



## SEANAD ÉIREANN

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*Dé Máirt, 31 Bealtaine 2005.*  
*Tuesday, 31 May 2005.*  
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Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

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*Paidir.*  
*Prayer.*  
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### Business of Seanad.

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

The need for the Minister for Education and Science to provide funding for a new science room, or refurbishment of the existing room in St. Macdara's College, Templeogue, in accordance with an application for funding which was lodged with her Department in 2002.

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

The need for the Minister for Health and Children to provide an update on the design brief for the Tuam Health Campus, County Galway, as the design was completed by the former Western Health Board in October 2002 incorporating a community hospital, Alzheimer's disease unit, child care training centre, primary care unit and an ambulance base.

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

The need for the Minister for Finance to give a detailed breakdown of the €2.5 billion tax breaks enjoyed by the pension industry; to list the top ten individuals; and the top ten schemes benefiting from the tax breaks and the value of each one.

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

The need for the Minister for Education and Science to provide a list of all primary and secondary schools which lack the necessary facilities to provide the level of physical activity recommended in the national task force on obesity report, such as the schools in Castleknock, Dublin 15, and also to provide an estimate of the level of investment needed to ensure that each school has adequate facilities for physical education classes.

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

The need for the Minister for Community, Rural and Gaeltacht Affairs, to act immediately to ensure that the internationally known brand name of Dingle survives and is permitted in the promotion and signage of An Daingean outside of the Gaeltacht, and to remedy the situation whereby foreign tourists are driving around County Kerry with maps in English and road signs in Irish.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment and I have selected the matters raised by Senators Brian Hayes, Kitt and Terry and they will be taken at the conclusion of business. Senators Morrissey and Coghlan may give notice on another day of the matters they wish to raise.

### Order of Business.

**Ms O'Rourke:** The Order of Business is No. 1, statements on the aviation action plan to be taken on the conclusion of the Order of Business and to conclude not later than 5.30 p.m., with the contributions of spokespersons not to exceed 15 minutes, those of all other Senators not to exceed ten minutes and the Minister to be called upon to reply not later than five minutes before the conclusion of the statements; No. 2, Safety, Health and Welfare at Work Bill 2004 — Report and Final Stages, to be taken at 5.30 p.m. and to conclude not later than 6 p.m.; and No. 3, Disability Bill 2004, Second Stage, to be taken at 6 p.m. until 8 p.m., with the contributions of all Senators not to exceed 20 minutes.

**Mr. B. Hayes:** Will the Leader make time available this week for an emergency debate about the disgraceful revelations in the "Prime Time" programme on RTE last night concerning a nursing home? While the programme focused on one nursing home and most homes, private and public, are run in an exemplary manner, there is widespread public concern following last night's "Prime Time" programme. It is clear that we need a statutory independent inspectorate which can issue reports in a more transparent way than is done by the Health Service Executive. Does the Leader agree that the health authorities should have the power to close down nursing homes which clearly are in contravention of public health regulations and regulations governing treatment of the elderly? This is a very serious matter which has exercised the country since the airing of last night's programme. The Minister of State with responsibility for the elderly should come into the House before the end of the week to make a statement on the matter.

I ask all Members on all sides who have expressed views in connection with the ratification process of the European constitutional treaty to hold their fire and not take up entrenched positions in advance of the Council meeting in

[Mr. B. Hayes.]  
 mid-June when all member state Prime Ministers will gather to discuss the position post-French decision. Clearly, the French no vote, is a body blow to the treaty. We need time to reflect on it and see the consequences. Irrespective of one's position on the treaty, 90% of what is in the treaty is already in place in existing treaties. That will continue in place irrespective of the other 10% which is new. We need to learn from the decision in France and consider the anticipated domino effect — the objective that one country's support would lead to ratification in other countries. That will become unstuck now. I ask Members not to take up strong entrenched positions in advance of the mid-June meeting between all the EU Prime Ministers and leaders.

**Mr. Norris:** I join Senator Brian Hayes in asking for a debate on nursing homes' treatment of the elderly and congratulate a former Member, now Deputy O'Dowd, who was crucially involved in this matter. I say that because he is a former Member of this House and a fine politician not from any partisan view because there are many on the other side who are equally concerned and have a professional commitment in this area. It was very worrying to see the development of bed sores. Last night's broadcast was an excellent informational programme on which RTE should be congratulated for having taken the risk. Attempts were made to prevent RTE showing it. The programme highlighted issues such as the development of bed sores. Most people just assumed, as I did, that bed sores develop automatically in certain circumstances when people are old but the experts said there is absolutely no reason for them if people are turned in their beds in the proper way. We have learned a great deal from the programme, which was quite shocking.

We should consider legislation in this area as we must strengthen the inspectorate. What is the point of giving warnings to those who are inspecting? If it is announced in advance that inspectors are coming to inspect a nursing home, one blows one's chances of finding anything wrong. A nursing home has never been fined or closed although there are 30 nursing homes against which there are complaints. I do not believe this is confined to private nursing homes. Those elderly persons in the care of the State need to be looked after also because I know there are problems in that area, partly because of understaffing, pressure being exerted on people and so on. One could not say that in the case of private nursing homes charging €45,000 per year. I would expect to get cocktails at 4 p.m. and to be turned every half an hour if I so decided.

**Mr. Leyden:** The Senator should not go there.

**Mr. Norris:** As this is an issue that affects all of us, either directly or through our relatives, the Seanad should properly consider it.

I wish to raise one further item, a bank robbery involving a shooting in Navan, because it is a most interesting situation and one that should give pause for thought. People are horrified by the increase in gun crime. I trace it all back to the so-called republican community because it helped to introduce guns and drugs into this country but that does not mean we cannot examine the position. It is very important to examine the situation. I was horrified to listen to the unending stream of gloating calls to the radio which said the gardaí should have shot them all. The callers had no sympathy for the families but the families may not have had anything whatever to do with it and they are human beings.

I also feel great sympathy for the gardaí who are decent, fine people. I understand one garda was in tears which is a very human response. However, when there is a situation where no shot was fired from the other side and several shots came from Garda sources, it is in the interests both of the Garda Síochána and the citizens of this country that there should be an independent inquiry. Otherwise we will be told that what we have in the South is a shoot to kill policy—

**Ms White:** That is ridiculous.

**Mr. Norris:** —and we squawked loud and hard when this was happening in Northern Ireland. We owe it to the Garda Síochána to make sure an independent inquiry is held. I will end on this point.

**An Cathaoirleach:** The Senator has elaborated sufficiently.

**Mr. Norris:** The Minister for Defence, Deputy O'Dea, said in a newspaper article in reference to Deputy Costello:

As if to add insult to injury, Costello referred to the Lusk shootings with the extraordinary phrase: "Where people die as a result of Garda action, there must be a proper procedures for an independent investigation into such incidents".

Is this how Costello and the Labour Party perceive what happened at Lusk post office?

**An Cathaoirleach:** We do not have control in this House over what Members of the other House say.

**Mr. Norris:** Deputy Costello's reaction is most sensible and is in line with what happens in every civilised country. It is no condemnation of the Garda Síochána that there must and should be an independent inquiry.

**Mr. McDowell:** I endorse what others have said on the subject of nursing homes. What we saw last night was deeply shocking. This situation was inevitable, given the utterly chaotic way in which nursing home places and nursing homes have been dealt with in the past number of years. The

former Minister for Finance, Mr. Charlie McCreevy, put in place a tax break and the creation of places has been driven entirely by the need to get bricks and mortar in place before a certain date and not by any planning nor any assessment of the available staff, nor by any assessment of the need in a particular area. There are now too many places in some parts of the country and too few in others. There are also too few public places everywhere and inadequate staff numbers in most of the country. This type of abuse arises because of the lack of an adequate inspectorate. It is high time we had a proper debate on the subject in this House and in the other House.

I also largely agree with what has been said by Senator Brian Hayes about the result of the French referendum on the EU constitution. In the next few weeks or months it will be necessary, as has been said by the British Foreign Secretary, Mr. Jack Straw, to reflect on whether this is the appropriate way to ratify the treaty. We thought we might organise a virtuous domino effect but we are very likely to produce a negative effect instead. At the very least we are looking at a situation where getting the treaty ratified by even those countries that seem willing to do so will lead to a measure of atrophy in the workings of the EU Commission and the European Union in the next two years as we struggle from one referendum to the next. We must consider what is to be done.

I ask the Leader to convey our congratulations to the newly appointed French Ambassador and through him to the newly appointed Prime Minister of France, Dominique de Villepin. I attended a lecture which he gave in Dublin Castle last year, as did other Members of the House. He is a man of great knowledge, notwithstanding his politics. He also knows a great deal about Ireland and he could reasonably be called a friend of Ireland.

**Mr. Dardis:** Over the past several weeks there have been calls in the House for debates on lawlessness and crime because people are rightly concerned about these issues. With regard to the incident at Lusk, the first and most important thing to say is that nobody wants to see the loss of human life in any circumstances. It is also important to say that members of the Garda Síochána are putting their lives on the line for the citizens of the State—

**Mr. B. Hayes:** Hear, hear.

**Mr. Dardis:** —and there should be some recognition of that fact.

**Ms Ormonde:** I agree.

**Mr. Dardis:** In many of the media reports subsequent to the event in Lusk it did not appear that this fact was taken into account. The House should express its gratitude to the gardaí for the way in which they look after us, the public and

the State. There should be no compromise on that and to say it is not to be in any way unsympathetic to the loss of life. We must decry the loss of life and we await the reports that will be made on the incident. It is essential that the House reaffirms its support for the forces of law and order in the State.

On the matter of the French referendum on the EU constitution, the French people have spoken and it would be appropriate for us to reflect on and debate the outcome. The best time to do so would possibly be after we have considered the outcome of the ballot this week in the Netherlands and next month's EU Council of Ministers meeting. One of the difficulties is that such referendums are increasingly becoming votes of confidence in the government, which is being confused with the merits of the constitutional treaty. As one who is an enthusiast for the adoption of the constitutional treaty, I hope we will support it here.

We were all appalled by what we saw in the "Prime Time" programme last night from which serious issues clearly arise, most centrally related to the rights of patients. Having seen the programme it seemed that the rights of the patients had been trodden upon, which is not acceptable. We look forward to measures being introduced to deal effectively with the issues that were raised. In the face of a rapidly aging population it was appropriate to introduce measures to encourage investment in nursing homes. What takes place inside such homes is separate from the need for additional nursing home places.

**An Cathaoirleach:** I wish to explain that some latitude is given to the leaders of the groups. Some 14 Senators are now offering and as they know of the time constraints I ask them to be as brief as possible to include them all before the time expires.

**Mr. Finucane:** I support what has been said by Senator Dardis. We have consistently linked the growth in criminality with drugs. Human life is no longer sacred, particularly in our urban areas. We have recently seen a big increase in the shootings of criminals. We must compliment the Garda, which is an unarmed force whose members consistently put their own lives at risk. The Minister recently allocated more than €6 million to Operation Anvil to try to tackle the problem and the incident in Lusk is a good example of tackling it. While we all regret the loss of human life, people who use pistols and other dangerous weaponry on an indiscriminate basis run the attendant risk of others being armed. This incident has struck a resonance with people, which is why they have empathised with the Garda on radio phone-in programmes. The people are sick and tired of the level of criminality in the country and want it to be rooted out. We must show solidarity with the Garda in this situation.

**Mr. Leyden:** I fully support a debate on private nursing homes. The mission statement for the Leas Cross nursing home claims: “The care we provide to our customers is second to none.” It claims to have in-house medical consultants and its website states: “We listen to our residents . . . if there is anything extra they need we provide it for them.” The website also claims: “We provide residential care of the highest quality for those seeking a pleasant retirement. We listen to our residents and are constantly seeking to improve our service.” Last night’s programme showed evidence of psychological and physical abuse which is disgraceful. People who watched the programme were moved to tears.

I commend those involved in the making of the “Prime Time” programme. I also commend the Minister of State for calling on the Garda to carry out an investigation and press charges against those engaged in the psychological warfare carried out against those old people, which was despicable.

**An Cathaoirleach:** We are not discussing the matter now. The Senator has made his point. Is he calling for a debate?

**Mr. Leyden:** Yes. The families of the residents also have a role to play to ensure that the proper standards are applied.

**An Cathaoirleach:** We are not discussing the matter now. When we have the debate the Senator may raise all those matters.

**Mr. Leyden:** I ask the Leader to arrange an emergency debate on the matter. On the Lusk situation, I compliment and support the Garda Síochána, which defends our rights and integrity. Those who live by the sword die by the sword. Would we have preferred a member of the Garda Síochána to have been murdered last week, rather than people who are prepared to take guns in their hands and shoot other people?

**Mr. Norris:** What about the RUC?

**Mr. Leyden:** As far as I am concerned, the gardaí had no other response to a loaded gun pointed in their face.

**Mr. Norris:** The same was true of the “Gibraltar three”.

**Mr. Leyden:** Like everyone in this House, I would regret anyone losing his or her life, but if people armed with guns turn up in a post office or a Garda station to shoot members of the Garda Síochána at will, the latter have no option but to defend themselves and our interests. Last Monday, one of the post offices near the county council was robbed—

**An Cathaoirleach:** I call Senator Coghlan.

**Mr. Coghlan:** I share the concerns regarding the situation in Lusk and compliment the gardaí. Like Senator Hayes and others, I am also worried about nursing homes. We are all agreed that last night’s programme revealed an appalling situation that shows a clear need for regulation and inspectors to ensure proper standards.

With the Cathaoirleach’s permission, I would like to ask the Leader about the agreement between the National Parks and Wildlife Service and a Dutch university regarding research to be conducted in Killarney National Park. I am aware of growing concern among conservationists and wildlife officers about the impact on the habitat and wildlife in the park. Ostensibly it is research into sustainable tourism. I would like to hear more about it and ask that the Leader request a debate with the Minister for the Environment, Heritage and Local Government, Deputy Roche.

**Mr. Dooley:** I too would like to raise the issue of nursing homes, which was dealt with in last night’s “Prime Time” programme. It is of great concern to see how the elderly are being treated. I agree with other Senators, particularly regarding the role of next of kin, which those concerned are obviously neglecting. I would like the Leader to take into account the question of prior notice. There are various agencies in this country, such as the Criminal Assets Bureau and the special investigations unit in the Department of Agriculture and Food, which have the power to swoop on those whom they seek to govern without notice. It is a crazy situation that we grant that kind of notice to people betraying the elderly, destroying their lives in the way that we saw last night. That they should get prior notice, allowing them to clean up their act a few days in advance, while we facilitate people turning up at farmers’ gates to deal with issues immediately is crazy.

**Mr. Quinn:** When we read in the newspaper or hear on the radio of raids such as that which happened in Lusk, we are frightened and motivated to do something about them. Last Thursday night, two armed gangsters raided one of my supermarkets with balaclavas and sawn-off shotguns. One meets the people who had to go through that, talks to them because one knows them and hears of their experiences, and then realises that this was the 30th raid in the area in the past month — I am not sure that the figure is exact, but I am told that it is approximately that. On the same night, another gang, without revolvers but with syringes, raided another supermarket. I mention this because it reminds us of the horror and frequency of what is happening, of which I was unaware.

Last year a proposal was made that a Taser — a gun that sends electric shocks but does not kill — should be introduced. There was an outcry because it was considered completely unsuitable. When one compares using real guns and Tasers, one sees that we must change our attitudes in the way we did following the death of Veronica

Guerin. We passed laws and did things that we had not done before to stop the drug barons. We must now give serious consideration to the issue. The fault is our own, as a nation and as legislators, and we must do something about it.

**An Cathaoirleach:** Eight Senators are offering, and we have only eight minutes, so I ask them to be brief. I will not be able to accept any more Senators.

**Mr. Glynn:** I support my colleagues who condemned the practices in that particular nursing home. As someone who worked in that profession for some years, it was flabbergasting that the problem of pressure sores was so extensive. It is one of the most basic nursing procedures and there are many mechanical apparatuses that contribute to the prevention of pressure sores, such as ripple beds, roto-rest beds and so on. However, it is the professionals working in that home who puzzle me. They should be called before the fitness to practise committee. I have long stated that there should be an inspectorate of hospitals and nursing homes.

**An Cathaoirleach:** There will be a debate on this in which the Senator can raise all of those points.

**Mr. Glynn:** Even where there were public beds, no right was extended to health board members to visit those institutions.

Following the incident in Lusk last week, I would like to affirm my total support for the gardaí. Anybody who goes in to a post office with a loaded gun goes in to murder. That has been proven time and again as the concept of self-preservation kicks in. He that loveth the danger shall perish therein.

**Ms Terry:** I agree with all of those who expressed their shock at the programme broadcast last night. The way in which we care for our elderly people reflects the type of society in which we live. When families research a nursing home and pay money to have their elderly parents looked after, they are entitled to the best of care. When the State entrusts someone to the care of a nursing home, it is obliged to ensure that person is cared for properly. The Minister must put in place the regulations necessary to ensure we get the best of care for our elderly people. We were told this morning that legislation would be in place by next spring, but we cannot wait that long. We do not want any more elderly people placed in danger and what we saw last night is happening in other nursing homes.

