviour over the years has found that in the housing estates where it occurs, a small minority of families are involved and where it goes unchecked those same families are involved in far more serious offences and crime ten or 20 years later. That is one of the many good reasons this should be tackled in the interests of a properly regulated society.

The Minister has taken a number of initiatives over the years, such as the fixed penalty in the Criminal Justice Bill whereby people who commit certain offences can have an order placed on them by gardaí and if they fail to pay they are brought to court.

Managing anti-social behaviour through the Garda without the involvement of the courts and prisons is a step in the right direction, and I have no doubt that all sides would commend the Garda youth diversion programme. This programme deals with 12 to 17 year olds who are at a vulnerable and impressionable age where much of what they do will have a life-long impact and will help to chart their future careers. It is very important to put the mechanism in place to ensure the paths they follow lead to a satisfying and fulfilling life.

The Opposition has many times alluded to a matter which is germane to the motion. I am happy the Minister has initiated a process to increase Garda numbers to 14,000. I am pleasantly surprised to note the Minister expects the process to be completed in 2006. The initiative to bring 275 new recruits on stream in each quarter of a three-year period will contribute. A visible Garda presence on the beat is a great deterrent to all sorts of crime. I can never understand why traffic enforcement is conducted by gardaí who hide behind trees and bushes with speed guns and are only seen if they stop a driver. In other countries with more effective traffic controls in place, police are highly visible which does not detract from detection or enforcement but makes people aware that enforcement is a high priority. Making

[Mr. J. Walsh.]

the Garda presence more evident is a very positive step.

The Minister outlined the reduction in the rate of public order offences and headline crimes such as murder. If one is a victim, however, the crime one suffers is one too many. While we will never achieve zero tolerance, our aim should be to travel in that direction at all times. I am pleased that the Seanad had a significant influence on the Garda Síochána Bill. The establishment of joint policing committees will be a constructive step which facilitates more focused and effective policing at local level and bridges the gap in the dissemination of information to the public. Senator Cummins mentioned our recent, low-profile trip to London, which did not receive the level of attention focused on some of our colleagues who went a little further afield.

**Mr. Cummins:** It was not far enough away.

**Mr. Ryan:** The Senator is not as provocative.

**Mr. J. Walsh:** Despite its low profile, those on the trip found it very informative. We were given an insight into the approach to policing in a major metropolis. As one need not reinvent the wheel, police in London had copied many initiatives from Amsterdam and, particularly, Chicago, which has very strong community policing arrangements. One of the most significant community policing activities in London is tackling the public's perception that crime rates are at an all-time high and escalating. When they were informed, people were more reassured. Newspaper headlines concentrate on significant criminal activity in certain areas which influences perceptions and gives rise to a lack of confidence among the public. The London initiative is therefore welcome.

The anti-social behaviour of those who have got into difficulties and those who have the potential to get into them should be tackled. Police in Bexley have organised a football team for young people who had been loitering in the area and created a film-making group and an art group. Instead of graffiti, the young people were drawing murals. Their energy was focused in positive activities which made them feel respect for civil society and changed their lives. Police in Bexley record home visits and take a number of steps involving parents and behavioural contracts before they reach the anti-social behaviour order stage. We should put the same steps in place to ensure that the anti-social behaviour order is the last resort after encouragement and partnership have failed to result in proper conduct.

**Mr. Ryan:** I am one of the world's great law and order liberals. While I continue to be reluctant to portray crime as being worse than it is, one learns lessons in politics and would be very foolish to use the information with which one is provided. I was a candidate for the Dáil in the

2002 general election, but the Seanad did not lose me in spite of my best efforts. While it was a difficult election for Opposition parties as everyone felt very well off, a matter of concern which was raised consistently on private and local authority housing estates was the extraordinary nuisance of low-level and unpleasant anti-social behaviour. Perhaps, the problem is more intense in such areas. I refer not to the sort of extreme cases which have been mentioned during the debate but to the low-level degradation of the sense of community created by youngsters who drink, shout, break windows and run away and use appalling language. They respond to any reprimand with even worse language than they have already used.

As people to whom I spoke got older they became nervous about vigorous, energetic and threatening young men a quarter of their age and decided the best thing to do was to stay in after dark. It is dreadful how often people tell me they called gardaí in such circumstances and were told that while officers were very sorry, there was nothing they could do. No matter how difficult a set of circumstances are, a member of the Garda should never say to a citizen that there is nothing he or she can do. Such comments tend to lead to a chat about people being brought to court and let out again. It is a line too many gardaí use and they must discipline themselves and accept they harm people's confidence when they utter it.

Senator Jim Walsh was accurate to point out that a great deal of the argument involves perception rather than an out-of-control crime wave. While that does not make crime less real or painful, communities need to feel they are in control and have support from the forces of law and order. If one creates that perception, communities can feel they are in a position to deal with some anti-social behaviour simply through the increased presence of people on the streets. If one allows a minority of nasty people, who are often though not always young, to create a climate in which most of the decent people in a community go home, lock their doors and hope for the best until the following morning, one will not succeed in doing anything other than to cement the view that crime is out of control.

I had the privilege to chair the task force which began the process of regenerating St. Michael's estate in Kilmainham. The task force needed a chairman and someone from 160 miles away was accepted to have no vested interests. Good people on the estate had horrendous stories to tell. They had gone as far as to put steel plates on the doors of their apartments and stay in at night. They locked their doors and did not re-open them until morning, when they swept up the syringes, condoms and other detritus left by Dublin drug addicts who entered the estate during the night. Every stairwell light was broken because drug users wanted darkness. Windows were covered in plastic so that gardaí would be disadvantaged by the lack of light. It was a heart-breaking account of events in apartment build-

ings which were originally built to a high standard. The apartments were big and had efficient heating but had been abandoned by society. It was tragic that a decision had to be taken to demolish them, thereby resulting in the failure of an expensive experiment.