**Dr. M. Hayes:** I support those who seek a debate on nursing homes. The Minister should look at the situation that pertains in Northern Ireland, where a social services inspectorate carries out scheduled inspections and spot checks. We do not need to wait for regulations because

many of these people are placed there by the health boards.

**Ms O'Rourke:** Yes, they are public patients.

**Dr. M. Hayes:** The health boards have a contract and they can put whatever conditions they want in the contract.

It seems there is a necessity for the relevant Minister to bring forward legislation on the regulation of charities. We were promised this some time ago. I support the position of Senators Dardis and Moynihan on the gardaí. It is unreasonable to expect a garda to wait until he is shot before he can respond. These events make an unanswerable case for the establishment of a Garda ombudsman who would move in quickly and provide an important independent judgment on whether this was done properly or not.

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

**Mr. Cummins:** I called for a debate two weeks ago on the neglect of our elderly in the light of a report published at the time. What we witnessed last night was absolutely appalling and something will have to be done about it urgently. I call for the Health (Nursing Homes) Act 1990 to be amended urgently and an independent inspectorate to be put in place. It is right that we complimentary RTE on the programme. It was investigative journalism at its best.

I compliment the gardaí who placed their lives on the line during the robbery in Lusk. Gardai do so on our behalf every day in the course of their duties. I agree with Senator Maurice Hayes that the existence of a Garda ombudsman would offer the best means of investigating incidents such as this.

**Labhrás Ó Murchú:** I wish to take up the point raised by Senator Brian Hayes. In small countries like Ireland, citizens realise fully what it means to be part of a partnership such as the EU. The Union provides us with protection and opportunities. One element of that partnership is the European Court of Human Rights. I am pleased that this court will next month examine allegations of British collusion in the Dublin-Monaghan bombings. The Justice for the Forgotten group is to be complimented on its perseverance on behalf of its members' loved ones. The group contends that the British authorities did not provide information to the Irish inquiry because that information would demonstrate the extent of collusion by the British army and the RUC with loyalist terrorist gangs. I hope we will give the group every support in its case before the European Court of Human Rights.

**Mr. Browne:** We must examine the issue of how nursing homes are defined. Difficulties arise for those involved in their management because they are currently classified neither as commercial properties nor as hospitals. I brought a case to the attention of the House some months ago

[Mr. Browne.]

of a nursing home in Carlow which had a substation for a telecommunications company located in its premises. The nursing home was in receipt of €50,000 over five years for facilitating the substation but no action could be taken against it because there was no formal definition as to whether the home was a commercial property or a hospital. The situation must be clarified because the patients in this instance were exposed to risks from the associated equipment.

Will the Leader agree to a debate on the function of regulators? We learn today that landing charges are set to increase and will be regulated by the aviation regulator. It seems regulators serve merely to sanction proposed price increases instead of querying and perhaps rejecting them as they should. This is especially the case in regard to the ESB given that the Commission for Energy Regulation has allowed prices to increase four times in recent months. This is not the purpose of a regulator.

**Ms K. Walsh:** I support Members' comments on the nursing home situation. However, the question must be raised as to whether the families of those resident in the Leas Cross nursing home were aware of any problems in regard to the treatment received by their relatives. I congratulate the gardaí who by their actions during the robbery in Lusk have preserved other lives.

**Mr. Kitt:** I welcome this week's debate on the rights of those with disabilities. It is important that we should also have a debate as soon as possible on the rights of the elderly. It is clear following last night's television programme that this is a question of human rights. Action must be taken to provide more State beds. There are many applications from the former health boards and the HSE to the Department of Health and Children seeking the provision of more beds. I hope such provision will be made soon.

I congratulate RTE on last night's programme. In regard to the costs of private nursing home care, it is necessary to examine the issue of the nursing home subvention. It seems nursing homes in the east receive approximately three times the subvention paid to those in the west. It is time this situation was reviewed.

**An Cathaoirleach:** That issue will be discussed as part of the debate on this matter.

**Mr. Kitt:** It is important that there be equity in terms of the subventions paid to those with elderly relatives in nursing homes.

**Ms White:** I congratulate the sole Member of the Labour Party present today for the bold initiative on child care taken by Senator O'Meara at that party's conference. I would also like to say that imitation is the best form of flattery.

**Mr. Coghlan:** It must be tied into the south east.

**Ms White:** I met the Minister for Finance last December. I congratulate the Labour Party for following Fianna Fáil's initiative on child care.

**Ms Terry:** As Fianna Fáil is currently in Government, it has the opportunity to put measures in place.

**Ms O'Rourke:** Senator Brian Hayes raised last night's programme on nursing homes and the need for an independent inspectorate. I concur with his assertion that, while the HSE is not currently permitted under the 1990 Act to close nursing homes immediately, it should have this right. Situations are often so awful as to require knee-jerk responses. Last night's programme revealed terrible acts of vandalism on people. Like Senator Terry, I am unsure whether we can wait for action until next spring. Emergency legislation should be introduced to allow the health authorities to respond.

The 1990 Act provides a framework for appropriate amendments in order to strengthen legislation in this area. I was reminded of man's inhumanity to man and events of the last world war, including Dachau. However, these events, which went beyond unkindness, took place in this city and possibly in other locations. People were badly treated despite relatives paying significant sums of money for care. We should keep in our minds the image of the woman who was being changed. She was treated recklessly and in an awful manner.

Senator Hayes also asked that we would not express trenchant opinions on the EU constitutional treaty before the next Council meeting takes place. By that time, wise heads will have worked through this matter.

Senator Norris also discussed the nursing homes issue and called for legislation to be strengthened. I would like to embrace the whistleblowers rather than the programme makers for revealing situations about which we should all be aware. The Senator also complimented the Garda on the shootings in Lusk.

Senator McDowell claimed that some nursing homes are chaotic and have inadequate and untrained staff. It is clear that improper health care is provided. He also raised the EU constitution and congratulated the new French Prime Minister whose appointment followed quickly on the previous incumbent being booted out of office after the referendum.

**Mr. B. Hayes:** If only that would happen here.

**Ms O'Rourke:** It will not happen here.

**Mr. Browne:** Does the Leader think it a good idea?

**An Cathaoirleach:** The Leader without interruption please.

**Ms O'Rourke:** Senator Dardis expressed his gratitude to the gardaí who put their lives on the line in Lusk and his regret at the loss of life. Any comment on this matter should include such regrets. No one glories in death. The Senator noted the vote of the French people and the rights of patients involved in the nursing home scandal.

I remember that Senator Finucane previously raised the matter of criminality and the identification of people. Senator Leyden called for an emergency debate on the nursing home issue and expressed his support for the Garda. I did not know of the post office raid which he mentioned. Senator Coghlan commented on the nursing home issue and asked about the status of the research into the national parks and wildlife service.

Senator Dooley raised the issue of prior notice for nursing home inspections. A cigire can go into schools without giving such notice. Advance notice of inspection should not be given to anybody who runs a service. The only way we can find out what is happening is if an inspector can call in whenever he or she wishes.

Senator Quinn spoke about his supermarket and others which were raided. It is only when one speaks to people who have been in such circumstances that one becomes truly aware of the panic and great worry which arise.

Senator Glynn spoke about the "Prime Time" programme on nursing homes and the need for an inspectorate to visit them. While the Senator said procedures and equipment were available to deal with medical problems, the owners of the homes in question were not interested in that. They were interested only in money — the bucks in their fists — and piled in beds and employed inadequate numbers of staff to that end. Senator Terry also expressed her shock at the programme. The problem is with public and private nursing homes, all of which should be subject to extensive scrutiny.

Senator Morrissey spoke about nursing homes and the need for legislation on charities, with which I agree. It often strikes one that the significant sums raised by charities suggest a need for regulation. The Senator supported Senator Dardis on the Garda and spoke of the need for a Garda ombudsman. The House has passed the Garda Síochána Bill, which embodies the proposal for a Garda ombudsman. The Bill is before the Dáil, though I do not know on what Stage.

**Mr. B. Hayes:** It is on Committee Stage.

**Ms O'Rourke:** Senator Cummins called for an independent inspectorate of nursing homes, which I remember him raising in the House previously. He said gardaí place their lives on the line, which is true on a daily basis.

Senator Ó Murchú said we should continue to support the Justice for the Forgotten campaign. Senator Browne said a telecommunications sub-station had been situated at a nursing home in

Carlow, something of which I am not aware. He also spoke about regulators. It is better to have regulators. If there were a nursing homes regulator——

**Mr. Browne:** They keep increasing charges.

**Ms O'Rourke:** No. The aviation regulator, Mr. Bill Prasifka, does not simply increase rates, but examines the background to each application. Proper safety measures and security regulations at airports costs money. As one cannot skimp, it is better to be regulated than not. While I acknowledge that people have arguments about big Government, we cannot have it every way. If we want regulation of services, we have to pay for it.

**Mr. Browne:** My point is financial. They are increasing costs.

**An Cathaoirleach:** Order.

**Ms O'Rourke:** Senator Kate Walsh referred to the nursing homes scandal and paid tribute to the Garda. Senator Kitt spoke about the rights of the elderly. We say a great deal about the rights of various groupings, of which the elderly are the least able to stand up for themselves. I agree that more beds are needed. Senator Kitt also said nursing homes in the east receive approximately three times the subvention paid to those in the west.

Senator White was very generous in congratulating the Labour Party and, in particular, Senator O'Meara on her child care initiative. People should watch out. They heard it here first that Senator White will soon be bursting into print on the matter.

**Mr. B. Hayes:** We hang on her every word.

Order of Business agreed to.

#### **Aviation Action Plan: Statements.**

**Minister for Transport (Mr. Cullen):** I welcome this opportunity to address the Seanad on the aviation action plan that was approved recently by the Government. In deciding on this major and comprehensive plan, the Government has clearly demonstrated confidence in the future of our aviation sector and for that reason has set out a clear strategic direction and an unambiguous mandate for growth. The net result will be a stronger aviation sector and a better future for the economy, customers and staff.

The Government has decided in principle to allow the sale of a majority shareholding in Aer Lingus in order to facilitate an equity injection into the company while retaining a significant stake to protect the State's key strategic interests. The Government also decided to appoint advisers to advise on the size, type and timing of the Aer Lingus sale transaction. This decision is the culmination of detailed and comprehensive consider-

[Mr. Cullen.]

ation of the various options facing the company that has taken place over the past year. It is now widely accepted, including by the unions, that Aer Lingus needs access to equity finance in order to grow and prosper. The Minister for Finance and I are moving quickly to engage advisers and to consult with the company and staff, as appropriate. I understand that the newspaper advertisements in this regard will be published before the end of this week. In selecting the most appropriate transaction mechanism, a range of key issues will be taken into account, including the price achievable. As regards the timing of a transaction, this will be dictated by the company's needs, its performance, the state of the aviation sector and market conditions.

A key part of the decision is the mandate to the board of Aer Lingus to prepare and submit a plan for future profitable growth as soon as possible on the basis that additional equity capital will be available within a reasonable timescale. This decision allows Aer Lingus to secure funding for new aircraft and, in turn, to open and compete on new routes, particularly long haul routes. The investment will result in a strengthening of the Aer Lingus balance sheet and will ensure that equity funds are available to Aer Lingus as part of its overall funding mix. This is a key issue. In order to compete effectively, Aer Lingus must have the same funding flexibility as its competitors. This was clearly identified in the Goldman Sachs report as being crucial to the future success of the airline as well as being essential for financial stability.

For Aer Lingus to maximize its growth potential, in addition to having access to funds, it must have a competitive cost base. It is, therefore, vitally important that the existing business plan is implemented in full. This will ensure that the airline has an appropriate cost base to support the growth plan which the board has been mandated to complete. It will be critical over the next few months that management and staff work together to achieve this objective. With access to funds and continued progress towards greater productivity, Aer Lingus will be able to compete effectively and grow profitably both on short haul and long haul routes.

From an operational point of view, Aer Lingus has been performing well in recent years in a difficult climate for aviation. However, given the volatility of this sector where nothing can be taken for granted there must be a clear focus on the key issues that will provide the basis for a successful and profitable future for the airline. The two most important of these key issues are funding flexibility, which the Government is now addressing, and the company's cost base, which management and staff are addressing. A forward-looking strategic plan for growth based on clarity and progress on these issues is the next step. That is why I have focused on making the correct long-term decision for Aer Lingus. I do not want the crisis cycles to keep repeating. I want to focus on

growth not survival. This decision provides the essential framework for the future of Aer Lingus. It removes uncertainty and allows the airline to plan and take the key decisions on a timely basis which is essential in this fast moving, volatile but dynamic sector.

I now want to deal with the concerns on key strategic matters which have been expressed in the context of the State reducing its shareholding in Aer Lingus. These concerns relate to issues such as the loss of the Aer Lingus brand, loss of direct transatlantic services and the loss of slots at Heathrow. In order to address these concerns the Government has decided to maintain a significant minority shareholding in Aer Lingus. In addition, other options such as specific shareholder agreements, covenants or commercial arrangements between the State and the company will be examined over the coming months with advisers to ensure that key concerns are adequately addressed in the context of reduced State ownership. Retaining ownership of over 25% means, under Irish company law, that the Government cannot be forced to sell its shares and can also deny other shareholders the ability to pass special and extraordinary resolutions such as making changes to the memorandum and articles of association.

While I will take appropriate measures to protect key strategic issues I do not share the negative views of the Opposition on all these matters. I have no concerns that any prudent investor would want to destroy a premium brand like Aer Lingus or would cease to operate profitable transatlantic services directly to and from Ireland. New investors will want to see Aer Lingus flourishing in all its existing markets as well as exploiting the potential new long-haul routes present.

I am also aware that increasing the commercial opportunities for Aer Lingus in terms of services between Ireland and the US is an important element in the overall strategic future for the airline. I will be endeavouring to achieve this outcome over the coming months. Aer Lingus has stated it could double traffic on US routes within a three to five year period if the market is opened up.

Currently, Aer Lingus can only operate scheduled services to five US points under the bilateral aviation agreement. These are New York, Boston, Chicago, Los Angeles and Baltimore. This restriction, which has been in place for many years, is the response of the US authorities to the requirement in the bilateral agreement that all airlines serve Shannon as often as they serve Dublin.

Addressing this issue involves making adjustments to the bilateral aviation agreement between Ireland and the US. In doing so, we must seek to secure the best outcome for Aer Lingus, our national tourism industry, Shannon Airport and the Shannon region. In particular, I am conscious that the new board of Shannon is now producing a business plan for the airport and that clarity on future transatlantic aviation policy

would be very helpful to that business planning process.

Negotiations between the EU and the US on an aviation agreement, which would result in "open skies" across the Atlantic, are not active at present but it is likely they will resume after the June Transport Council, at which the Council will review the possible elements of an EU-US agreement. This meeting is only a few weeks away. In the meantime, I am keeping the Ireland-US aviation agreement under review, having regard to the EU-US negotiations.

I welcome the recent appointment of Dermot Mannion as chief executive of Aer Lingus. I understand he will take up office in August. I express my appreciation to the chairman and board for their ongoing efforts in directing the airline. The staff, in particular, are due our thanks for their efforts. They work in a difficult industry and have had to adjust continually to change. I assure them we will engage with the unions and the ESOT in a spirit of partnership to progress the Government decision to ensure a viable future for Aer Lingus with the maximum number of sustainable jobs.

On the recent Government decision regarding capacity provision at Dublin Airport, the decisions on terminal capacity at the airport are also a key part of the aviation action plan. In terms of access, inward investment, economic development and tourism generally, Dublin Airport is, and will remain, the metropolitan gateway to the State.

It is also noteworthy that the national spatial strategy has acknowledged that the expansion of the level of air services from Dublin Airport to a wider range of destinations is essential in the interests of underpinning Ireland's future international competitiveness. Notwithstanding the greatly welcome increase over recent years in traffic at Shannon and Cork airports, and indeed at some of the smaller regional airports, Dublin Airport will remain crucial to the national economy as a vital strategic component of national infrastructure.

The Government recognises the urgent need to provide for additional terminal and pier capacity at Dublin Airport. It agreed that the Dublin Airport Authority will build and own the new second terminal and the objective is to have the new facility operational in 2009. Following consultation with its customers, the Dublin Airport Authority will develop the most cost-effective options for the design, building, financing and operation of the terminal. Recognised independent experts with appropriate aviation and financial expertise will be approved by the Government to verify the proposal on its behalf.

Under the Dublin Airport Authority's current legislation, the operator of the new terminal will be selected through a fully open competition, which will be organised by an appropriate independent group or body. Selection of the successful tenderer will be on the basis of the most economically advantageous proposal. The agreement

between the Government and ICTU, which was agreed in tandem with last year's negotiations on the mid-term review of Sustaining Progress, will also be reflected appropriately in arrangements for the conduct of the competition.

The Commission for Aviation Regulation will ensure that the level of investment is appropriate through its statutory role in setting airport charges. I am aware that, earlier today, the regulator published for consultation the new draft airport charges determination for Dublin Airport.

In the longer term, the Government recognises that, based on current passenger volume growth projections, further terminal capacity will be required at Dublin Airport by around the middle of the next decade. In this regard the Government decided that preparatory work should begin on examining the current legal and regulatory framework governing the airport for the purpose of identifying any changes that may be necessary to facilitate the delivery of the next tranche of terminal capacity, namely, terminal 3. It is the objective of Government policy to underpin the most cost effective, efficient and timely delivery of terminal 3 in line with emerging aviation trends, through an open, transparent and competitive process.

With regard to contact stands for aircraft, the Government also recognises the priority associated with the provision by the DAA of new pier capacity at Dublin Airport and I have ensured that the authority now has the necessary flexibility to respond appropriately to customer requirements in this area. The Government also agreed that proceeding to finalise the independence of Dublin, Cork and Shannon airports on the basis of viable business plans is critical to achieving the strategic goals of aviation policy. I will be progressing the restructuring of State airports on foot of assessment of the business plans currently being prepared by the airport authorities.

The Dublin and Shannon Airport authorities have been working intensively to identify new business opportunities for Shannon and concluded an agreement last year with Ryanair that will result in significant new business on European routes. Securing access from Shannon to additional destinations can provide new business opportunities for Shannon, and this is one pillar of the approach to future growth by the Shannon Airport Authority. The two authorities have also indicated that addressing the long-standing unsustainable cost base at Shannon is an essential precondition for future viability of the airport. The Shannon Airport Authority is satisfied that necessary cost savings can be achieved and in this regard, I expect that discussions with the trade unions will begin shortly.

Turning to Cork Airport, this is one of the fastest growing regional airports in Europe. Since 1994 traffic at the airport has risen nearly three-fold to 2.25 million passengers in 2004. With its relatively large catchment area, it has good growth potential as evidenced by new routes

[Mr. Cullen.]

launched in 2004 and 2005. Cork Airport will also benefit from the major capital development now underway, including the construction of a new terminal which will have a capacity of 3 million passengers per annum, with the facility to expand to 5 million passengers, as demand requires. New multi-storey and surface level car parks are being provided and a new internal road system is being developed. Cork Airport will therefore be well positioned to respond to the region's growth potential.

The business planning process currently underway will provide a basis for effecting the restructuring and separating of Shannon and Cork as fully independent airports. As required under the State Airports Act, Senators can be assured that the ability of both Shannon and Cork to operate on a completely commercial basis will be fully assessed as part of this process and will be factored into the decisions made.

When taken together, this package of measures will position the State airports as well as Aer Lingus to realise their full potential in delivering international air access. I am sure the House will agree that this strategic approach is necessary to underpin Ireland's competitiveness, industry and tourism and to enable the economy to maximise sustainable employment opportunities. I am pleased that an outcome to the aviation issues has now been concluded in an inclusive manner. My approach has been to engage with all the stakeholders, listen to all views and then put forward a proposal that best delivers for the country. As a result of the Government's recent decisions, for the first time Irish aviation has an action plan that positions it for long term growth.

**Mr. P. Burke:** I welcome the Minister to the House. Some of the decisions that the Government has taken over the last couple of weeks are to be welcomed, belated as they may be. I am pleased to have the opportunity to speak on the Government's recent announcement regarding the aviation sector. However, the so-called "package" is very disappointing and extremely short-sighted. It is typical of the half-hearted and ultimately weak approach that the Government takes to all the serious problems and challenges facing the country's strategic and economic development. There are two major aspects to the Government's recent announcement, namely, the sale of Aer Lingus and the decision to proceed with a second terminal at Dublin Airport. These decisions have resolved little and they have created more questions than they have answered.

With regard to Aer Lingus, I welcome the decision to sell a majority stake in the company. This is a straightforward and economically rational proposal. The facts speak for themselves. Aer Lingus needs over €1 billion in capital to replace and expand its long-haul fleet. It has already self-financed the replacement of its short-haul fleet from within its existing resources but it is clear it is incapable of stretching its resources

to fund the long-haul fleet. It is equally clear that the Government cannot — or should not — endeavour to propose to fund Aer Lingus's long-haul fleet expansion. The Government's resources are needed in more high priority areas such as health, roads and education.

We cannot afford to continue to bankroll Aer Lingus. I am sure other Members will remind the House of the airline's current profitability and no one can argue with that. However, we must also remember that Aer Lingus has been through a number of economic downturns in recent years and the State can no longer afford to take chances with it. It is time to allow the private sector to step in and offer greater investment leverage to the company.

I am sure many Senators will argue that the selling of a majority stake in Aer Lingus will be disastrous for Ireland and that it will result in the danger of losing our airline connections to the wider world, including Europe and the USA. Again, I do not believe this and am confident that the market will dictate.

There has been an enormous growth in the volume of traffic into and out of our airports in recent years. We are all too well aware of the phenomenal growth in travel, foreign holidays or city breaks taken by members of the public. The market exists and is growing. I am confident that no airline, particularly Aer Lingus, is about to walk away from the Irish market while it is undergoing such tremendous growth.

The Irish market remains buoyant and it will continue to be there for Aer Lingus to tap into and exploit. A domestic market leader, such as Aer Lingus, stands to greatly benefit if a significant capital injection to allow it to increase the number and type of routes it is offering to the travelling public is provided. The company has indicated a wish to open new routes to the US, South Africa and Asia. Such ambitious plans offer a major potential for the company's growth and I hope that it will now have to opportunity to advance these plans, which appear to have been under consideration for several years.

Concerns have been expressed that Aer Lingus will lose its identity and that its world famous brands will be diluted. This can be avoided provided the Government puts in place a deal which contains terms of contract that ensure the Aer Lingus brand will be retained. It is crucial that the Government crafts the right type of agreement to ensue that this is the case.

In terms of the landing slots at Heathrow, again, any deal must contain the caveat that Aer Lingus's landing slots may only be used for passengers travelling into and out of Ireland. As regards fears that the slots will be lost to Ireland, such concern relates to my earlier argument that a buoyant Irish aviation market will ensure that the Dublin to Heathrow route will continue to remain much travelled. It is currently one of the busiest and most profitable in Europe and I do not foresee this changing. Indeed, any private sector investor involved with Aer Lingus is most

likely to be eager not only to continue with the route, but to seek to expand it.

If it is accepted that private sector investment in Aer Lingus is on the way there is an urgent need to consider the value of the company, particularly at the time of its eventual sale. Its value will be crucial if the company is to continue to grow, fulfil its ambitious expansion plans and complete its survival plan. This is the real issue and it is one about which most people are appalled by the behaviour of the Government in recent years. The figure of €700 million is now being bandied about by analysts and experts as the company's estimated value. This is despite the fact that it made an operating profit of over €100 million in 2004. This time last year its valuation was much higher, with figures of more than €900 million being regularly quoted. The only answer to Aer Lingus's sudden fall in value lies solely in the Government's corner. It has completely botched the handling of the Aer Lingus issue. For years the Government has promised that it would act and decide on Aer Lingus's future but instead it has dithered and the company has lost more than €200 million in market value.

Last summer matters came to a head when the management team was unable to tolerate any longer having its pleas for a swift decision on Aer Lingus fall on deaf ears. The members of that management team, headed by Willie Walsh whom I wish well in his new position with British Airways, decided the Government had no intention of acting and they cut their losses and left the company. That management team was central to the revival of the airline and it had the potential to grow the company further. This is not to take from the vital role played by members of the staff of the company who must also be congratulated on the work they did in recent years to turn around the company. However, it is true that the management team provided valuable leadership to the company.

Even the Government's report produced by Goldman Sachs acknowledged the importance of the management team and its significance in terms of ensuring continuity during the sale period. Instead the Government's incompetence has meant that management team has walked away and the company has been devalued by €200 million. This is disgraceful. It is a further example, if one was needed, of the Government's inability to effectively govern and secure the national interest. It has squandered €200 million of taxpayers' money.

The situation gets even worse when one considers the Government's approach towards the development of a second terminal at Dublin Airport. Similar to its attitude towards Aer Lingus, it has procrastinated, hesitated and avoided taking a decision on a second terminal at all costs. When it was pushed into a corner of having to act, largely as a result of pressure from the Opposition, and conscious of the appalling overcrowding developing at the existing terminal, it was forced to make a decision.

The result has been a political fudge by the Government and an embarrassing climbdown by the so-called watchdog of the Government, the PDs. The Government has moved from the farcical position of being utterly incapable of deciding on one terminal to proposing a third terminal or two further terminals. A third terminal, as everyone knows, may never see the light of day, but at least it has the appearance of the PDs having gained a crumb from the Fianna Fáil master table. Nothing could be further from the truth. The PDs have promised competition at the terminals, in the aviation sector and in public transport, but three years on we have not seen a shred of competition.

The PDs have rolled over to Fianna Fáil, whose agenda is to appease the constituents of north Dublin. No one can argue that Dublin Airport has a much wider remit. It is a vital piece of national infrastructure and is a crucial generator of economic, business and tourism revenue. The decision on the terminal should have been decided in the national interest, with a fair and rounded consideration of all the issues. This did not happen. We have had a retention of the *status quo* and no prospect of real competition at the airport.

However, what concerns me most is the decision to locate a second terminal on existing Dublin Airport Authority lands. In my view and that of my party, this is a wrong decision. Report after report has come out against such a measure. Such reports include those commissioned by Fingal County Council and the Dublin Airport Authority, which did not favour siting a second terminal on Dublin Airport Authority lands. The reason is simple. The Dublin Airport Authority sites available are too constrained and do not have enough capacity to build the terminal we need. If a second terminal was built on Dublin Airport Authority lands, it would run out of capacity in a short period and we would be back to the current position at the airport, which is one of chronic overcrowding which poses a safety hazard.

Passenger numbers at Dublin Airport are expected to rise to more than 20 million this year alone. I do not see the value in building a second terminal which would cater for only an additional 10 million passengers. If the terminal is not completed until 2010, we will be well on the way to reaching that figure before it opens, given that passenger numbers at the airport have grown by more than 8% in the first quarter of this year alone. Passenger numbers at the airport are rapidly increasing. We need a solution to address provision for such growth, rather than a half-hearted approach to dealing with this issue.

We should adopt best international practice in our development plans for a second terminal. Best practice for the siting of new terminals indicates that they should be on a greenfield site which allows for future expansion. We are pitching our sights too low. We need to plan for at least 40 million passengers at Dublin Airport. We

[Mr. P. Burke.]

are all too aware of the failure to estimate the growth in traffic, particularly on the M50. We are aware of what has happened on that motorway. The congestion on it is a nightmare for motorists. We are faced with funding the upgrade of this motorway which it is estimated will cost €500 million.

The Minister said that a group will be established to oversee the advertising of the sale of Aer Lingus, securing the best deal for the company and selecting the most appropriate transaction mechanism with regard to key issues, including the price achievable. The Minister also said that the open skies policy could have a big impact in opening up more routes. Under the bilateral agreement with the US, we are currently only flying to New York, Boston, Chicago, Los Angeles and Baltimore. Will a decision on the open skies policy be made before the sale of Aer Lingus or will all these details be taken into account by the review group being set up to advise on the best possible deal for the taxpayer?

**Mr. Cullen:** There seems to be some misunderstanding on the part of the Senator. We are not setting up a review group. Advertisements will be placed in the newspapers this week to bring in financial advisers to conduct the sale.

**Mr. P. Burke:** The Minister will bring in advisers.

**Mr. Cullen:** Their role will be to conduct the sale. An impression is being given that a group will be set up to advise us. Any private or public company in similar circumstances brings in financial advisers to conduct a sale.

**Mr. P. Burke:** The Minister has put advisers in place to conduct and advise him on whatever portion of the company will be sold. He also referred to the open skies policy. Will it be taken into account by such advisers when they advise the Minister? Will the company be worth more if an open skies policy is in place? Will all these details be taken into account because such a policy would affect the price we would be able to secure for the portion of Aer Lingus that will be sold, given that its market value has been diluted from €900 million to €700 million on the basis of the figures being bandied about and having regard to the lack of decision making by the Government in recent years.

**Mr. Cullen:** Some 44 new routes have opened in the past four years. That represents substantial expansion of the company.

**Mr. P. Burke:** I hope the Minister will report back to us on that before too long. I urge the Government to reconsider its decision on the second terminal at Dublin Airport. I hope he will opt for locating it on a greenfield site—

**Mr. Cullen:** That is a matter for the Dublin Airport Authority.

**Mr. P. Burke:** —and that he will have the best interest of the taxpayer in mind when making that decision.

**Mr. Wilson:** I welcome the Minister, who is a regular attender here, and his officials to the House.

Aviation issues have been an almost permanent item on the agendas of successive Governments for decades. Since my election to this House almost three years ago, it has regularly come up for discussion on the Order of Business and Private Members' business.

The reality is that there have been many crises in the aviation sector but little long-term planning. At its Cabinet meeting on 18 May the Government approved the aviation action plan proposed by the Minister for Transport, Deputy Cullen. The decision gives Irish aviation a clear strategic direction and an unambiguous mandate for growth. A majority sale of Aer Lingus has been approved in principle with the Government retaining a strategic stakeholding in the airline. I am glad that in his speech the Minister alluded to the retention of at least a 25% stake.

Financial advisers will be appointed to advise the Government on the size, type and timing of the sale. This decision allows Aer Lingus to secure funding for new aircraft and in turn to compete for, and win, new routes. If Aer Lingus flies to and from more destinations it can offer greater choice to consumers, open new markets for Irish tourism and grow jobs.

The Government's decision ensures that for the first time there will be investment for growth rather than just short-term funding to help in a time of crisis. I was pleased to hear the Minister reiterate today that he and the Government are interested in growth, not survival. If the airline is to enjoy its full potential the existing business plan must be implemented in full.

As part of the aviation action plan the Government also approved the building of a new terminal — the famous terminal 2 — at Dublin Airport, to be opened by 2009. The Dublin Airport Authority will commission terminal 2 for which an open tender competition overseen by an independent panel of experts will select an operator. I welcome the fact that the full tender for the operation of terminal 2 will be awarded by the independent group to the most economically sound proposition. It is vital for trade, tourism and our economy as a whole to improve access to Ireland. It is clear that we need extra capacity and I welcome the Minister's commitment to ensuring it is provided as quickly as possible.

A new pier for aircraft parking stands at Dublin Airport will be available from 2007. I also welcome the Government's approval of the triple safeguard to ensure maximum efficiency and cost-effectiveness of terminal 2, as outlined by the Minister in his speech. The three safeguards are

consultation, verification and regulation. Terminal 2 will be designed to meet the requirements of airlines servicing Dublin Airport. To this end, the Dublin Airport Authority will consult in detail with the relevant airline operators.

Aviation experts will independently verify the final specifications and costings of terminal 2. The Commission for Aviation Regulation, in its independent statutory role, will ensure that charges reflect costs appropriate to the building of an efficient terminal. The Minister stated that the commission made an announcement today. The Dublin Airport Authority will consult with the airlines and the independent experts will verify the design. This approach ensures that terminal 2 will provide the best outcome for the customer and the taxpayer.

The aviation agreement makes very clear that long-term demand at the airport will be catered for. Infrastructural logjams are often the result of short-term thinking but this will no longer work. If we are to serve a modern economy we have a responsibility to think about the long term. That responsibility involves anticipating future passenger needs at the airport by advance planning for a third terminal. We need to plan far ahead for the delivery of transport infrastructure. This approach should apply to aviation just as it does for to other forms of transport. Preparing now would yield two clear benefits. First, it will ensure that when passenger numbers determine a third terminal is required we are ready to respond and second, ensuring extra capacity is delivered when it is needed will avoid the costs that would come with providing too much capacity too soon.

In his speech the Minister stated that under company law, by retaining ownership of over 25% of Aer Lingus the Government cannot be forced to sell its shares and can also deny other shareholders through its ability to pass special and extraordinary resolutions, such as making changes to the memorandum and articles of association. There has been a great deal of scare-mongering about this issue. I also welcome the Minister's comments on the loss of the brand, the slots at Heathrow Airport and the transatlantic services.

Senator Paddy Burke stated that this is primarily a Fianna Fáil plan and that the Progressive Democrats received some concessions or crumbs from the master's table. The Senator would use his time better in consulting with his party colleagues and his party's history in regard to Aer Lingus, Dublin Airport and the other State airports. He should also spend more time with his party colleagues working on the new arrangement with the Labour Party, the Green Party, although Green Party members do not like mention of their party in connection with any future potential government, and with the rag bag of Independent candidates which will be needed if his party is to have any chance of forming a government after the next election. Most right-thinking people do not think this group has any

hope of achieving that goal, even when such an assortment of people say "No" to everything.