I support anti-social behaviour orders in principle, although I want to learn their details. They provide communities with sanctions against individuals and groups who claim immunity but they are not the only remedy. The issues raised in the Fine Gael motion and by the Minister are important. A willingness to find workable solutions is needed in a political discussion of crime. Imprisonment does not work.

The imprisonment of young people creates crime rather than prevents it. Half of indictable offences are committed by those aged 17 and under. Society's objective ought to be that no offender under the age of 17 ends up in prison, otherwise it is almost guaranteed that a lifelong criminal will be created. If a person under the age of 25 is kept out of prison, he or she will not be imprisoned after reaching that age. Anti-social behaviour orders need to be combined with a visible community police presence. The theory behind the re-organisation of the Garda is partly based on efficient responses to crime after the event. Concentrating gardaí in towns and large urban stations so that they may speed to the scene of a crime was great on "Z-Cars" but ignores the primary role of uniformed police, which is to reassure the community. That can only be done through a visible presence even when nothing is happening so that people feel that police form part of their community's background. When I was a child, I knew the name of every garda in Athy. Not many children now know the names of the gardaí in their communities. The gardaí knew me and would inform my father if I caused trouble. They had an effective set of remedies.

It must be asked why young people disregard authority. Part of the fault lies with the authorities. A divided society has been created, in which much social disadvantage is invisible. On television and radio, disadvantage is only seen on occasional scare programmes. Both the perpetrators and victims of crime are invisible because they are socially disadvantaged. Our society must be reintegrated. The Minister for Justice, Equality and Law Reform made provocative speeches about the necessity of sustaining a degree of inequality. Inequality should be reduced. The Minister distorted this argument by pretending that attempts were being made to abolish inequality. One of the consequences of Ireland's prosperity was increased inequality which contributed to a sense of hopelessness and anti-social behaviour. I support the motion but hope for sensible debate on crime and its causes and remedies.

**Mr. Minihan:** I am pleased to contribute to this evening's debate. Growing concerns exist about

the incidence of anti-social behaviour. The most worrying aspect is that the vulnerable are at the receiving end. I am particularly concerned for the elderly. Communities can be subjected to serious harassment, which can cause distress despite its not involving criminal offences. Standing up to offenders can be impossible for older or vulnerable people. Relief must be provided through the State. The heart of the debate concerns behaviour that is serious but not criminal and the role of the State in this matter.

I have no problem with the element of the Fine Gael motion which notes the growing public concern over the prevalence of anti-social behaviour. However, reality is ignored elsewhere in the motion. That is a pity because issues of public concern should be debated in the context of fact and reality. Those moving the motion would have the House believe the Government is failing to adequately resource the Garda. This should be rebutted. The Government has pursued a wise and multifaceted approach. The Garda Bill currently before the Oireachtas is the first comprehensive legislation to deal with policing in 80 years. For the first time, legislation provides for a reserve force and partnerships between the Garda and local authorities. Those moving the motion would also have us believe the Government is failing to address the issue of Garda numbers. The Minister clearly outlined to the House that the target for extra gardaí to which a commitment was made in the programme for Government will be met by late 2006. There is no doubt that the goal of recruiting over 1,100 gardaí every year between 2005 and 2007 will be reached.

Minor menaces, including the blaring of loud music or persistent late night interference from people walking down the street, may over time ruin individual lives without crossing the line to criminality. A mechanism is needed to protect the public from behaviour likely to cause harassment, alarm or distress. Many speakers referred to the ASBOs which were introduced in the UK. I welcome the acknowledgement of the need for ASBOs and the Government's proposal to introduce them. Amendments to the criminal justice legislation will introduce ASBOs into Irish legislation.

The Minister pointed out that while these orders will be similar to those in operation in the UK, they will not be an exact replica. One of the key differences is that in this jurisdiction, only the gardaí will be able to go to court to secure an anti-social behaviour order. In the UK, the police and the local authorities can make such applications. We must take action against anti-social behaviour via the State and the gardaí are best placed to fulfil this role.

ASBOs are the key to dealing with behaviour that is serious but not criminal. The granting of such orders is a matter of civil law but a breach of an order is a criminal offence. An order, which can be in place for up to two years, can prohibit an offender from engaging in specific anti-social

[Mr. Minihan.]  
behaviour in a defined location. The breach of an ASBO moves the individual into the criminal realm.

It is interesting that some of those who are supposedly in favour of ASBOs are becoming proficient in denouncing their impact in the UK. The Minister referred to the House of Commons report in this regard. We hear much of the 30% of people in the UK who end up in the criminal system, but very little about the 70% who do not. It is a case of seeing the glass as half full or half empty.

A prominent claim in the UK is that one third of those served with an ASBO go on to breach it and then enter into the criminal system. Like all other measures designed to deal with social problems, ASBOs should not be considered in isolation. I draw Members' attention to section 29 of the Criminal Justice Bill. Some people have claimed that the introduction of ASBOs —

**Mr. Bannon:** Does the Senator consider it a success that one third of people end up in the criminal system?

**Mr. Minihan:** If the Senator had been listening —

**Mr. Bannon:** We are listening to the Senator.

**Mr. Minihan:** What about the 70% who do not go into the criminal system?

**Mr. Bannon:** The Senator's figures are wrong.

**Mr. Coonan:** The Senator's figures do not add up.

**Mr. Minihan:** Some people have claimed that the introduction of ASBOs will mean that those guilty of anti-social behaviour will always end up in the criminal system. I restate my point that a certain percentage of people will end up in the criminal system but that same percentage would have done so anyway. We must take account of those people who will benefit from an ASBO and not end up in the criminal system. That is the way to approach this if one wants to be positive and the House of Commons report supports this argument.

Another issue thrown into the mix is that of the criminalisation of children. This is an emotive area that is sure to engender anxiety in people. Some have expressed concern that the proposed measures would lead to the criminalisation of children for behaviour that is not, in itself, criminal. They further argue that this will undermine the welfare approach of the Children Act. However, we should examine the proposals closely to ascertain whether the same penalties will apply to children and adults alike. The Minister referred to this issue and suggested that the question is how the penalties will be applied in respect of children and adults. It is in this context that we should take the discussion forward.

Anti-social behaviour is a symptom of wider societal problems and is closely related to general criminal behaviour. Increased crime is accompanied by increased anti-social behaviour. This has been the experience here and abroad.

ASBOs have been in operation in the UK since 1998 and have been employed on many occasions in the past seven years. The Minister has said that he will not slavishly follow the UK model, which I welcome. We have heard a plethora of so-called experts in the UK denounce ASBOs and their effects in Britain. It is a little strange, in that context, that every mainstream party in the UK supports ASBOs. Questions must be asked about those who oppose the orders. They are not practising politicians who engage with the public and who are aware of anti-social behaviour problems in their constituencies. If there were serious problems with ASBOs, I would have expected at least one political party to oppose them.

Vociferous groups will also come out against measures to deal with anti-social behaviour in this country. They will protest, highlight extreme cases and use emotive language in their campaigns. Yet, as in the UK, the main political parties here support the measures. Fine Gael —

**An Cathaoirleach:** The Senator's time is up.

**Mr. Minihan:** It is interesting that the only two parties who do not support the ASBO measures are Sinn Féin and the Green Party.

Consensus on the seriousness of the problem and the measures to deal with it will not stop some groups attempting to make political gain from anti-social behaviour. I hope that this will not be the case in this House because we must move forward to address this blight on Irish society.

**Mr. Bannon:** The raid in Ballymahon post office in County Longford on Monday last highlights the breakdown of law and order. Let us try to imagine what it would be like to be a 17 year old and to wake up to find an armed man standing in your bedroom, threatening you. That was the fate of a young girl, whose only crime was to be the daughter of the local postmaster in Ballymahon. This girl is an innocent victim of our rapidly increasing rate of anti-social behaviour.

The raid on the Ballymahon post office was not an isolated incident in County Longford, however. There were similar raids in Colehill, Edgeworthstown, Tashinney and on the Bank of Ireland in Ballymahon. In County Westmeath, there were armed raids in the last few months in Glassin, Horseleap and Athlone. Building sites in Keenagh, Granard, Lanesboro and Longford town are being cleaned out on a nightly basis.

Numerous representations have been made to the Minister for Justice, Equality and Law Reform seeking an increase in Garda numbers in County Longford and a request for a meeting between the Minister and a council delegation was made more than a year ago. However, when

the Minister came to County Longford recently to open a new child care facility and sign documents relating to prison decentralisation, he made no effort to meet the local councillors to discuss the problems of raids and Garda numbers. This has led people in Longford to make accusations of unhealthy arrogance on the part of the Minister. He has snubbed the town and county councillors. The councillors were not made aware of his impending visit and only learned of it because the Mayor is a member of the executive that signed the decentralisation documentation.

The current uproar over the lack of consultation on Garda manpower is ironic, given that the Garda Síochána Bill brings community policing to the forefront, with consultation bodies to be set up following its passing into law. Local councillors in County Longford welcome the opportunity to become more involved in police decisions, as envisaged in the Bill. However, they are wondering from where the extra gardaí required for community policing will come. The Government has continued to renege on its commitment in this regard.

Where are the extra 2000 gardaí that were promised? Longford, Ballymahon and Lanesboro need extra gardaí as do almost every town and village in the county and, indeed, the rest of the country. If the Government cannot provide the additional manpower required, what hope do we have?

Fine Gael believes that the law is biased against the victims of burglary and armed trespass. It calls on the Government to review legislation in this area, with a view to re-balancing the scales to protect the victims and impose tougher sentences on criminals. Assaults, violent incidents, fatalities, break-ins and so on, are an everyday occurrence. One only has to turn on the radio or pick up a newspaper to be aware of this. Rural policing needs to be stepped up, not scaled back. Dublin gangs are now targeting rural areas. Having a Garda presence in an area is the greatest deterrent to criminals. Security can be increased by providing more patrol cars and extra resources, including gardaí on the beat.

It is worrying that, over the past three years, more than 1,300 firearms have been stolen from rural homes and gun dealerships throughout the country. Most of these weapons have found their way into the hands of criminal gangs. This begs the question as to why such a large volume of illegally held arms is to be found in country areas. Is law and order breaking down to such an extent that rural dwellers must adopt a wild west approach to ensuring their own safety? Gun rule will become the norm in our society unless the Government rectifies the appalling situation in which we now find ourselves. The extreme anti-social behaviour that currently exists in many areas, and to which several Opposition Members have referred, is very annoying for citizens, particularly the elderly.