**Mr. P. Burke:** The Senator has grown very arrogant and it suits him.

**Mr. Wilson:** I congratulate the Minister who has been in office for only seven months. He has consulted widely with the stakeholders, listened to all their views and put forward what I and my colleagues in Fianna Fáil and the Progressive Democrats consider to be the best aviation policy this country has seen.

I pay tribute to the Aer Lingus staff and management for all they did to bring the airline through a difficult period to its present position. The management, led by Mr. Willie Walsh, did a good job but Mr. Walsh was wrong to state that the Government had no interest in the airline. He and his colleagues were more interested in attempting to take over the airline for themselves than in serving the interests of the airline or the people.

I also pay tribute to Ryanair, regardless of what we may think of some of the personalities involved in that airline. Today it announced that its profits have risen by 19% to €268.9 million and that its traffic growth has increased by 19% to 27.6 million. I also pay tribute to Aer Arann which makes a significant contribution to the aviation industry, particularly servicing remote areas. The airline recently celebrated reaching 3 million passengers.

I join the Minister in welcoming the new chief executive of Aer Lingus, Mr. Dermot Mannion, and wish him well in his new role. I pay tribute to the Minister who, after seven months of listening, brought this proposal to Cabinet where his colleagues approved it. I wish him and the proposal the best of luck in the future.

**Mr. Ross:** I welcome this debate and appreciate the fact that the Minister comes into this House quite frequently and is willing to speak and listen to us, if not to take our suggestions on board. At least he attends the House and gives us the opportunity to make those suggestions. This debate, which may have been useful a little earlier, is unreal partly because the events being discussed have been decided in principle but also because the reasons the decisions have been made have little to do with those stated by the Government parties.

There were two driving forces in this great aviation debate, none of which have been mentioned in any of the speeches from the Government side.

It all very well to speak about great strategic interests, visionary decisions, long-term key directions and even to straddle the ideological divide between the Progressive Democrats and Fianna Fáil. Good financial and economic arguments have been made on both sides but the two motivating forces in this debate were purely political. Senator Burke touched on it. What decided the

4 o'clock

[Mr. Ross.] so-called “aviation action plan”, a piece of PR spinning euphemism which will get into the lexicon of the Irish media if the Government has its way? This great plan was decided by a few handful of seats in north Dublin. That was the motivating force. It is regrettable that such an important decision on infrastructure should be decided by someone who is obsessed with the political consequences in his own backyard. I refer to the Taoiseach. That is acknowledged by those outside the political arena as being the truth of the matter and all other arguments are floss, dressed up as some justification for the decision. The Taoiseach would not have minded whether the second terminal went private, public, DAA, or to the entrepreneurs provided it guaranteed seats.

The other agenda driving this debate, to which the Minister referred unwittingly or otherwise, was the trade unions. The Minister referred, as far as I can recollect, to the trade unions three times regarding the necessity to consult with them on all occasions. The same tributes were not paid nor care taken to consult with business and, most important, little care was taken to consult with those who really matter, namely the consumers.

**Mr. Cullen:** That is not true.

**Mr. Ross:** Those who are benefiting from this decision are the Fianna Fáil Party — the Progressive Democrats are suffering — and the trade union movement. This is because they have a coincidence of interest here. The Fianna Fáil Party hopes this decision will hold the north Dublin seats. Its means of doing this is to keep the trade unions happy. The trade unions will be happy if the workforce is happy and in tact. The vast number of staff at Aer Lingus and Aer Rianta are resident in north Dublin. If the trade unions are kept happy, the workers will vote for Fianna Fáil and hold those seats. God help the Labour Party which was completely outmanoeuvred. It sat there while the Taoiseach used his party’s trade unions. The trade unions, in particular SIPTU, continue to fund the Labour Party and dictate policy to Fianna Fáil. It is a pretty good trick. They have both parties in their pockets. That is the agenda which has driven this so-called “aviation action plan”. I do not believe it is an aviation action plan. This is a little sordid deal hatched because Aer Rianta and Aer Lingus had the same trade unions. It was agreed to let the trade unions decide the agenda and to call it an aviation action plan.

There was, however, a minor tussle in the background when the Progressive Democrats kicked up a little and said it did not like the State’s approach and wanted some private enterprise to save its face. It was given a couple of fig leaves but lost its bottle on this issue. It comprehensively lost the Aer Lingus battle on which it was outwitted and just conceded on the airport battle with Aer Rianta.

I have not heard any credible justification for giving the contract to build, design and own the second terminal to the same organisation that has made a complete and utter mess of the first terminal. I would have thought there would have been a *sine qua non* on this issue, that this would be an open tender to all comers, except one which has proved beyond doubt its utter incompetence. However, the Government has decided to award the contract to the one organisation that has proved its incompetence.

It is extraordinary that those who have proved most incompetent are the most convenient. Provided the Government continues to own and dictate the terms of building the second terminal there will be a soft touch. Private industry and the private sector is not anti-trade unions but it is not a soft touch either. It is obvious that as the second terminal is being built the electoral timetable will get tighter and as the demands being made get stronger, the concession made will multiply.

Anybody who would give the Dublin Airport Authority-Aer Rianta this contract could not have been in Dublin Airport during the past 20 years. It is a total and utter shambles. Recently it was voted by Irish businessmen as the worst airport in Europe. I will place a wager with the Minister, and any other Member, that the same organisation will also be the chosen operator of the terminal when the time comes.

This tender process which will be chosen by an “independent” body will arrive at the conclusion that all things taken into account the same State organisation, which has run this slum out in Collinstown in Dublin Airport, should do the same with the second terminal. I do not understand this on any grounds except those of party politics. The most powerful forces, the Taoiseach and the trade unions, have won this battle. The consumer can go to hell for the next six or seven years. The Minister and those who made this decision must know of the anti-consumer nature of Dublin Airport, the cavalier way in which passengers are treated and the monopolies that exist there. Does the Minister park his car out there? I am sorry, that is an unfair question for which I apologise. Does anybody in this House park their car out there? It costs €30 for nine hours parking at Dublin Airport. This is what the Dublin Airport Authority imposes. Does anybody every change money out there? The foreign exchange charges are outrageous.

**Mr. Cullen:** The Senator cannot blame Dublin Airport.

**Mr. Ross:** Sorry, I can blame Dublin Airport and I will tell the Minister why. Dublin Airport charges International Currency Exchange, ICE, €1 million a year. This was the charge insisted upon by Aer Rianta because it had a quasi-monopoly for so long. That is why I blame Dublin Airport.

I accept there is also a small Bank of Ireland branch at the airport but ICE is in a monopoly situation and can charge the customer what it likes. I blame Aer Rianta specifically because its charges are prohibitively high because it is a monopoly. This is one of the reasons competition between terminals might or might not be a good idea. Dublin Airport can also be blamed for the car park charges. The airport is a shambles and a slum. The toilets are disgusting. Everything is wrong because the attitude and the culture is appallingly negligent of the customer.

The other reason this is such an appalling decision is an historic reason which is continuing to this day and which will continue after this happens. Aer Rianta has been a disgrace in terms of political nominees to the board. It has been ruthlessly exploited almost exclusively by Fianna Fáil as a safe reward for party political loyalists who have then decided to run it as a personal fiefdom. I will not go into all the details.

Every Member of the House will be aware of what has been happening in Aer Rianta and the extraordinarily luxurious style in which some of the board members have been capable of enjoying themselves. That system of political nominees goes on to this day and will continue under the present regime. Those who are appointed under whichever party will still be loyal, first and foremost, to the party. This has been one of the diseases of the organisation. There is no reason to believe this will end; they will not be appointed unless they are loyal to the party. If they are thought to be suspect or commercially minded, they will not be appointed or their appointments will not be renewed. The plan for the airport which the House is discussing is utterly flawed.

I wish to speak on the Aer Lingus decision which is part of this deal hatched up to hold the north Dublin seats. On the surface, the decision on Aer Lingus might provide us with some sort of comfort that the State is going to sacrifice and give up its control. The trade unions, playing brilliant ball with Bertie, have made a little bit of noise and said they do not like this very much. The House need not worry because they will not do anything about it; they will not upset the apple cart on this one. They are making all the right noises by protesting a bit as though they did not get their own way which they did.

**Mr. Cullen:** The Senator is a great man for fiction. He should write a good novel.

**Acting Chairman (Mr. Dardis):** Whether it is fact or fiction, the Senator has half a minute left.

**Mr. Ross:** I will finish this point and then conclude. We are informed that 51% of the airline is being sold. This is correct and the trade unions kick up about it. Where will the other 49% be? It will be in the hands of the State and the unions, the old alliance again. They are locked together and they will stick together. Where is the 51%

going to be? It will be distributed everywhere in multiples, dozens, hundreds and maybe thousands of shareholders. Once it is distributed far and wide enough, who will be the largest shareholder? It will be the State, by a very long way. As the Minister proudly said, "Don't worry, lads, we will have 25%, a blocking shareholding." This is the code for the unions. The State will still be in control.

**Mr. Cullen:** It could be Manchester United.

**Acting Chairman:** Senator Ross needs to have his flaps and wheels down at this stage.

**Mr. Ross:** I am just going down the runway.

The other 51% will be distributed in such a way that no one will be able to touch them. The House has heard some scaremongering this afternoon. It is, "We are awfully worried about the slots. We are going to protect them and the brand." Nothing is more calculated to scare off any potential investor than this sort of talk. He will not get rid of the slots unless they are unprofitable. He will not get rid of the brand unless it is valuable.

**Acting Chairman:** The Senator must conclude.

**Mr. Ross:** I am finishing. The State will go on trying to reassure its statist friends and every time this is said, the value of the airline goes down. The truth is that nobody cares. This is a political solution to an economic problem. It is the worst possible solution but the Minister and the Taoiseach's friends in the trade unions can rest assured they have won an enormous victory. They are still in control of Aer Rianta and the second terminal and they are still in control of Aer Lingus.

**Mr. Morrissey:** I welcome the Minister to the House for this debate. Recently I met a Dublin businessman who employs 50 people in a medium-sized industry. He informed me that 20 years ago if one of his machines broke down in Dublin he would be forced to wait until the following day to book an Aer Lingus flight to Birmingham, stay overnight and fly back the next day. His machine would then need to be recommissioned and it would be down for three days. Now he can book his flights for the next month in advance, whether or not he travels and his machinery is back in operation within a few hours. We are very lucky in this small country on the periphery of Europe to have two of the most successful airlines in Europe, Ryanair and Aer Lingus. It is ironic to be debating this subject on the 20th anniversary of the establishment of Ryanair and in the knowledge of its extraordinary success. We are fortunate that Aer Lingus has survived.

This situation pertains today not because of regulation but rather because of competition. Ryanair started that competition 20 years ago and set the standard for Europe and perhaps the

[Mr. Morrissey.]

world for competition in the aviation sector. Aer Lingus has been forced to follow. Much has been made by Opposition speakers of the differences between the Government parties on the aviation package. Much newsprint has been expended and much radio and television time devoted to the aviation package announced on 18 May. It was suggested that divisions existed about the work practices at the new terminal and that differing views were expressed on the flexibility of the new terminal and the efficiency of the existing terminal.

I refer to the issue of efficiency at the second terminal. The wish to read the following quotation:

There's going to have to be a different kind of work practice and different kinds of flexibilities than are in the present arrangements. That has been clear from the start. That is an issue where people can put forward their plan.

That is not a quotation from a member of the Progressive Democrats. Those are the words of the Taoiseach, which match perfectly and consistently the view expressed by his partners in Government in all press statements and at Government regarding what we set out to try to achieve. What we wanted was the best deal for the taxpayer in terms of the cost of the terminal and the future of Aer Lingus. I hope this quotation puts an end to that particular claim by the Opposition. I also hope that newsprint, radio and television airtime can focus on the many policy areas on which the supposed alternative Government agrees. That airtime should be very short.

Almost 12 months ago this House debated the State Airports Bill, involving the break-up of Aer Rianta. In light of the success of the break-up of Aer Rianta, particularly for Cork and Shannon, I remind the House of some the contributions made here at that time. It might be uncomfortable listening for some Members, so I will keep the quotes anonymous. One Opposition Senator said:

This Bill will have major implications for taxpayers, the workers directly employed by Aer Rianta and the travelling public [which, I presume is the consumer] . . . The absence of business plans and the mixed signals from different reports, such as the PricewaterhouseCoopers report or the Farrell Grant Sparks, a report commissioned by the unions, suggested that the combined value of Shannon and Cork Airports will drop by €110 million following the break-up, are very worrying . . . We seem to be approaching this from the wrong direction . . . We are being asked to take a leap into the dark and this is totally unsatisfactory from everyone's point of view.

Another Senator referred to shortcomings in the infrastructure in the immediate vicinity of Shannon Airport and said:

There is no rail link, the bus link is not very good and although the roads are not improving, they are not great . . . While one intuitively feels there is scope for improvement at Shannon, I do not see how a totally independent company, as opposed to independent management, which takes a certain amount of independent initiative, will improve business at Shannon. The Minister has failed utterly to persuade me and many other people that such an improvement will be achieved.

Another Senator said:

My fear is — I do not say this in anger, despair, in shouting or excited tones — that as the Government can no longer subsidise Shannon Airport, it will fall prey to other forces which would seek to use it for their commercial ends . . . We are a very small country and the idea that competition would arise and be dynamic between the three airports is a paltry excuse for putting forward the Bill.

Let me outline what has happened at Shannon. The airport has recently concluded a deal with Ryanair involving flights to Paris, Prestwick, Hamburg, Frankfurt, Liverpool, Stockholm, Milan, Luton, Gatwick and Stanstead. It has also negotiated a deal for a Boston to Shannon route and a Chicago to Dublin route. It has said that its future must be commercial rather than regulated. This has happened in a mere 11 months.

Some Senators said we were taking a leap into the dark and it could not happen. It has happened. This shows what competition has done around the country and it is good for the regions. Ryanair has promised 350,000 passengers this year. By 2005-06 it has promised 1.4 million passengers. This is the single biggest tourism initiative in the country. These flights will be sold throughout the year and not just during the summer. Anybody can sell Ireland from May to August. The difficulty is in selling it off-season. These flights will be all year around and will bring people to the mid-west and western areas, which shows what we achieved last year. Those flights have already received 450,000 pre-bookings, which shows what competition has achieved.

On the building and location of a second terminal at Dublin Airport, it has been agreed that after extensive consultation with the airlines, the Dublin Airport Authority will set about costing and constructing the new terminal. Again that process will be verified. When it has been built real competition will again take place because the operator of the second terminal will be appointed following a competitive tendering process. In that tendering process all costs and prices will need to be on the table as if in a glass bowl. I would not have any problem if the Dublin Airport Authority was to win the contract. Up to now the unions were happy to enter into an agreement for the provision of an independent terminal. They had no problem with the word "independent" and were even willing to buy a 15% shareholding as opposed to getting it for free.

**Mr. Finucane:** What the Senator is saying is in direct contradiction to what he has espoused all along.

**Mr. P. Burke:** It is terrible hypocrisy.

**Acting Chairman:** Senator Finucane will get his own chance to speak.

**Mr. Morrissey:** This is what the unions were prepared to do. It was not to be at a price less than the price for that job in Dublin Airport today — it was at the same price for that job — there was no race to the bottom as we often hear. However, the price to be requested was greater efficiency. I will give an example of such efficiency. Dublin Airport has 140 check-in desks. Some 20 of them, 17%, are operated by Ryanair. However, Ryanair processes 33% of the passengers through Dublin Airport. That is called efficiency and is reflected in its profit figures as cited by Senator Wilson.

When one considers how far we need to travel in the aviation sector one must realise that despite the pain endured at Dublin Airport in recent years, Ryanair has 2,500 staff carrying 28 million passengers. Aer Lingus has 3,500 staff carrying 7 million passengers, which is a quarter of the number carried by Ryanair. Is the Labour Party really suggesting the Government should invest in that model, which is obviously not efficient—

**Minister of State at the Department of Transport (Mr. Callely):** Perhaps Senator McDowell can answer.

**Mr. McDowell:** Of course we are.

**Mr. Morrissey:** — and which is very volatile, cyclical and risky? We in the Progressive Democrats wholeheartedly support an equity stake of considerably more than 50% in Aer Lingus. Only then can Aer Lingus fight the good fight.

**Mr. McDowell:** Is the Senator saying he supports selling an equity stake of more than 50%?

**Mr. Morrissey:** I am saying from 50% up to 60%. The Minister said the Government would retain 25% and there is a further 15% for the staff. If 40 is subtracted from 100, it leaves 60, and a majority stake is anywhere between 50% and 60%. It is only then that Aer Lingus can take its hands from behind its back, where they have been tied for the past few years. It had a Government shareholder that by its very nature could not take a decision. Surely we should have realised by now that the Government should not be involved in such a sector, which is so volatile and risky and in which decisions must be made not within three months but within two or three days. That is where I see the future of Aer Lingus. I have no doubt it will survive and thrive, providing a hub between America and Europe.

Its future success can only be achieved by going out to fight for business with competitive rates.