The closure of many small rural Garda stations has left areas without the security that such a

Garda presence would bring. This applies especially to old people and other vulnerable sections in rural communities. It is totally unacceptable that people cannot go about their daily lives without fear of intimidation. This desperate situation is being brought home to us repeatedly on the doorsteps, yet the Government is doing nothing apart from spinning and emitting lots of hot air.

Figures produced by the Health Research Board at the end of last year showed that drug use outside Dublin almost trebled between 1998 and 2002. Alcohol consumption and drug abuse is directly related to the lack of youth facilities and measures to assist the most marginalised young people. It is essential to bring them into the fold, rather than pushing them further to the outer limits of society.

The introduction of anti-social behaviour orders could lead to an unprecedented and counter-productive increase in the number of young people being detained, according to solicitors dealing with criminal cases in the United Kingdom. Under such orders, behaviour likely to cause harassment, alarm or distress is capable of including everyone from serious criminals to people whose appearance makes us feel uneasy. Realistically, anti-social behaviour in juveniles can be tackled using a wide range of measures under the Children Act 2001.

The Government must honour its commitment to recruit 2,000 extra gardaí. In addition, minimum sentencing should be introduced for repeat offenders and a properly organised and researched crime unit should be established to tackle crime.

People are enraged when free legal aid is provided for criminals. I hope the Minister will take that issue on board. It is sickening for people to hear that free legal aid is being provided to someone who may have committed a serious crime.

**Mr. Brady:** That is democracy.

**Mr. Bannon:** That situation needs to be examined and addressed.

**Mr. Kett:** I wish to share my time with Senator Brady.

**An Cathaoirleach:** Is that agreed? Agreed.

**Mr. Kett:** I welcome the Minister of State to the House. I am glad of this opportunity to support the amendment to the motion as outlined by my colleague, Senator Jim Walsh. Fine Gael has afforded us an opportunity to show how successful the Minister's crime prevention programme has been to date. Although this applies to both sides of the House, it is unfortunate when divisive motions are tabled and amendments are equally divisive. One ends up with the Opposition telling us how poorly we are doing, while we end up outlining the facts to them.

**Mr. Bannon:** If the Senator had been in Ballymahon last week he would have seen the facts concerning the Government's negligence.

**Mr. Brady:** The Senator had an opportunity to speak, but he is intent on taking up everyone else's time as well.

**An Cathaoirleach:** As a matter of courtesy to other Senators, Senator Bannon should allow them to speak.

**Mr. Brady:** Instead of shouting at one another, it would be more beneficial if we put forward constructive views. It is our job to put our shoulders to the wheel in order to introduce legislative programmes that benefit the public we are here to serve. It is unfair to suggest, as the motion does, that the Minister has been sitting on his hands during his period in office.

This month alone, the Joint Committee on Justice, Equality, Defence and Women's Rights — of which both Senator Jim Walsh and Senator Brian Hayes are members — sat through one of the finest processes I have been involved with, coming up with a concept for the introduction of community policing. Some 60 submissions were made to that committee which involved five days of hearings. Members of the joint committee also made a worthwhile trip to London where they met a police inspector at Scotland Yard who was most informative and enthusiastic about the concept of community policing.

In addition to meeting local community activists, we also met the Garda Commissioner, the Dublin city manager, Mr. Denis Bradley of the Northern Ireland Policing Board and many others. The beneficial outcome was the report we all received last week, which showed that conventional policing has failed in its efforts to deal with anti-social behaviour in the community. The report also found that the Garda Síochána was reactive rather than proactive. All of us who have served as councillors would agree with that.

The Minister has provided positive legislation that will help society to develop socially and recreationally. That corpus of legislation includes the Garda Síochána Bill, to which several Senators have referred, as well as the Criminal Justice (Public Order) Bill, which strengthened the role of the Garda Síochána.

A recent survey in the north inner city, which Senator Brady and myself represent, suggested that persistent anti-social behaviour — much of which is, unfortunately, drug-related — was committed by a small number of people. The survey revealed there was a major disincentive for local people to involve themselves in their community, either through voluntary organisations or otherwise. Public disorder, including street violence — particularly among young males — is one of the major threats to society.

The experience of anti-social behaviour is not unique to Dublin, as other cities have the same problem. A multi-agency response is required to

tackle it, involving education, health and housing. Over the years, the design of housing estates has contributed to some of the current social disorder. Parental control is vital because the role of parents in the lives of the younger generation is central to any solutions we may come up with here.

Effective community policing is the way forward but in establishing a community policing organisation we must ensure it will not be the poor relation of the Garda Síochána. Such a structure for community policing must include gardaí of senior rank. In addition, gardaí must be willing to work in community policing and have the potential to benefit from promotion if they do so. When it comes to enforcing anti-social behaviour orders, community policing is the way forward.

**Mr. Brady:** I thank Senator Kett for sharing his time with me and welcome the Minister of State to the House. I congratulate the Minister, Deputy Michael McDowell, for the personal passion he has shown in dealing with this subject. His address to the House earlier was eloquent.

I sought a definition of anti-social behaviour and the best one I came up with was in a Dublin City Council policy document which defined it as "any behaviour which causes, or is likely to cause, any significant or persistent danger, injury, damage, loss or fear to any person living in a house or an estate, and which includes violence, threats, intimidation, coercion, harassment, nuisance or serious obstruction of any person". It also includes the manufacture, sale and supply of drugs.

As Senator Kett noted, significant strides have been made in our area, the north inner city of Dublin, in dealing with anti-social behaviour, not only in recent times but over many years. I will refer specifically to two programmes. I have seen at first hand the benefits of the youth diversion programme which attempts to change the behavioural patterns of young people who get into trouble. The use of positive role models from among their peers is essential when dealing with young people. While adults will tell young people what to do, it is only when they are told what is right and wrong by members of their own age group that young people assume personal responsibility which is lacking in many cases of anti-social behaviour.

The community policing fora is the second initiative I wish to raise, specifically in the context of the inner city. The fora have been established in a number of areas and have proved effective in breaking down the barriers which exist in some communities between residents and the Garda. The community policing forum model has proven successful in this regard because it gives communities and residents a direct link to policing and an opportunity to have a say in how their areas and communities are policed. Anti-social behaviour affects all communities and I welcome

the Minister's attempts to address it, particularly through community policing committees.

**Mr. Finucane:** I compliment my colleague, Senator Cummins, for tabling this motion because it has been an interesting debate. I listened to the Minister's knockabout performance. Senator Brady probably reflected Dublin opinion when he noted that anti-social behaviour impacts most on urban areas. I will speak about rural Ireland, specifically the area I know best, west Limerick and the town of Newcastle West.

The document produced by the Fine Gael Party refers to rostering, an issue I ask the Minister to examine. To illustrate my point I will give as an example the anti-social behaviour which takes place at weekends in Newcastle West. As a result of recent events, a local councillor, Patrick O'Donovan, and I visited the local superintendent to discuss the issue and outline the concerns of the community. Members of the community who approached us had a sense of helplessness and frustration and asked who would control anti-social behaviour in the area. The superintendent, who has 24 gardaí in his division, pointed out that only four gardaí will be on duty at any time at a weekend because a four cycle shift system is in operation. Of these, two will be in a squad car, one in the Garda station and one available.

I pointed out that anti-social behaviour in Newcastle West usually occurs at certain flash-point times, namely, between 11 p.m. and 3 a.m. on Friday and Saturday nights. The town is no different from many other towns in which people from outlying rural areas congregate to attend discos. They then go to fast food restaurants and usually disperse at around 3 a.m. The period prior to 3 a.m. when most vandalism occurs gives cause for concern. Windows have been broken, barrels and benches dumped in the river and a recently erected post box was ripped out and found 100 yards away. How can one control these and similar incidents of wanton, senseless vandalism with a depleted Garda resource? Effective deployment of Garda resources on the streets during flash-point times would eliminate much of the problem. The square in Newcastle West is a central point and if two gardaí were deployed on it late on weekend evenings, it would make a substantial difference. The superintendent pointed out that it was a matter of effective deployment of resources. The reason I focus on rostering is that much could be done to improve Garda deployment.

I also told the superintendent that at 9 a.m. on Monday mornings, a busy time for gardaí who must issue summonses and access the PULSE computer system, Newcastle West, like elsewhere, is quiet. The solution, therefore, lies in rostering and the deployment of resources.

A fine, ultra-modern Garda station has been fitted out in Abbeyfeale but its opening times are

restricted. While this may be necessary because the Newcastle West station is the central point in the area and is open on a 24 hour basis, it is nevertheless a major deficiency to open a modern Garda station without providing the required tools, in other words, the PULSE computer system to key in the data. It defeats the purpose to provide nuts and bolts without providing the type of system required. Much could be learned by examining the current approaches to PULSE and Garda deployment.

I welcome the Minister's comments, particularly with regard to anti-social behaviour orders. From what I have read, these have worked effectively in the United Kingdom and would be desirable here because we require a deterrent. Society has changed dramatically. When I was growing up people who fell out, as they often did, may have used their fists but I do not recall a single occasion on which a person was kicked while on the ground. Unfortunately, people are now kicked senseless. I do not know what is happening to society but it is on a slippery slope and it is important that we apply brakes or controls to halt the slide.

**Mr. Cummins:** I am glad the Fine Gael Party tabled this motion. It generated a lively, interesting debate, the House reached a consensus on many issues and Senators shared their experiences, many in graphic detail, of the type of anti-social behaviour taking place throughout the country. This issue is relevant to the ordinary person in the street and affects communities everywhere so it is no surprise that we had such a lively debate.

The Minister devoted most of his speech to anti-social behaviour orders. As I stated in my opening speech, too much emphasis has been placed on these orders. Instead of honing in on them, we should introduce preventative and support measures and tackle the symptoms of anti-social behaviour, including poverty and deprivation. The Minister failed to address any of these issues or my comments on the Government's policy on the Children Act, to which it does not appear to be committed. He did not, for example, respond to my remarks on the sections of the Act dealing with supervision and community sanctions.

The Fine Gael Party also made proposals on generating finance. We have taken a constructive approach and offered a positive policy. The Minister stated once again that all these matters would be addressed in his amendments to the Criminal Justice Bill. We asked when this would happen because we are fed up with talk but little action from the Minister. We had more rhetoric tonight but people on the street who are affected by anti-social behaviour every day want to see action. Our motion calls for that action.

Amendment put.

The Seanad divided: Tá, 30; Níl, 17.

Tá

Brady, Cyprian.  
Brennan, Michael.  
Callanan, Peter.  
Cox, Margaret.  
Dardis, John.  
Dooley, Timmy.  
Feeney, Geraldine.  
Fitzgerald, Liam.  
Glynn, Camillus.  
Kenneally, Brendan.  
Kett, Tony.  
Kitt, Michael P.  
Leyden, Terry.  
Lydon, Donal J.  
MacSharry, Marc.