At a recent Oireachtas meeting, Mr. Gary McGann, the new chief executive of the Dublin Airport Authority, said that the greatest increase in traffic through Dublin Airport had been in the low-cost aviation sector. If that is where the business is, the users of the airport must follow that model. If Ryanair can process 33% of passengers with 16% of the ticket desks, one has to ask what sort of efficiency savings must be introduced. That is why I support the current business plan, and I would support another; business cannot stand still. The Opposition attempted to demonstrate differences within the Government, but one need only look at the last election manifestoes of the parties that would form an alternative Government regarding both the terminal and the sale of Aer Lingus. They are diametrically opposed, while the Taoiseach's comments mirror precisely those of the Progressive Democrats.

**Mr. Finucane:** For God's sake, there has been a change of policy.

**Mr. McDowell:** It is sometimes said there is too much consensus in this House or in politics, but on this issue there is very little. I agree with very little of what Senator Morrissey said and not a great deal of what Senator Paddy Burke said. Of course, I agree with precisely nothing of what Senator Ross said, although I am sure that we would both feel bad about ourselves were it otherwise.

**Mr. Cullen:** What about Senators Finucane and Coghlan?

**Mr. Finucane:** We know Senator McDowell's sentiments after the weekend; he is consistent at any rate. Let us try to be consistent.

**Acting Chairman:** The Senator should try to contain himself.

**Mr. Finucane:** The Minister is being confrontational.

**Mr. McDowell:** The outbreak of fraternity on my left is a little difficult to take at this time in the afternoon.

Before coming to the substance of what I want to say, perhaps I might briefly address two issues that it would be unfortunate to let pass without some sort of comment. The first is the eulogising of Ryanair by Senator Morrissey. He is right to say that it is an extremely successful business offering a decent service to a great many people. However, one or two things should be put on the table. I am not sure to what extent Ryanair really competes with Aer Lingus. They share perhaps three routes in Britain and another three on the Continent. By and large, they serve different routes, however.

The Senator touched on the second argument towards the end of his speech, when he said that

[Mr. McDowell.]

the low-cost sector was the fastest-growing. It is distinctly different from what was traditionally operated by the flag-carriers, including Aer Lingus. It is fair to say that they have increased numbers of passengers passing through the airport, but I am not entirely sure that it has come about through competition. It has certainly not come about through direct competition on large numbers of routes, since there is none. Ryanair is now a largely British-based airline with a relatively small number of services flying from this country and even fewer that directly compete with Aer Lingus.

Another far more important point concerns Dublin Airport Authority. Senator Ross has been remarkably successful in infusing public opinion with the notion that there are horribly inefficient companies that provide no service to anyone. That is simply not fair to Aer Rianta or the Dublin Airport Authority. I accept they have deficiencies, not all of them by any means their own fault, although the design and construction of pier C were not great. Dithering decision-making over the years has not been helpful, but many of those problems were created by politicians, who delayed for a very long time a decision on pier D. In the 1990s they dithered for a very long time before deciding on a growth structure for Aer Rianta or, for that matter, any structure for the company at all.

The company has been dealing with a building that has stood for 50 or 60 years. It has grown incrementally in a not very efficient manner. Perhaps someone should have suggested knocking down the whole thing and starting again some time ago. No one did, however, and one cannot blame Dublin Airport Authority exclusively for that mistake. Aer Rianta, for almost its entire existence, has not only been profitable but very much so. I accept that improvements are necessary, but bashing Aer Rianta is unfair to the company.

The point should also be made that many of the services that operate from the airport are licensed or franchised rather than being operated by Aer Rianta directly, including the shops, check-in, baggage handling and other services where customers come into direct contact with staff. They are not operated by DAA or Aer Rianta staff but by individual franchisees. Of course, it is the overall business of DAA to ensure that such services are delivered efficiently, but the flexibility to do so is limited to the initial decision regarding to whom one awards a franchise, and one does not do that every day. It is therefore not a matter for the day-to-day management of DAA. I am not making excuses for it, but we need a sense of reality.

That impinges on the judgment regarding whether any sort of decent or serious competition is possible between competing terminals in the airport. Frankly, I do not believe there is any reality to that. It certainly does not apply to the customer or passenger. If I wish to fly to Rome

in the morning, I cannot simply say that I would like to take an aeroplane from terminal one rather than terminal two. One simply does not have that choice, which will be made for one by the airlines.

I suppose that the terminals can compete to attract the business of individual airlines, but how do they do that? Do they provide less expensive services or better ones, or do they simply not provide any? I am not persuaded that it can operate in an efficient, genuinely competitive manner that feeds through to better or cheaper services for the customer. I do not see that happening, and in any event it is clear that it is unlikely to occur as a result of the current process.

I will spend most of my time on Aer Lingus. The decision is fundamentally wrong and flawed, assuming it means what it appears to mean. The Government has merely announced, very tersely, that it will dispose of a majority share. It has not decided the capital base it thinks appropriate for the airline or how it will divest itself of that 51% or 61% share — whether it will be by private placement or by IPO. I do not think that it has decided what the end result will be in ten or 15 years, or whether it will retain the 25% share thereafter.

The Government has decided that it will appoint yet another series of financial consultants to advise it on those issues. I heard the brief discussion between Senator Paddy Burke and the Minister for Transport, Deputy Cullen, when the latter appeared to say that the financial consultants were there only to sell the airline. That is not really in line with the Government's statement of last week that they were to advise on the type and timing of the disposal. It did not state that those people would look after the disposal. If that is the case, perhaps the Minister might clarify the matter.

This is not by any stretch of the imagination the first time the Government has made a decision of this kind. In 1999, it decided on an IPO, and the assumption at that stage was that it would be of the 85% of the company the Government still held. That was subsequently cancelled.

The Goldman Sachs report the Government commissioned last year is very interesting and quite accessible, judged against similar publications. I will briefly relate three observations to invite the Minister to comment on them in his reply. The first point is that any transaction undertaken regarding ownership structures should address the raising of equity capital for the company at the same time as effecting the change of ownership. It also states that a change in the *status quo* without ensuring an adequate capital base for the company would not be advisable. The point is surely that these are two quite distinct and separate issues and that the Government must address them as such. There is no indication that the Government has addressed the capital structure.

The second point raised in the report is that any partial divestment or introduction of a new

investor should be viewed as the first step towards an eventual exit by that investor and probably the State, through a subsequent sale or IPO. That was the advice that Goldman Sachs gave to the Government less than a year ago. I would like to know if the Government considers that such an observation is valid.

Third, the report states that the ability to retain control of strategic issues will be adversely affected by the introduction of any new investor, although potential measures to mitigate this effect may be established. Goldman Sachs is clearly signalling to the Government that looking after the strategic interests will be extraordinarily difficult in circumstances where it is divesting itself of a majority shareholding in the company. These issues must be addressed by the Government now, especially if it has come to a conclusion on them.

On previous occasions in the House I have outlined my view and the view of my party on the strategic nature of Aer Lingus and I do not intend to repeat it, but I would like to explore the basic rationale for its disposal, which is to give the company access to capital markets. The argument is made that the company needs up to €1 billion over the next five to seven years in order to replace the long haul fleet. We could punch holes in that particular argument, but let us accept it today for the sake of the argument. How does the disposal of 50% of the airline manage to do that? Let us assume that the Government receives €350 million for the disposal of its 51% share. Are we to understand that the Government intends to reinvest that money in the company? The company will by then be a majority privately owned company. Will the Government simply pocket the money or is it the intention to reinvest all or part of it on condition that the private sector investor also does the same? This assumes that a big institutional shareholder or another airline wants to take a significant chunk of the airline.

Unless the gearing of the company is substantially increased or unless some of the assets are disposed of, then an initial public offering of 51% will not come remotely close to meeting the supposed capital needs of the company. Those capital needs are the rationale for selling it in the first place. This is a fundamental misfit which must be addressed by the Government.

The claim is made that a part private, part public, part worker owned company allows access to the capital markets and thus allows the company to borrow. Where stands the argument that the company's gearing is wrong, thus preventing it from borrowing? If it goes on as it currently does, in five years' time its gearing will be unacceptable. That would surely also apply in the case of this new triple owned company. If the essential rationale for part privatising Aer Lingus is that enough money is needed to do a certain job, namely, to reinvest in the long haul fleet, the very least we can expect from the Government is a clear indication on how that will release the

capital. From what little we have been told by the Minister thus far, it is not clear at all.

Senator Ross anticipated that in a relatively short period of time, the ownership of Aer Lingus would be dispersed and that there would be hundreds or even thousands of individual shareholders. That may be the case but I doubt it. Within a relatively short period of time, either institutional shareholders or another airline will hold a majority share in the company. In five to ten years, the State's shareholding will be diluted. We can see that very clearly from the experience of other previously wholly owned state carriers in Europe, where the initial shareholding of the State has been slowly but surely reduced, either by further disposals or by the issue of more shares to raise capital. In a relatively short period of time, the State's holding will fall below the level needed to block an overall takeover. We must anticipate that whatever the initial result of an IPO, those who really want to own the company will do so. The likelihood is that in ten years' time, British Airways or some other large international company will own Aer Lingus.

British Airways may be interested in maintaining the brand or maintaining the services to Naples, Hamburg and other destinations that Aer Lingus have recently opened up. However, it may not be interested in doing so in any recession. After I was first elected to this House in 1992, there was a major crisis at Aer Lingus. At the time, the services that were losing most money were the transatlantic routes. We made the argument, accepted by the Government, that although they were loss making, they were still important services to Ireland and they were maintained. I am not persuaded that in similar circumstances, a private operator would have retained those services. They may have been restored after 12 or 24 months, but a privately owned Aer Lingus at that time would have closed down the transatlantic routes. No one in either House has suggested that would be a good thing.

Given the cyclical nature of the business, it is necessary to take a strategic view of what is a strategic asset. My party is in favour of investing in what is a profitable company that is also a strategic asset. There is an onus on the Minister to stand his proposal to scrutiny, even on its own terms.

**Ms White:** There should be an international competition for the design of the new airport building that is to be built by 2009. Dublin Airport is chaotic at present. I am flying out of there on Friday and I dread it.

**Mr. P. Burke:** Will the Senator support my party's position?

**Ms White:** I am calling for an international competition for the design of the new airport as it is critical.

**Mr. Dooley:** I welcome the Minister to the House for this important debate. We have had a number of debates on all elements of aviation policy announced in the last few weeks. It is welcome to get clarity once and for all on these issues. I will try to address those elements that have a particular relevance to the west of Ireland, the mid-west and County Clare in particular.

It is important that the right solution is found for Dublin Airport. There was much negative comment during the last few months over the perceived delays by the Government in making this decision. It is much better to spend the time going through the planning stages rather than jumping to conclusions much too early.

Successive Governments from all sides have been responsible for making shoddy decisions on future planning for infrastructural projects. That has got us where we are today with decisions on the West Link toll bridge and on other infrastructural projects that did not take account of the expected growth. I welcome the fact that the two parties in Government have played an active role in ensuring that the right decision was made.

There was an effort on behalf of the Opposition to drive a wedge between the coalition partners on Dublin Airport. It was perceived by some elements in the media and in the Opposition that there were differences of ideology. I am sure that there were not and that the best interests of society were taken into account by the two parties coming together.

A comprehensive package of measures has been put together to ensure the level of development required to cater for the future needs of the travelling public. It is good that this decision has been arrived at. However, there have been references in the media to the effect that it is a fudge.

**Mr. P. Burke:** The public knows it is a fudge.

**Mr. Dooley:** From the perspective of the media and the Opposition, they did not succeed in their aim of driving a wedge between the Government parties and creating the false dawn of an election. That was wishful thinking.

The decision of the Government in this matter has once again shown the resilience and ability of the two Government parties to work together for the betterment of the public. There is no doubt regarding the integrity the measures and decisions taken in this matter and the Government will continue to manage all necessary policy elements into the future —

**Mr. Browne:** Has Senator Dooley been in Dublin Airport lately?

**Mr. P. Burke:** There will once again be chaos there this Thursday.

**Mr. Callely:** Thousands of passengers pass through Dublin Airport every day without experiencing any difficulties.

**Acting Chairman (Mr. U. Burke):** Deputy Dooley should be allowed to continue without interruption.

**Mr. Dooley:** The Government parties have the capacity to ensure the policies that are required will be developed and delivered in the coming years.

In regard to the decision to sell a partial interest in Aer Lingus, the Minister and several other speakers observed that Aer Lingus requires access to working capital in order to ensure it has the capacity to compete with other significant players in the market and to develop the type of route structures it has previously been unable to target. The necessary replacement of the fleet, and the long-haul fleet in particular, should allow Aer Lingus to target markets in the Far East and to ensure Ireland has a capacity to look further than mainland Europe and the United States. We are all aware of the importance of the emerging markets in the Far East, especially China. Their significance is recognised in the Government's Asia strategy as is the importance of developing business links——

**Mr. P. Burke:** Will Senator Dooley undertake research on these new markets?

**Mr. Dooley:** Senator Paddy Burke is well aware that I intend to do so. It is important that the country as a whole should establish itself as a base for investment from Asia, particularly China, with a view to ensuring the continued growth of our economy.

The Minister, Deputy Cullen, addressed a number of the issues that remain to be considered. Of particular importance is the strategic issue of the slots at Heathrow Airport. The Government's decision to retain a crucial shareholding in Aer Lingus will ensure those slots are protected. An issue that is critical from the perspective of the west and mid-west is the importance of daily access to the United States. This is critical for tourism and for the development and retention of the business that has been established in the region on the back of the work done by Shannon Development over many years. As Senator Finucane is aware, an integral part of this is the necessity to ensure direct daily links between the east coast of the United States and Shannon Airport.

Anything that might threaten this would be of great concern not only to me but to all Oireachtas Members who represent the mid-west. However, the retention of the golden share in Aer Lingus will ensure the Government is in a position to deal with this issue over the coming years. There has been much talk in this regard about the liberalised market and the open skies policy in particular. The upside of this is the potential growth for Aer Lingus and the east coast but there is an equal amount of concern in the mid-west regarding the lack of service in that region. I hope the Government will utilise its influence in terms of

the share ownership to ensure Aer Lingus continues to provide direct daily services from the west.

There is no doubt that the open skies policy is a major issue for Shannon Airport. I compliment the progressive approach of the group of organisations that have come together in the mid-west from both the public and private sector with a view to embracing the changes that will arise as a consequence of the open skies policy. This group is prepared to accept the challenges that lie ahead but has also clearly stated the necessity of support from the Government. I am hopeful that support will be forthcoming. What is required is a transition period to allow for the phasing in or out of the current bilateral situation. The current arrangement involves a one for one system in terms of the landing of aircraft from transatlantic points. The group to which I referred has stated clearly that a five-year period is required to facilitate the restructuring necessary for the transition to the open skies situation. This seems to be a reasonable timeframe.

There is a necessity to improve the infrastructure in the region to ensure the future viability of Shannon Airport. It is not merely a question of the future viability of the airport as a stand-alone structure. Shannon Airport has been and must continue to be a key driver in developing the economy of the region through foreign direct investment and through facilitating the business interests and the major international corporations that have developed there. It also serves as a gateway for tourism right along the west coast.

Critical in this regard is the upgrading of the N18 from Galway to Ennis to dual carriageway status, which is already under review by the NRA. This will reduce the journey time from Galway to Shannon to approximately 50 minutes and will ensure that large centre of population can provide Shannon Airport with the throughput of traffic that is so badly needed. Although it is already at an advanced stage in terms of the acquisition of lands, the fourth river crossing in Limerick must be expedited. I ask the Minister of State to consider these key infrastructural requirements as a matter of urgency.

Another important element is the delivery of the first phase of the western rail corridor. A rail connection from Ennis to Athenry will facilitate access to Shannon Airport for rail passengers from Galway. As part of

5 o'clock

this, the Government should secure the immediate involvement of Iarnród Éireann in the development of a rail spur from the Ennis to Limerick line which will connect at Sixmilebridge through to Shannon Airport. This is a short section of railway but it would make a significant difference to the airport in that it would create a triangle between Limerick, Ennis and Shannon. This would also facilitate access from Galway and the west if the western rail corridor becomes a reality. An issue that relates to tourism interests and Bord Fáilte Ireland is the necessity to deal with the marketing and branding of the region to

ensure it is capable of dealing with the challenges that lie ahead.

I wish to put on record the tremendous commendation that is owed to workers in public sector companies for their ability to recognise the challenges ahead and their willingness to embrace the change necessary to take these companies into an environment in which competition is very much part of the reality, in a manner which will allow them to develop. Those who have devoted their lives to the development of these businesses — especially Aer Lingus workers — deserve all our recognition and thanks. Any changes to work practices must be undertaken in a sensitive way that takes cognisance of the tremendous input workers have made over the years. In many cases they have forgone wage increases in line with practices and customs that existed for many years in order to allow certain restructuring to take place. It is important at a time when we are discussing the part-privatisation of Aer Lingus that we should recognise the contribution that the workers, including those who have retired, have made to the company.