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

Níl

Bannon, James.  
Bradford, Paul.  
Burke, Ulick.  
Coghlan, Paul.  
Coonan, Noel.  
Cummins, Maurice.  
Feighan, Frank.  
Finucane, Michael.  
Hayes, Brian.

Henry, Mary.  
McHugh, Joe.  
Norris, David.  
O'Toole, Joe.  
Phelan, John.  
Ross, Shane.  
Ryan, Brendan.  
Terry, Sheila.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators Cummins and Finucane.

Amendment declared carried.

Motion, as amended, put and declared carried.

**An Cathaoirleach:** When is it proposed to sit again?

**Ms O'Rourke:** At 10.30 a.m. tomorrow.

### Adjournment Matters.

#### Road Network.

**Mr. Cummins:** I am raising the issue of the route of the proposed Waterford city bypass. I believe the Minister for the Environment, Heritage and Local Government, Deputy Roche, made a statement today on the Viking site at Woodstown, County Waterford, directing the National Roads Authority to examine an alternative route. The people of Waterford are concerned about the time taken to commence work on the bypass and second river crossing as we have been waiting for the past 30 years. For a time, there has been nothing but report after report on the matter and then the Viking site was discovered, which the Minister has rightly decided must be preserved. However, it leaves the choice of the bypass route open.

Will the Minister expedite the matter and ensure the NRA adopts one of the proposed routes at the earliest possible opportunity? The

economy of Waterford and the south east is dependent on this bypass. I hope the Minister will use his good offices to ensure a start on the bypass by the end of 2005. Commencement on the project has been promised for the past three years but we have not seen it yet. Patience has been tried to the limit.

**Minister for the Environment, Heritage and Local Government (Mr. Roche):** I thank Senator Cummins for raising this issue. This is one of those happy occasions when a Minister can tell the House a problem has been solved. However, I must wait for tomorrow's newspaper headlines to see how well I have solved it.

Earlier today I issued directions to Waterford City Council requiring the protection of the Viking and early medieval site at Woodstown, County Waterford, on the route of the proposed Waterford city bypass. The directions were issued under the National Monuments (Amendment) Act 2004. The bypass was approved by An Bord Pleanála in October 2002 but before work could commence archaeological excavations had to take place.

The remarkable archaeological site at Woodstown is up river from Waterford city and on the County Waterford side of the River Suir. The site was discovered in April 2003 during the course of routine archaeological investigations in advance of the construction of the N25-Waterford bypass being carried out on behalf of Waterford City Council under the auspices of the National Roads Authority. A report on the outcome of these

archaeological investigations, which identified this previously unknown site, was submitted to my Department and is available on the NRA website. The discovery was unexpected and had not been dealt with in the environmental impact statement or the approval of the road project by An Bord Pleanála.

My Department subsequently issued directions under the National Monuments Acts 1930 to 2004 requiring further studies to be carried out by the road developers to establish the archaeological potential of a marsh area at the western end of the site. Relevant reports on this were duly submitted. The Department's underwater archaeological unit also carried out geophysical surveys in the river adjacent to the site. These investigations indicated that the site is of national importance because of its archaeological and historical significance, being a multiperiod site with extensive Viking occupation and a national monument within the meaning of the National Monuments Acts 1930 to 2004.

Earlier this year, I visited the site and indicated that I was minded, subject to statutory procedures, to require the preservation of the site pending the development of a long-term strategy for its future preservation, either *in situ* or by record, and archaeological investigation. I was impressed by the professionalism of the archaeologists involved. It is an exciting find and I hope the extraordinary artefacts discovered will be kept on permanent display in Waterford, where I believe they rightly belong.

In the meantime, following the study, I consulted the director of the National Museum, as I am statutorily obliged to do before the issuing of directives, under the National Monuments (Amendment) Act 2004. The director has indicated that he agrees with the proposed approach, and I have now issued the directions to Waterford City Council requiring the site's protection. This frees the council and the NRA from the ambiguities which have existed to date. I propose shortly to establish a working group led by my Department to advise on the long-term strategy to deal with the preservation, archaeological investigation and appropriate management of this very important site. Sadly, as the Senator will be aware, the site itself was bisected by railway works in the 19th century and we do not know what was lost. We know that what is there is worth examining and hopefully worth bringing to public attention.

The working group will also include representatives of, *inter alia*, the National Museum and the local authorities. The National Roads Authority has indicated it favours a modification to the alignment of the proposed Waterford city bypass route which would avoid the site, and this is now its preferred option. Deputy Cullen, the Minister for Transport and a local man, will, I think, be speedy in supporting the NRA in its proposals.

Following the issue of my directions, it is now a matter for the NRA to submit its proposals for a realignment of a portion of the road to avoid

the site being referred to An Bord Pleanála for determination. The Act provides that this can be done, which is much more flexible than going through the entire process again. The board will make a determination solely with regard to any proposed route change since under the 2004 Act the approval for the rest of the road stands. From the point of view of Senator Cummins and the people of Waterford, that is very important.

I trust this clarifies the up-to-date position for the Senator on the day on which, as I have said, directions have been issued in this matter. I believe that having cleared up the ambiguities and the other issues, and having made clear what should happen, we will now see some speedy progress in the area. I know the Minister for Transport, Deputy Cullen, is the most anxious of the people in that illustrious part of the country to see progress being made.

### Alternative Energy Projects.

**Mr. Morrissey:** I have raised this issue on the Adjournment because, from commentators and from our own experience in the past few years and very recently, we all know about the cost of energy in our homes and businesses. We must begin looking at alternative sources of energy in this country. As an island nation we are very dependent on others to supply our energy needs.

Without Government support for, or interest in, the wind energy sector, the opportunity to develop offshore wind farms in Ireland will be lost for a long time. We have no commercially proven oil reserves and we have limited gas reserves, so we are at the mercy of outside energy suppliers. As an island we have very good wind speeds capable of meeting our energy requirements. For example, a wind turbine in Ireland will deliver twice as much power as the same turbine in Germany. We are the envy of Europe because of our wind speeds.

Offshore does not have the same planning issues or constraints as onshore, and offers the opportunity to develop wind farms to produce a large proportion of our energy requirements. The recent operation of AER VI amounted to tinkering with the system, in that one company was offered two AERs of 25 MW each for the Kish and Bray banks, which adjoin each other. When one looks at recent energy prices, the typical man or woman in the street, if asked why energy prices had gone through the roof, might blame the war in Iraq, but a typical economist might be more likely to blame the growth of China. For example, the consumption of oil in China on an annual basis is now the equivalent of the world's supply of oil in the mid 1990s. That gives us an indication of the quantity of oil being used by China's emerging and growing economy. If that trend continues, which I have no doubt it will, we will remain at the mercy of others in terms of our energy needs.

The offshore wind sector has not received the support it deserves in this country. Wind energy

[Mr. Morrissey.]

use can assist us in meeting our Kyoto Protocol obligations in terms of reducing carbon gases. I ask the Minister of State to consider the issue seriously and I look forward to what he will tell us tonight regarding what assistance the Government is providing for this energy sector.

**Minister of State at the Department of Communications, Marine and Natural Resources (Mr. Gallagher):** I thank Senator Morrissey for raising this important issue in which a great deal of interest has been expressed by people anxious to provide renewable energy.

The green electricity market has been fully liberalised in this country since February 2000, under the Electricity Regulation Act 1999, some five years in advance of full market liberalisation. Renewable energy developers, including offshore wind developers, are therefore able to sell the electricity they produce on the open market. Consequently, any decision to invest in offshore wind projects is a commercial decision for individual developers.

In Ireland, electricity generation from renewable energy-based technologies is not as yet fully competitive with conventional fossil fuel technology, and in consequence, market support is required because these technologies operate from a higher cost base than conventional technologies. The Department administers the alternative energy requirement or AER programme, the underlying principle of which has to date been that prospective generators are invited to make a formal application to build, own and operate newly installed renewable energy based electricity generating plant, and to supply electricity from these to the Electricity Supply Board under a power purchase agreement of up to 15 years duration. The net additional cost to the ESB is charged to electricity consumers as a public service levy in each individual electricity bill.

On 7 April last, the Minister for Communications, Marine and Natural Resources, Deputy Noel Dempsey, announced the outline of a future support mechanism to be known as AER VII. This revised system will move away from competitive tendering to a fixed price proposal. In addition, the support which was previously tied to contracts with the ESB will now be available for supply contracts with any licensed supplier. AER VII will contain an overall quantitative limit so that a competitive element remains. The actual capacity limit in AER VII will be a specific term which will be of major interest to all potential applicants. It is appropriate that it is made accessible to all potential applicants simultaneously. The Department therefore is not in a position to announce a specific quantitative target until AER VII is formally launched.

The last competition, AER VI, included an offshore wind category for the first time. Following a study conducted by consultants Byrne Ó Cléirigh on behalf of Sustainable Energy Ireland, it was decided that support would be offered for

two 25 MW demonstration projects. When the Minister, Deputy Dempsey, announced the latest round of the AER programme, he indicated that wind would remain the dominant renewable technology available to achieve our 2010 target. However, wind is an intermittent fuel source. Electricity is produced when the wind blows, which is not always necessarily when the consumer demands it. There are therefore management issues regarding the amount of wind which the network can accommodate at any time whether the project is onshore or offshore.

From the consumer's point of view, electricity produced onshore and offshore is identical. The difference is production cost. Offshore wind energy has a significantly higher cost base than onshore wind. Industry sources report that the cost of installing a megawatt of offshore wind capacity can be up to double the cost of the equivalent capacity being generated onshore. As a result, the cost of electricity produced from the offshore plants supported by AER VI will impose a significantly higher charge per unit on all electricity consumers than the onshore equivalent. Under the AER programme, additional costs are charged to all consumers as a public service levy. There is therefore logic in minimising that levy. While it is appropriate to facilitate demonstration projects to a judicious extent offshore in order to keep up to date with the technology, the fact that there is substantial unexploited potential onshore suggests that the latter should be favoured.

The European Union has addressed a directive to all member states to increase the consumption of green electricity by 2010. The obligation addressed to Ireland is to deliver a programme capable of increasing the amount of electricity from renewable energy sources to 13.2% or approximately 1,400MW of total consumption by 2010. It is acknowledged at EU level as a challenging target. It will require us to more than double existing capacity within five years. This is the minimum target the Minister is demanding. The overall target is to optimise the amount of renewable energy technologies which can be connected to the network while maintaining safe and reliable supply and reasonable retail charges for consumers.

### Special Educational Needs.

**Mr. J. Phelan:** This issue involves a child in Kilkenny with special educational needs. The situation was brought to my attention a little over a year ago by the principal of the school the child attends when the school was having difficulty securing resource hours from the Department of Education and Science for the child. The child cannot speak. Anybody will agree that this is a severe impairment for a child in infants class in a primary school.