**Mr. Finucane:** I propose to give two minutes of my time to Senator Browne.

**Acting Chairman:** That is agreed.

**Mr. Finucane:** I welcome the Minister of State, Deputy Callely. We are all grateful that the Government has finally made a decision on this issue. This was a classic example of Shakespeare's observation that procrastination is the thief of time. The Government dithered over this matter for months. Senator Dooley referred to the media but it was the Government that caused all the media speculation. I am amazed by Senator Morrissey's inconsistency during the debate in this House. He has given many radio interviews during which he repeated the Progressive Democrats mantra of the importance of competition. It seems to be game, set and match to Fianna Fáil regarding the terminal. At long last, the dithering is over and this decision has been made.

**Mr. Callely:** The big issue is that we must make the correct decision.

**Mr. Finucane:** As the Minister of State has said, we are holding a round table discussion on this issue. He should not interrupt me because I am able to take him on over various issues.

**Mr. Callely:** I will take on Senator Finucane any time he wishes.

**Mr. Finucane:** The Minister of State would be a good man were he to address the NCT.

**Mr. Callely:** I have done so.

**Mr. Finucane:** I wish to speak on the issue of Shannon, which concerns people of the mid-west region. We debated the State Airports Act 2004,

[Mr. Finucane.]

the break-up of Aer Rianta and the creation of the Shannon authority on an autonomous basis but have not as yet reached a conclusion. The chief executive, Mr. Pat Shanahan, and his board have approached their business in a serious manner. Shannon, which has a current debt of €77 million, has lost money for many years. The Minister for Transport made a promise to this House that, with the break-up of Aer Rianta, Dublin Airport Authority would take over the debt of Shannon. Last year, Shannon lost almost €3 million. Passenger numbers there experienced a decrease of 0.3% compared to 2003, whereas Dublin experienced an increase of more than 17%. Shannon Airport Authority, in order to attract Ryanair's business, made the generous concession of €1 per departing passenger, thereby incentivising air travel in that area. We are grateful to Mr. Michael O'Leary for opening up four further airports to travellers from Shannon.

However, much uncertainty remains over Shannon Development's future as an organisation to promote industrial development in the mid-west region. For a long time, it has acted as a catalyst for industrial development and as a stimulant to tourism in the region. A cloud of uncertainty hangs over this organisation. I have often been critical of it but ultimately praise its work. Recently, the Tánaiste stated that the Shannon free zone would have to bankroll the new Shannon Airport Authority. Shannon Development was correct to say that this would have a catastrophic effect on its viability.

A further cloud of uncertainty hangs over the dubious decision to decentralise Enterprise Ireland to Shannon. It is dubious in that a mere two or three people have volunteered to transfer from Dublin to Shannon. The belief within Shannon Development is that it will be absorbed by Enterprise Ireland when the Minister of State at the Department of Finance, Deputy Parlon, finally decides, over the preferences of the Dublin staff, that the latter organisation will move to Shannon. It is significant that within a few days of signing his contract with Shannon Airport Authority, Mr. O'Leary claimed that the collapse of an Italian airline, Volare, meant that up to six Italian airports were competing to attract Ryanair at more attractive terms than those offered by Shannon. This serves as an example of the existing uncertainty and competition.

The discontinuation of the bilateral agreement is a cause for concern in Shannon. This must be examined in the contexts of the Minister of State's speech and Aer Lingus. If the bilateral status of Shannon is discontinued, followed by the sale of 51% of Aer Lingus, that airline will then become more profitable through the opening of the American market. How is this reconciled with a situation where a prominent director from Shannon said that the discontinuation of the bilateral agreement would be accepted on condition that it is phased over five years? These

five years would help Shannon to remain economically sustainable.

How will the Minister of State square the circle? Will obfuscation recur until the next election in two years time? Decisions may not be made on the sale of Aer Lingus or the bilateral agreement because local politics dominate the thinking of the Government, as was always the case for Shannon. However, many of the unfavourable changes which took place in Shannon were brought about by Fianna Fáil.

We await action on the bilateral agreement. It will have the economic effect of displacing approximately 400,000 US passengers to Shannon each year. One million customers of low cost carriers are needed to make up for this economic loss. Clearance of Shannon's debt will require an estimation of the airport's viability. Not only is Ryanair's expansion needed but other low cost carriers must also be attracted.

I am critical of Aer Lingus outside of its transatlantic base. The serious deficiencies that exist in terms of providing a viable service to customers are noticeable if one attempts to make connections between Dublin and Shannon. I wish that Aer Lingus would look more favourably on domestic business and at least provide the opportunity to fly between Shannon and Dublin. Regrettably, that service is not offered at present.

Shannon is important to its region. It has long been an economic catalyst and has employed many people. Uncertainty exists in the region and many pieces of the jigsaw will have to be put in place before satisfaction will ensue. I look forward to a reply which will address the concerns I expressed.

**Mr. Browne:** I welcome the Minister for Transport and his officials to this House. It is amazing that we are still discussing this issue in 2005. I was spokesman on transport for the first two years——

**Dr. Mansergh:** On a point of order, I thought the order of speakers alternated between the two sides of the House.

**Acting Chairman:** The Fine Gael Senators are sharing time.

**Dr. Mansergh:** Was that pointed out? I do not think it was.

**Mr. Finucane:** It was said at the start of the debate. Was Senator Mansergh in the House? If he was, he must have not been listening.

**Mr. Browne:** Most of the spokespersons on this subject have changed, as have the relevant Ministers. As Senator Finucane said, the recent Government announcement was game, set and match to Fianna Fáil. The Progressive Democrats, passengers and taxpayers were definite losers. In years to come, we will look back on this time as a missed opportunity. I have often been asked why Baldonnel was not considered as a

second airport. People from Carlow would welcome this as they would not have to cross the city. Why is everyone forced to use Dublin Airport? Most capitals have two airports.

I welcome the decision to sell the majority shareholding in a firm which will realise important capital. However, we should look carefully at the lessons to be learned from the Eircom privatisation debacle, when taxpayers got a bad deal. Similarly, taxpayers and farmers got a bad deal when Greencore was privatised.

**Mr. Cullen:** While shareholders may have suffered, the taxpayers got a fantastic deal on Eircom.

**Acting Chairman:** The Minister will have time to reply.

**Mr. Browne:** Taxpayers may be regarded as consumers. The Minister might change his opinion if he tried to get a new telephone line or to have a telephone pole removed. The bottom line is that the service to taxpayers and consumers has gone rapidly downhill since privatisation.

I remind Senator Wilson that Fine Gael's record is proud in this area. As Minister for Transport in the mid-1980s, the late Deputy Jim Mitchell allowed for the development of Ryanair, which has revolutionised air travel. It is cheaper to fly with Aer Lingus now than it was 20 years ago. If the prices Aer Lingus was charging 20 years ago had increased as planned, one would have to pay over €1,000 for a ticket which now costs €100. It is important to record the point.

**Dr. Mansergh:** As I believe in being as politically fair as possible, it is appropriate to pay tribute to former Deputy Jim Mitchell for allowing Ryanair to commence operations. I welcome the Minister to the House and the decisions of Government, which are essentially correct. While it is true the State could have invested in Aer Lingus under the Brussels rules, we saw in 2001 that if there were a downturn, all sorts of obstacles would have been placed in the way of such a measure. It would have been represented as subsidisation. State airlines in other parts of Europe went bankrupt as a result of such events. All things considered, the Government's approach is correct.

I noted the Minister's comment that the emphasis in Aer Lingus should now be on growth, rather than just on survival, and the extension of connections to further flung parts of the world such as Asia and South Africa. As Senator McDowell observed, it is an interesting reversal that the transatlantic flights which used to be loss-making are now among the most profitable undertakings of the business. I accept that the 25% plus shareholding which the Government will retain will provide it with substantial leverage in strategic decisions which relate the vital interests of the country. There are few interests more vital than our air connections.

There is an instinctive reaction in some quarters against any form of privatisation. Some of the voices from those quarters were heard at the Labour Party conference at the weekend. I am not inclined to entertain lectures from such voices. I have been around long enough to remember what happened to Irish Shipping which was simply abandoned when the Taoiseach of the day went on what he called a white elephant shoot. I remember the very unhappy outcome of the sale of Irish Steel in Cork to a fabulously wealthy Indian. It was sold a few years later for a nominal amount, the facility was closed and the owner walked away. Without referring to matters which are the subject of tribunals, the sale for a song of the second mobile phone licence was a disgrace given that it was worth approximately €400 million within two years. Where were the then Tánaiste's departmental officials, programme advisors and others when that was done? Contrary to Senator Browne's comments, the taxpayer was not the loser in the Eircom privatisation. One can argue that incipient shareholders had their fingers burnt, but that was a separate issue. The general public interest did not suffer.

It is amazing that discussion of the simple economic law of supply and demand has been absent from the debate on Aer Rianta. Taking air travel and airport charges together, the real cost of air travel has plummeted in the last 20 years. It is not, therefore, in the least bit surprising that demand has soared. It is this which has created the capacity problems we are grappling with currently which are compounded by concerns about security. I accept that Dublin Airport, at which until recently most of us were very comfortable and of which, even, very proud, has become quite difficult to get through. I worry about the effect delays will have on regional connections within the country. If one must wait at the airport for two hours before one's flight, one might as well travel by road to most domestic destinations. There may be a case for establishing a separate, fast-track regional service within the terminal which people can get through without entering the general melee.

While I will not get into the issue of competing terminals with which I have dealt before, a matter which has not been adverted to sufficiently is the extraordinarily high car parking charges at Dublin Airport, especially at short-term facilities. Access to the airport must be improved to cope with the increased numbers of visitors envisaged. I look forward to Government announcements in the reasonably near future on the provision of some form of rail access. If visitor numbers are to increase to between 30 million and 40 million, I suspect more than one type of rail connection will be needed, including a metro and fixed-track line.

Some concern has been expressed about the way in which debt will be managed, especially that of Shannon and Cork airports. While it is important the airports get off to a good start, Dublin Airport is not anxious to be saddled with

[Dr. Mansergh.]

the whole burden. Whether the Government has a role in the matter must be considered.

I reject completely the politically reductionist and populist approach of Senator Ross which reduces everything to seats and political interests. While he has not stated it explicitly, it is obvious the Senator believes the Government should attempt to ride roughshod over the trade unions while ignoring social partnership which works very well. The decisions stand on their own merits irrespective of political considerations.

I endorse everything my colleague, Senator Dooley, stated about improving access to Shannon Airport. Presumably, the 25% Government share will help to maintain connections to the airport. My only doubt is that if it is possible to otherwise ensure connections to Shannon Airport, the five-year transition period which is being sought may be too long.

My final appeal to the Minister is only tangentially related. While I am not in favour of the privatisation of the Great Southern hotels, it is clear that they need another home. The Dublin Airport Authority has no interest in them and the parcel has, unfortunately, been passed through a number of different bodies. A more suitable home must be found for them.

**Mr. Quinn:** I welcome the Minister and the aviation action plan, although I do not think the term is appropriate. I see no connection between the interesting matters of Dublin Airport and the sale of Aer Lingus.

It has not been that long since the House spoke about Dublin Airport and the approach we should take there. I noticed with some amusement as I listened to the Minister's contribution that one of the decisions in the action plan is the completion of pier D as an appetizer to the building of a completely new terminal. It is the same pier D which could and should have been completed long before now had not the interference of the current and previous Governments stopped the project in its tracks. If it had not been for that interference, pier D would be built by now.

As for the new terminal itself, it is perhaps reassuring to learn about the very detailed process that will be carried out before it will be built. However, these are perfectly normal actions that would be taken completely for granted in any public building project. They are being trumpeted as if there is something unique about them. Somebody should tell the Minister that it is not new to look before one leaps, to consider carefully what one builds before it is built and to ensure the money spent is well spent. This is standard operating procedure — or it should be. It may have been necessary to fluff up these details in order to turn this into a full blown action plan. The fact that the Minister has chosen to stress elements that should be part of any building project suggests he is making a hard sell of this. I wish the new board at Dublin Airport all the best

for the future. As far as I am concerned it should be able to get on with the job and should be judged on the quality of what it succeeds in doing.

After much huffing and puffing the Government has decided to sell off Aer Lingus once again. This will be the third time in recent years that it has got to this preliminary stage of selling off the airline. This has been long discussed but the argument never appears to move forward. Perhaps it will now. First, Aer Lingus had to be sold off because it was almost bankrupt. Then we were going to sell it off because it was making a great deal of money. Regardless of the circumstances the answer has always been to sell off the airline. The only reason it has not been sold before now is that the Government has lacked the courage to go through with the deal.

When we debated the Goldman Sachs report here at the end of last year, I surprised more than a few Members by suggesting that on the basis of that report — perhaps it was not expected because of my business background — selling off Aer Lingus at that point was not such a good idea. Nothing that has happened in the past six months has caused me to change my mind on the matter. At the time Senator Mansergh was surprised that such an opinion came from a business person. I have two problems with the sale, one is the price and the other is what we give away. The Goldman Sachs report made it clear that the only way we can sell Aer Lingus is at a discount price. The Minister stated:

I now want to deal with the concerns on key strategic matters which have been expressed in the context of the State reducing its shareholding in Aer Lingus. These concerns relate to issues such as the loss of the Aer Lingus brand, loss of direct transatlantic services and the loss of slots at Heathrow.

He further stated:

Retaining ownership of over 25% means, under Irish company law, that the Government cannot be forced to sell its shares and can also deny other shareholders the ability to pass special and extraordinary resolutions such as making changes to the memorandum and articles of association.

That is the bit that scares me about the price. Would any of us running our own pension fund invest in a company where the 25% shareholder states it is putting into the memorandum and articles of association conditions that specify certain matters that would be protected regardless of whether it would make commercial sense? If that were the case, why would anyone buy such a company at the high price we would hope to achieve?

Either we hold on to the airline or we sell it all off. I am not a believer in holding on to 25% and hoping that the majority shareholder would take an interest in it. That is a bad decision. We should decide to hold on to Aer Lingus and sack the board if it does not do a good job. We have done

this in the past with State companies. The benefit to Aer Lingus of the slots in Heathrow is not unlike infrastructure such as roads or railways. The State should own this infrastructure. The Goldman Sachs report made clear that the only way we can sell Aer Lingus is at a discount price. We will have to sell the airline at a price that is far below its true value. We would be better off holding on to it and financing its fleet replacements from our own resources. We can do that although it is against my usual thinking in this area.

**Mr. Cullen:** We cannot do that.

**Mr. Quinn:** Maybe we cannot. However, if we appoint a board with which we do not interfere whose job is to make a success of the airline, it should be sacked if it does not do a good job. Let us not interfere with it. Let us not be half-hearted and believe we can hold on to 25% of the airline — with the unions holding on to another 14.9% — and believe somebody will pay a good price for 60% of a company because he or she can do the right thing with it commercially. We are wishing for the best of two worlds and we will fall between the two.

**Mr. Daly:** Will the Minister give an update on the current state of play with the bilateral negotiations between the United States and the European Union, especially in regard to Shannon, as he is aware of people's fears in that regard?

**Minister for Transport (Mr. Cullen):** I thank Senators for their contributions to this debate. I was present for most of it and I apologise to those speakers whose contributions I missed. Unfortunately I had to be in the other House at the same time.

I am surprised at some of the analysis drawn by Senator Quinn, as someone who has run a successful company and knows the market well. Many private sector companies have major stakeholders but that does not appear to be an issue. Although I do not wish to draw an absolute analogy with what happened recently with Manchester United football club, it was most interesting that when it was being taken over everybody was deeply concerned about somebody holding on to a 25% stake to block the takeover of the company and prevent it from going private. This is part of the reason the State wants to have some strategic interest in the airline. The one thing we cannot do, which is what we have been doing with Aer Lingus, is expect it to compete with everybody else with one and perhaps two hands tied behind its back.

I have been at pains to say to everybody that the issue is not about giving Aer Lingus a sum of money next week or next month. If it were that simple we would all be fine. Aer Lingus must have ongoing access to the capital markets to make strategic decisions, as would any company. In particular, it must be in a position to do so

when the aviation market experiences a downturn, which it inevitably will, given that it is the most cyclical of all sectors in the marketplace. It must be able to deal with that and have access to capital markets on an ongoing basis. It is not feasible for the State to remain a 100% shareholder.

I have no doubt that if one sold the company in its entirety one would do better but that is not to say that it is not legitimate to keep a stake in the company and see what the market price will realise. I am confident there will be a great deal of interest in Aer Lingus because if the private sector is to invest it will want to make a profit. It will want to invest in a company that is positioned for significant growth. Aer Lingus has the potential for an incredible amount of growth. Planning its growth on foot of the decision will allow it to go to the market, especially to purchase aircraft. The lead-in time is about 18 months to two years so it would need to be doing that immediately.