After the principal contacted me, I took the usual parliamentary route for pursuing these queries. One of the mechanisms I adopted was putting down a parliamentary question, through

Deputy Enright, in the other House. I was surprised, indeed shocked, that an official of the Department of Education and Science telephoned the principal of the school in question on the day before the parliamentary question was answered to tell the principal that the child was not eligible for resource hours.

Why was the school principal contacted on the day before the parliamentary question was answered to be told the resource hours were not applicable to the child? Why did the Department deny to me in formal correspondence any knowledge of this child's case yet when I made a freedom of information request the file on the child was discovered in the Department? Why did it take 19 months for the resource hours which were allocated to the child to be confirmed? This was only confirmed following the freedom of information request.

Does this type of occurrence happen regularly? Many children in this country have special educational needs. Are many of these children granted resource hours but not told about it by the Department for 19 months or longer? The school in question did everything by the book. It contracted a psychologist to assess the child two months before the child was due to start in the school. The psychologist spent two days assessing the child and sent the findings to the board of management. The board of management forwarded the assessment to the Department.

The Department said it would investigate the situation and that resource hours would be awarded within five or six weeks. However, the school's board of management had to pay for a special needs assistant for this child for almost two years out of its funds. Will the Department refund the board of management of this school for doing the Department's work in this case?

The case angers me greatly. I have been in politics for six years, in Kilkenny County Council and the Seanad, and I have never encountered such a case of neglect. The officials in the Department were attempting to pull the wool over my eyes and those of the school principal, the child concerned and the child's parents. Children are the most vulnerable members of society and a child with special educational needs is surely the most vulnerable of that group. I do not wish to get angry with the Minister of State because he is not directly responsible but the way this case has been handled by the Department of Education and Science leaves a great deal to be desired.

I hope the Minister of State has answers to my questions. The situation has certainly not been satisfactory to date.

**Mr. Gallagher:** I was not aware of the details of this matter before now but it is clear from Senator John Paul Phelan's contribution that he is sincere and that his objective is to ensure that something like this does not happen again. I will outline the position of the Department of Education and Science regarding the matter of

resource teaching support for the pupil in question.

More than 5,000 applications for special education resources, including one for the pupil in question, were received in the Department of Education and Science between 15 February 2003 and 31 August 2003. Approximately 1,000 of these applications, which were in respect of new pupils who would be beginning school in September 2003, were prioritised and responded to before or soon after the commencement of the school year in September 2003.

Unfortunately, due to the large numbers of applications that were received, the application for the pupil referred to by the Senator, which should have been dealt with as a priority as the child in question was beginning school in September 2003, was not prioritised in the manner outlined. The application submitted by the school for resources to meet this pupil's needs was received in the Department before the deadline of 31 August 2003. This application should have been processed as part of the "new entrant" batch received in advance of September 2003 and should have been given priority.

However, the application was not seen by the National Educational Psychological Service until November 2003. It recommended 2.5 hours resource teaching per week for the pupil. At that stage a response should have issued to the school sanctioning the 2.5 hours for the pupil. Unfortunately, this did not occur due to the large number of applications that were being dealt with by the Department of Education and Science at that time.

At this stage and having considered the circumstances involved in this case, the Department agreed in March of this year to sanction 2.5 hours resource teaching support for the pupil. Furthermore, due to the long delay in sanction, the Department has also agreed to increase this to five hours per week resource teaching support to the end of the current school year. These additional hours were sanctioned in March with immediate effect.

The Minister for Education and Science has announced the introduction of a revised general allocation system in September of this year and the school will be advised of its allocation under the new system in the near future. This allocation will enable the school attended by the pupil in question to provide for her special educational needs on an ongoing basis. Part of the reasoning behind introducing a general allocation system of resource teaching allocation for children with high incidence special educational needs is to ensure that the type of situation that arose in this case cannot arise again in the future as schools will be automatically resourced to provide for the special educational needs of such children without the necessity of submitting applications with supporting psychological assessments to the Department for consideration.

Senator John Paul Phelan asked why the principal was contacted the day before the question

[Mr. Gallagher.]  
was answered. I do not know the answer but I will try to establish it. He also inquired why the Department denied all knowledge of this matter and why the file was only discovered following a freedom of information request. All I can say is that I am quite sure no official in the Department decided this file would not be processed. It was one of 5,000 files, 1,000 of which were prioritised. It is unfortunate that this happened. The Department has clearly stated that when the file was sent to the NEPS the decision regarding the 2.5 resource teaching hours was approved but, unfortunately, it only kicked in later that year. In March of this year it was increased to five hours. I hope that has compensated in some way for the delay in the processing of this case.

From my knowledge of the system as a public representative and of the officials who work in that area who are under a great deal of pressure, they give a good service. The Senator can take it from me that there is nothing in this matter that

is in any way sinister or intentional. The fact that he raised the issue resulted in the file being discovered. We are where we are and we cannot turn back the clock. I hope the additional 2.5 resource teaching hours since March to the end of this year will compensate in some small way.

**Mr. J. Phelan:** I acknowledge the Minister of State's response. I accept he is not directly responsible but I wish to put on record how disgusted I am with what happened in this case. I appreciate that something happened to the file and it slipped through the net. However, the two years this child has spent in primary education cannot be recovered. It will take more than five hours of resource teaching per week to reverse the damage that has been done, if it is even possible to do so. I accept what the Minister of State said and I hope nothing like this ever happens again.

The Seanad adjourned at 7.35 p.m. until 10.30 a.m. on Thursday, 12 May 2005.