I am surprised at some of the remarks made about the Dublin Airport Authority. I again apologise for not being present for all contributions. There is a symmetry between the development of the Dublin Airport Authority and Aer Lingus. Aer Lingus is the biggest customer of the Dublin Airport Authority. It is in the interests of the Dublin Airport Authority to make sure that it develops the airport in a way that maximises the airline's ability to grow within the airport. If the Dublin Airport Authority took the wrong decision, that would not be in the interests of the airline. By doing it the wrong way the authority would not grow the airport and thus its own business because it would not increase passenger throughput.

Senator Quinn is correct in saying I am stating the obvious in regard to due diligence. The reason I have done so is that many commentators referred to gold-plating this and that which I considered wrong. It is important that I would spell out the caveats that exist and how we will ensure that would not happen. I agree with Senator Quinn in principle. It is obvious, but sometimes it is necessary to state the obvious.

I do not have a great deal of time to go through what everybody said. We have made good decisions that for the first time will put the aviation sector in a position where it can grow rather than merely cope with a crisis situation. That is a fair assessment.

It is not for the Government to decide the location of the second terminal. It is not for any political party to decide, although Fine Gael appears to state that if it were in Government it would decide. That is not the legal basis that exists. It is a matter for the Dublin Airport Authority.

We should all draw a line in the sand. It is very wrong to be making references to the board of the authority. It is a new board. Its members are well-known and respected by all in the business community. They are regarded as people who have proven themselves to be highly successful. What happened under Aer Rianta, be it wrong or

[Mr. Cullen.]  
right, is history and I will not comment on it. What is important is that there is an entirely new board in place with an entirely new mandate, a clear Government policy and a clear direction. I trust the board has the ability to deliver and I wish it well.

Of course Shannon Airport is extremely important strategically. We have had good discussions with the Americans. There are also issues to be addressed at EU level. I am hopeful there will be a very good outcome which will be good for the development of the aviation business in general in Ireland. No airline, be it Irish or international, has suggested to me that it does not believe there is a great future for Shannon Airport in terms of both European and transatlantic destinations.

**Acting Chairman:** That concludes statements.

**Mr. McDowell:** I appreciate that. However, I posed a number of questions during my contribution, which the Minister has not had time to address.

**An Cathaoirleach:** Statements have concluded.

**Mr. McDowell:** I appreciate that. I am merely making the point that I posed some questions that were not answered—

**An Cathaoirleach:** We will proceed to No. 2.

**Mr. McDowell:** —because of a lack of time.

**Ms O'Rourke:** The Minister can reply to the Senator in a letter.

**Mr. McDowell:** If he could do that, I would appreciate it.

**An Cathaoirleach:** The statements have concluded. We are proceeding to No. 2.

**Mr. Norris:** The Senator is entitled to ask a question.

#### **Safety, Health and Welfare at Work Bill 2004: Report and Final Stages.**

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

**Mr. Norris:** I move amendment No. 1:

In page 11, to delete lines 9 to 12, and substitute the following:

“(b) the collapse or partial collapse of any building or structure under construction or in use as a place of work,

(c) the uncontrolled or accidental release, the escape or the ignition of any substance,

(d) a fire involving any substance, or

(e) any unintentional ignition or explosion of explosives.”

I understand the Government may well accept this amendment. It simply seeks to amplify the terms used in page 11 of the Bill. The terms, as they stand, just refer to materials but the amendment proposes to extend them to include the collapse of a building, a fire involving any substance at all or any unintentional ignition or explosion of explosives. It is well-grounded because the existing definition is too narrow. The amendment is particularly pertinent for me because I remember raising the issue of safety in recent years in respect of an incident in which people were killed in the collapse of a building as a result of an explosion to demolish that building.

One of the general duties of an employer is to report accidents and dangerous occurrences to the Health and Safety Authority. Paragraph (a) of the definition of “dangerous occurrence” relates only to work equipment as far as the proposers of the amendment, among whom I now include myself, are concerned. Unless the definition is tightened, it seems it will not protect workers in the event of the collapse of a building or the explosion of gases, although I am sure this was not the intention of the those who framed it. The amendment seeks to extend the provision so workers will be covered in such circumstances. The collapse of scaffolding would already be covered. I raised this issue after scaffolding collapsed in the Baggot Street area, resulting in the death of at least one worker. Such matters are severe but there is a greater likelihood of injury or death when an entire building collapses. Therefore, I urge the Minister to accept the amendment.

**An Cathaoirleach:** For the Senator’s information, the Government has tabled a similar amendment.

**Mr. Norris:** I see. However, we will still get the credit for it. This morning a distinguished Senator on the Government side congratulated the Labour Party on its wonderful, imaginative initiative—

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

**Mr. Norris:** —concerning child care. Of course the Government got the idea from us in this case. It is a copycat.

**An Cathaoirleach:** We are considering the Safety, Health and Welfare at Work Bill 2004.

**Mr. Norris:** We are but I am merely drawing attention to the principle that if a Senator can, on the Order of Business, draw attention to Labour copying the Government, I can draw attention to

the Government copying the Independents. We are grateful that the Government saw sense——

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

**Mr. Norris:** It is very relevant.

**An Cathaoirleach:** No, it is not relevant.

**Mr. Norris:** The Government is to accept the Independent Members' amendment.

**Mr. Quinn:** I assume I am allowed to second the Independent Members' amendment and share in the glory when it is accepted.

**An Cathaoirleach:** Yes.

**Mr. Quinn:** I second the amendment.

**Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen):** Senator O'Toole tabled this amendment on Committee Stage and we had a discussion thereon. I accepted it was clear that the definition was deficient. However, in the course of discussing the amendment, it became apparent that there was a danger that the words "the uncontrolled or accidental release, the escape or the ignition of any substance" might be deleted by the inclusion of the previous amendment. We can agree on all fronts that amendment No. 1, in the names of Senators O'Toole and Henry, moved today by Senator Norris and seconded by Senator Quinn, strengthens the Bill considerably. I thank them for having brought the issue to our attention and I accept the amendment.

Amendment agreed to.

**An Cathaoirleach:** Amendment No. 3 is cognate to amendment No. 2 and amendment No. 4 is related, therefore, amendments Nos. 2 to 4, inclusive, may be discussed together by agreement.

Government amendment No. 2:

In page 13, line 2, to delete "by regulations made".

**Mr. Killeen:** Amendments Nos. 2 to 4, inclusive, are technical. Under some sections, such as section 66(7), pertaining to an appeal against an improvement notice, and section 67(7), pertaining to an appeal against a prohibition notice, it will be necessary to prescribe the procedures and forms of order for cases in the District Court. These are matters that will be prescribed by the Minister for Justice, Equality and Law Reform. These procedural matters should be prescribed by way of rules of court and not by regulations and this is the reason for these technical amendments.

Amendment Nos. 2 and 3 refer to "by regulations made" and amendment No. 4 seeks the

insertion of the words "by rules made". All these amendments have the same effect.

Amendment agreed to.

Government amendment No. 3:

In page 13, line 3, before "by" to insert "by regulations made".

Amendment agreed to.

Government amendment No. 4:

In page 13, line 5, after "72(3)" to insert "by rules made".

Amendment agreed to.

**An Cathaoirleach:** Amendments Nos. 5 and 6 are related and may be discussed together by agreement.

Government amendment No. 5:

In page 14, line 11, to delete "for gain".

**Mr. Killeen:** In reviewing the Bill, it has come to light that there is a possible inconsistency between the use of the word "undertaking" in section 2(5), which uses the phrase "whether carried on by him or her for profit or not", and the definition of "undertaking" in section 2(1). For this reason it is important that amendments Nos. 5 and 6 be accepted. I am concerned that the Bill will cover all types of workplaces and the amendments will ensure this.

Amendment agreed to.

Government amendment No. 6:

In page 14, line 12, after "service" to insert "(whether carried on by him or her for profit or not)".

Amendment agreed to.

**An Cathaoirleach:** Amendments Nos. 7 and 8 are related and may be discussed together by agreement.

Government amendment No. 7:

In page 29, to delete lines 19 to 26 and substitute the following:

"(3) The risk assessment shall be reviewed by the employer where——

(a) there has been a significant change in the matters to which it relates, or

(b) there is another reason to believe that it is no longer valid,

and, following the review, the employer shall amend the risk assessment as appropriate."

**Mr. Killeen:** This amendment was discussed on Committee Stage in reference to an amendment tabled by Senator Coghlan and proposed by Senator Cummins. I indicated on Committee Stage that I believed there might be a need for a very minor amendment to their proposal. It involved the inclusion of the word “another”. Amendment No. 7 basically accepts and clarifies Senator Coghlan’s proposal.

**Mr. Coghlan:** It is naturally agreed in that case.

Amendment agreed to.

Government amendment No. 8:

In page 30, to delete lines 36 to 46 and in page 31 to delete lines 1 and 2, and substitute the following:

“(5) Every employer shall, taking into account the risk assessment carried out under section 19, review the safety statement where-

(a) there has been a significant change in the matters to which it refers,

(b) there is another reason to believe that the safety statement is no longer valid, or

(c) an inspector in the course of an inspection, investigation, examination, inquiry under section 64 or otherwise directs that the safety statement be amended within 30 days of the giving of that direction,

and, following the review, the employer shall amend the safety statement as appropriate.”.

Amendment agreed to.

Bill, as amended, received for final consideration.

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

**Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen):** I take this opportunity to thank the Cathaoirleach and Members of the Seanad for their co-operation during the passage of the Bill through this House, and in particular for drawing our attention to the deficiencies addressed by the amendments which have been accepted. I also want to thank the officials of the Department for their help in the course of the Bill, as well as everybody who contributed.

**Mr. Moylan:** I thank the Minister of State and his officials as regards this very important piece of legislation. It is crucial because the health, safety and welfare of people at work are so important. Legislation has been introduced and much work has been done by the Minister and his officials over the years in taking on board so many new health and safety regulations in the workplace. It is a Bill that may well have to be revisited at a later stage as we find out that there

could be some shortfalls or anomalies within legislation. That is something, in the event, that we must be prepared to return to and sort out immediately.

**Mr. Coghlan:** I thank the Minister of State and his officials for this very necessary measure. I thank the Minister of State for accepting some of the amendments we believe to be worthy, which were tabled on Committee Stage. I also thank the Minister of State and the officials for the improvements wrought on one of those amendments. It was a pleasure doing business with the Minister of State and well done to all concerned.

Question put and agreed to.

*Sitting suspended at 5.45 p.m. and resumed at 6 p.m.*

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

**Mr. Moylan:** The Minister of State is delayed due to a vote in the Dáil. I propose that we suspend until 6.15 p.m.

**An Cathaoirleach:** Is that agreed? Agreed.

*Sitting suspended at 6.05 p.m. and resumed at 6.15 p.m.*

#### **Disability Bill 2004: Second Stage.**

Question proposed: “That the Bill be now read a Second Time.”

**Minister of State at the Department of Justice, Equality and Law Reform (Mr. Fahey):** I am pleased as Minister of State with responsibility for equality to bring before the Seanad this important legislation. This Bill, once enacted, will significantly advance the position of people with disabilities and will be instrumental in sustaining progress in the longer term. The Bill is one element of the national disability strategy, launched by the Taoiseach on 21 September 2004. The strategy has three other elements, namely, the Comhairle (Amendment) Bill 2004, six outline sectoral plans and a multi-annual investment programme for high priority disability support services.

The strategy represents a commitment by Government to drive forward a significant evolution in policy and provision for people with disabilities, which has gathered momentum in recent years. Among the established building blocks are the strong anti-discrimination framework of employment equality and equal status legislation, the policy of mainstreaming services for people with disabilities and the significant increase in investment in disability services in recent years. This framework is supported by infrastructure comprising the Equality Authority, the Equality Tribunal, the National Disability Authority and Comhairle which together have had a positive influence on equality, service development and

delivery, and on practices and attitudes generally. These milestones set the context for the national disability strategy and the Bill.

An important aspect of equal access is education and the support of children with disabilities to fulfil their potential through education. The Education for Persons with Special Educational Needs Act 2004 is another important development which has put in place a strong framework for the transformation of special needs education policy. Since last July, the Act creates rights to an educational assessment for children with special educational needs, to the development of an individual education plan and to the delivery of educational services on foot of that plan.

Side by side with equality and mainstream policy development, there has been a significant increase in spending on disability specific services. This year, some €2.9 billion, representing almost 7.5% of gross current public expenditure on services, will be spent in this way. This figure does not take account of income support and other services provided through the Department of Social and Family Affairs. It does not take account of the fact that many people with a disability participate in, or benefit from, mainstream public service programmes and services. The figure of €2.9 billion compares with expenditure of just under €0.8 billion in 1997 — a 3.5 fold increase in eight years.

Building on this successful experience, the Government has guaranteed a multi-annual investment programme totalling over €900 million, comprising capital and current funding for high priority disability support services, over the years 2006-09. The funding focuses mainly on the health and education sectors and will enhance service levels where they are most needed. The multi-annual approach is an unprecedented initiative where spending on services is concerned. Generally, funding to run all Government services is allocated on a year-to-year basis, taking into account existing commitments and expected revenue.

The Bill is unique in the legislation that comes before this House. It seeks to provide for services that come within the ambit of a wide variety of Departments and State agencies. Knowing the cross-departmental nature of the work envisaged, the Government decided at an early stage to refer the process of overseeing the preparation of the Bill and the national disability strategy to the Cabinet committee on social inclusion.

The committee, which comprised 11 Ministers as well as concerned Ministers of State met regularly for this purpose and its work has been supported by a cross-departmental group of senior officials. In the course of its deliberations, the committee oversaw development of the scope and framework for the Bill and took decisions on the way forward on key policy issues.

The published Bill was the subject of extensive consultations with interest groups. Following a request from my Department in April 2002, the

National Disability Authority brought together a group representative of people with disabilities, their families and carers and service providers in the sector. The Disability Legislation Consultation Group — the DLCG — provided meaningful dialogue at national level, within the sector and with Government.

Senior officials and Ministers have had regular contact with the DLCG over the past two and a half years. These meetings, together with the DLCG document *Equal Citizens*, have allowed the committee and the senior officials working with it to obtain a detailed understanding of the issues of concern to the DLCG in regard to the legislation.

The Bill was drafted to take account of proposals in *Equal Citizens* such as a right to an independent assessment of need, transparency as to related services, a right of redress, mainstream service provision and the 3% target for the employment of people with disabilities. Senior officials presented an outline of the Bill to the DLCG in early 2004. The shape of the Bill, as initiated, and the national disability strategy reflect several important elements sought by the DLCG and agreed by the Cabinet committee.

The Bill contains no clause to protect the State against litigation for the breach of statutory duty, which was the case with the much-discussed section 47 in the Disability Bill 2001 and was unacceptable to disability groups. The absence of any such provision represents a fundamental shift in Government policy designed to accommodate widely held concerns.

Another major concern of the DLCG has been that the Bill would be supported by a multi-annual funding package for disability services. The Government has guaranteed an unprecedented multi-annual investment programme providing significant additional funding up to and including 2009, on top of funding to be provided through the annual Estimates process, which shows the special concern of Government for disability issues and is evidence of the Government's strong, positive response to this DLCG proposal.

The Bill as initiated, also reflects a DLCG proposal that a sixth sectoral plan dealing with training and employment issues be prepared. It also ensures that liaison officers will undertake a periodic review of each individual's service statement to ensure that its contents are being satisfactorily implemented. Since the Bill was published I have met the DLCG to discuss its views and the ten key areas of concern they have identified.

Arising from those meetings and consultations with the relevant Departments and the Cabinet committee, I accommodated changes to the Bill to address the group's concerns to the greatest extent possible. These changes were effected by way of Government amendments to the Bill during its passage through the Dáil. They provide for the following: expanding the definition of substantial restriction to ensure certainty in the inclusion of persons with mental health impairments and children needing early intervention

[Mr. Fahey.]

services to ameliorate a disability; building in a requirement that the operation of the Bill be reviewed within five years; simplifying the complaints mechanism by removing an option of the Health Service Executive or education service provider to refuse to implement a recommendation of a complaints officer; broadening the sectoral plan of the Department of the Environment, Heritage and Local Government to include housing and accommodation and for co-operation between the relevant authorities on such matters; providing an additional ground for complaint where the HSE fails to commence or complete an assessment within the time scales required; requiring public bodies to make published documents available in easy to read formats, as appropriate, for persons with intellectual disabilities; and allowing Ministers to make orders requiring public bodies to provide work experience contracts for persons with disabilities.

The DLCG welcomed the changes made to the Bill in the Dáil but later outlined five key issues upon which it sought further consideration. I met with the DLCG to hear its concerns and to outline the position on its proposals. The Taoiseach subsequently wrote to them setting out the Government's policy on each of the five points.

The DLCG sought a right to an assessment that would not be resource dependent. The Bill provides a right to an independent assessment to a benchmark standard with access to redress. The assessment will be undertaken without regard to the cost of or the capacity to provide any service identified in the assessment. The assessment process, however, will ultimately be resource dependent. In practice, the Government is confident that resources will not normally restrict the assessment process in view of the multi-annual investment programme. The DLCG sought that the Bill would require the provision of all assessed service needs within a reasonable and agreed timeframe and that there would be clear protection for disability-specific resources. The Bill will impose significant new requirements on Ministers and the Health Service Executive in regard to transparency of funding and service provision. It also places a statutory obligation on the Health Service Executive to collect aggregate data on assessed needs and on available services for service planning purposes.

The DLCG wants every Department to prepare a sectoral plan. The Bill provides for six sectoral plans dealing with those services which involve medium-term investment either to develop disability-specific supports or to underpin infrastructural change. Other public bodies are already obliged under the Bill to make their services accessible by next year.

The DLCG also sought that disability proofing be placed on a statutory footing. The Government is satisfied that the Bill already creates significant new requirements for public bodies in terms of accessibility of buildings, services and

information and that delivery on these provisions will in itself represent significant progress.

Some members of the DLCG left the group because the Government could not agree to change the Bill to accommodate the five points outlined above. The Taoiseach met with the remaining members of the DLCG on 25 May 2005 and, while restating the Government's position on the five points, he agreed to consider a number of further issues of concern to the DLCG, including the following: the need to provide for a face to face interview to review each applicant's service statement; additional powers for the complaints officer, which would allow him or her to recommend the timing of the service or assessment; to review concerns about the wording of section 5(4); the publication of the report on aggregate needs prepared by the Health Service Executive under section 13; the preparation of progress reports by the six sectoral plan Departments at least every three years;

**Ms O'Rourke:** It was five in the original—

**Mr. Fahey:** This is a separate issue. It involves the review of the sectoral plans.

**An Cathaoirleach:** The Minister of State without interruption please.

**Mr. Fahey:** —changing Cabinet procedures so that legislation and policy proposals submitted to Government would take account of the impact on people with disabilities; and the issue of audio-description which was raised in regard to the broadcasting provisions in the Bill. I hope to be in a position to bring forward a number of Government amendments to address as many of these proposals, as is possible, following detailed examination.

A main issue for some disability groups has been the question of justiciable social rights. There are divergent views about access to the courts as the primary means of vindicating these rights. One view is that ultimate redress in the courts is fundamental to the concept of social rights delivery. On the other hand, social service provision for any one group must be balanced with the valid and competing needs of other service users. The statute-based rights and redress mechanisms in the Bill find their basis in this reality. The Bill provides a right to an independent assessment of need, a right to a service statement — the content of which will have regard to resource availability, eligibility and other factors — and a right of redress and enforcement. The Bill provides an easily accessible statute-based means of redress in regard to assessment and services.

I have listened, time and time again, to calls for the Bill to be rights-based — in other words that it should give justiciable rights to services. There appears to be a belief this will guarantee services to meet needs or that case law will drive service delivery. The simple fact is that it will not, at least

not in the interests of people with disabilities generally. Already in the education area, for every €1 given in settlement of legal cases paid out by the Department of Education and Science, €4 went to pay the fees of members of the legal profession. Aside from the legal costs, a court case can cause delay and hardship for a person with disability and his or her family. The Bill, on the other hand, establishes a fair, person-centred system for complaint and appeal that will give real results relatively quickly and informally.

A rights-based approach to service provision on the lines sought by interest groups, and indeed the Opposition in the Dáil, is not evident in other developed common law countries. If we look at the work of respected independent authorities such as NESC, we see a recognition of the complexity of the issue, the need to understand the relationship between rights and standards and the fact that a focus on legal rights cannot always deliver in the simple way that is claimed. In its recently published report, NESC reiterates the complexities involved. In looking at socio-economic rights, NESC refers to well functioning systems being able to deliver rights and states that, “stronger institutional and policy capabilities, which are in part the fruit of an increase in resources, ...enrich the content and meaning of rights”. The Government has taken the practical approach by increasing investment to build capacity, so the rights to assessment and services contained in the Bill, and the quasi-judicial redress process that underpins them, can be delivered in practice.

The national disability strategy including the Bill and the multi-annual investment programme provide a strong basis for this planned approach which can respond to real needs. It enables the Government to fulfil its political duty to use available resources to the benefit of people with disabilities and balance the funding needs of other services and the rights and expectations of those who depend on them. Such decisions are proper to the political arena and are not matters primarily for case law.

I am the first to admit there is a historical deficit in regard to disability and there are limitations in current services. I have listened to criticisms of the Bill because service provision is subject to resource availability. In the real world, all services are subject to resource availability — that is the harsh reality and it is not unique to Ireland. However, that does not mean we ignore the historic deficits or shortfalls in disability services. What it means is that we must be practical in facing up to our responsibilities and we are doing that. We are putting in place a firm financial programme and a national disability strategy to establish a sound base for service provision. Under the Bill, Ministers, for the first time, will make an explicit determination of the amount of funding they will allocate each year for the purposes of the Bill.

In drawing up the legislation, regard has been had to benchmarks internationally. The ESRI

report entitled *On Rights-Based Services for People with Disabilities* was commissioned by my Department in 2003 to stimulate debate and gather factual information about the nature of disability legislation in other common law countries. The research shows that the commonalities in legislation internationally tend to be confined to anti-discrimination legislation. There is little consistency as to the kind of legislation, if any, underpinning disability service provision. The research dispels many assumptions and shows wide variation in the way disability-specific service provision is treated in the countries surveyed — Great Britain, New Zealand, Australia, the US, Canada and Sweden. The Bill compares well with legislation for disability service provision elsewhere and in common with that legislation establishes a link between service provision and resource availability.

The Disability Bill is a positive action measure comprising a number of distinct initiatives, which, taken together, will lead over time to a sustained improvement in the lives of people with disabilities. The initiatives in Part 2 deal with the individual health and education needs of each person with a disability. The initiatives in Parts 3 and 5 place statutory obligations on public bodies to support access for people with disabilities to mainstream public services and to public service employment. Parts 4, 6 and 7 deal with genetic testing, the establishment of a centre for excellence in universal design and miscellaneous matters.

I will outline the main provisions of the Bill. Provisions of particular importance include the definition of disability and section 5. The definition of “disability” in section 2 is in line with the definition in the National Disability Authority Act 1999. Section 5 is a novel provision which makes specific arrangements for Ministers to earmark funding for the purpose of implementing the provisions of the legislation. There is also provision for a review of the operation of the Bill no later than five years after commencement.

Part 2 establishes a right to an independent assessment of need, an individual service statement and redress. Section 7 defines the key terms used in this part. The definition of “disability” for the purposes of this part covers persons whose disability is likely to be permanent, results in significant difficulty communicating, learning, moving or significantly disordered thought processes and gives rise to a need for services on a continual basis. A “health service” is defined to include a “personal social service” and “education service” relates to the education of persons over 18 in a recognised school, or a programme of education, training or instruction specified by the Minister for Education and Science. The section assigns additional functions to the National Council for Special Education relating to the education of persons over 18 years. It also gives HSE officials access to the education appeals board where the council fails to comply with a request for co-operation in preparing a service statement.

[Mr. Fahey.]

Sections 8 to 10, inclusive, deal with the assessment of need. Assessment officers will be appointed by the executive and will be independent in the performance of their functions. The assessment will cover health and education services. A person who considers that he or she may have a disability, may apply to a health board for an assessment of need and the assessment will be commenced within three months of the date of the application. Each assessment of need will involve the applicant in the process and result in an assessment report which will specify an indicative date for review. Services will be prioritised in the assessment report and optimal timescales for delivery will be set out. Each assessment of need will be independent in three respects. First, assessment officers will be statutorily independent, second, the assessment itself will be undertaken without regard to existing service levels or related cost considerations and third, the assessment will take place in accordance with standards determined by a new independent body, the Health Information and Quality Authority, HIQA.

Section 11 deals with the individual service statements. Liaison officers will be appointed in the HSE as a key point of contact for the preparation of service statements. Following assessment, a liaison officer will prepare a service statement for the person concerned. In preparing the service statement, the legislation requires the officer to have regard to the HSE's budget for that year and other criteria, including the eligibility of the person for the service and the practicability of providing the service. Otherwise, the service statement will seek to reflect the priorities and timescales for the health and education services identified in the assessment report.

In an effort to aid service co-ordination, section 12 specifies that liaison officers, with the consent of the person concerned, will contact service providers outside the health and education sectors and give them any information needed to assist access to services, other than those provided for in the assessment of need. Section 13 requires the HSE to keep records as an aid to service planning. The HSE must compile a report each year for the Minister for Health and Children of the services being provided and the aggregate needs identified in assessments, including the priority of these needs, the optimal time scales for delivery and the estimated cost of such provision.

Part 2 provides for three stages of redress, complaint, appeal and enforcement. Section 14 allows for the making of a complaint relating to an assessment or service. Section 15 requires the HSE to appoint complaints officers who will be statutorily independent in the performance of their functions. Following examination of a complaint, the complaints officer may seek to resolve it informally. If this is not possible, he or she will investigate the complaint, issue findings and make a recommendation for implementation by

the HSE or head of the education service provider where appropriate.

Sections 16 to 20, inclusive, and the Schedule to the Bill deal with the appeals officer and appeals. The appeals officer will occupy an independent statutory office and will be appointed by the Minister for Health and Children. The officer will hear appeals and will have staff to whom functions can be delegated and a budget to undertake the work. The officer will make an annual report to the Minister for Health and Children in respect of his or her functions. A copy of the report will be laid before both Houses of the Oireachtas. Under sections 18 and 23, the appeals officer is given substantial powers to call witnesses, obtain documents, enter premises and ultimately to secure a search warrant from the District Court, if necessary.

A recommendation of a complaints officer can be appealed to the appeals officer by the applicant, the HSE or head of an education service provider. He or she will be required to take account of the same considerations as the complaints officer in coming to a decision, such as resources, eligibility and practicability considerations. Section 20 provides that a determination of the appeals officer will be final and not referable to the courts save on a point of law.

Section 18 provides that the appeals officer may arrange for mediation, unless either party to the appeal objects, if he or she considers that the issue could be resolved in this way. Unresolved cases may be considered again in the appeals process. A mediation settlement may be enforced in the same way as a determination of the appeals officer. As a last resort, where a determination of the appeals officer is not implemented, section 22 allows for an application to the Circuit Court for an enforcement notice against the HSE or education service provider which has failed to implement it. Certain recommendations of the complaints officer may also be enforced in this way.

Section 25 imposes a duty on public bodies to commence a rolling programme of refurbishment to make public buildings accessible. Sections 26 to 29, inclusive, are key sections which require public bodies to mainstream service provision for people with disabilities. Section 30 deals with codes of practice to be prepared by the NDA. Sections 31 to 37, inclusive, require the development of six sectoral plans by the Ministers for Health and Children, Social and Family Affairs, Transport, the Environment, Heritage and Local Government, Communications, Marine and Natural Resources and Enterprise, Trade and Employment. A duty is placed on the Minister responsible for each of the sectors to prepare, in accordance with a general framework, a plan setting out the disability related services and positive action measures he or she is committed to implementing.

Draft sectoral plans have already been published and are at present the subject of a consultation process being facilitated by the NDA at

regional information meetings. The final plans will be submitted to the Oireachtas for approval within one year of commencement of the legislation. Under section 38, individuals can make complaints about a failure by a public body to comply with a duty in respect of mainstream service provision under Part 3.

Section 39 requires every public body to designate inquiry officers to investigate any such complaints. Sectoral plans will also specify the complaints procedures that apply in each of the six plans. The decision of the inquiry officer or the complaints officer under a sectoral plan can be referred to the Ombudsman. Section 40 amends the Ombudsman Act 1980 to give the Ombudsman specific powers for this purpose.

Part 4 seeks to safeguard access to employment, insurance and mortgages for people who may be affected by certain genetic conditions, such as cystic fibrosis and Huntington's disease. The part restricts the use of genetic data in general, especially for employment purposes and outlaws its use for insurance purposes. The use of family history information for insurance purposes may be restricted by regulation. The provisions of this part will be subject to review commencing not later than 1 January 2014.

Part 5 establishes a statutory basis for positive action measures to support the employment of people with disabilities in the public service. It allows each Minister to specify targets for the employment of people with disabilities in their sector, pending the specification of which, the existing 3% employment target will apply. Implementation of the measures will be monitored by sectoral monitoring committees and the National Disability Authority will report to each Minister about compliance in their sector.

Part 6 provides for the establishment of a new centre for excellence in universal design within the NDA. The establishment of the centre is a commitment in the programme for government and responds to international obligations on universal design and e-accessibility. Section 52 amends the National Disability Authority Act 1999 to take account of its new role. Universal design relates to the design and composition of buildings, products and systems so that they can be accessed by everyone, to the greatest extent practicable, irrespective of any particular physical or mental feature, ability or disability. The purpose of the centre will be to achieve excellence in universal design through the development and promulgation of standards. The centre will have a particular role in pursuing this objective regarding electronic systems and in the promotion of universal design in courses of training for architects, engineers and other persons who design and build the built environment. Part 7 deals with a range of issues including rules for broadcasting to facilitate access by people with sensory impairments, offences, changes to the size of the NDA board and related matters, repeals and exclusions.

The Schedule sets out the terms and conditions of employment of the appeals officer to be appointed by the Minister for Health and Children under Part 2. It deals with such matters as selection by open competitive process, term of appointment, staff to be civil servants, accounting matters and delegation of functions.

I thank the Senators present for their attention. The debate in the Dáil was very informed with many good points made by the Opposition. On Committee Stage we incorporated many of those points. One common theme clearly running through much of the Opposition contribution was the need for judicable rights. In the five years since this process commenced the Government has been clear and adamant that it is not possible to have legislation giving judicable rights in the courts. As I have already said judicable rights are not available in any country with the one possible exception of South Africa. This will not change during the debate in the Seanad.

I appeal to Senators to recognise that we have gone past the debate on judicable rights. I am anxious to listen carefully to the points made here and to make amendments where possible as a result of proposals made. I would like to conduct the debate in the Seanad in that spirit. As a former Member of this House, I recognise the important role the Seanad has to play and the important contribution Members of this House have made in improving legislation. I again emphasise that I am anxious to conduct the debate in that spirit. I commend the Bill to the House.

**Ms Terry:** I welcome the Minister of State to the House. I also welcome the opportunity to at last deal with this Bill, for which we have waited a long time. While I recognise that some improvements have been made in the Dáil for which I thank the Minister of State, the Bill still falls short of what the majority if not all of the disability groups have called for. This is the basis from which I must start.

I attended nearly all of the meetings of the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights when the various disability groups attended to give their presentations and views on the Bill. One after another they expressed their dissatisfaction with it. While I accept some small improvements have been made, one must note, as the Minister of State mentioned, some of those groups have withdrawn from the DLCG. I wish to read a statement made by NAMHI as follows:

Two leading national representative organisations of people with disabilities have withdrawn their co-operation with government on the Disability Bill 2004. We have no choice but to pursue the fight for a Bill which respects the rights of people with disabilities, as promised in the programme for government, independently of the Disability Legislation Consultation Group (DLCG). The Forum for People With Disabilities, the National Parents and Sib-

[Ms Terry.]

lings Alliance and the National Association for People with an Intellectual Disability (NAMHI) have ended co-operation with the Bill.

Those groups, for which I have great respect, did not do so lightly. We must recognise that groups representing many people are still very dissatisfied with the Bill. These groups are dissatisfied as they are fighting for people who have been marginalised for years by many governments. I do not place all the blame on this Government. However, Fianna Fáil has been in Government for many more years than any other party and I must lay more blame with it for not having provided us with stronger legislation.

The Bill as presented is flawed. It is very complex and complicated without joined-up thinking. Too many Departments and Ministers are involved, which makes for bad legislation. It is convoluted and poorly written, not from a legislative but a plain English viewpoint. It should contain English that the ordinary person on the street can understand.

The Bill is definitely resource-driven while those affected by its provisions start from a very low base. In seeking rights and services for able-bodied people, we start from a position of being able to access buildings, perhaps being able to read and write and being independent. In this debate we are discussing people who are not at that stage. Our obligation is to ensure that they are brought up to be on a level playing field in so far as they are capable of doing so.

I will refer to some of my concerns, which I will address on Committee Stage. I am looking forward to a good debate at that stage and I hope the Minister of State will be in a position to adopt some of the amendments I will table. Many of these issues have been thrashed out in the Dáil and I am hoping that with further time for reflection we will be able to gain some success here.

The definition of the term “disability” is restrictive relative to that used in the Equal Status Act and the Education for Persons with Special Educational Needs Act. It excludes people with episodic needs and those who require early intervention measures, resulting in more people being excluded than included. This should be inclusive legislation. It must not set out legislation that from the outset will exclude certain people. I suggest that the right to an assessment is open to interpretation. The Bill states that assessment must be carried out as if there were no resource constraints. However, the assessment process is itself resource-constrained, and meeting any need for services arising from the assessment depends on the availability of resources. Assessment officers are appointed by the Health Service Executive, which, as we know, cannot go over budget and must take account of available resources. Therefore, once again, when we hit bad times, the marginalised will be those hit. That is not acceptable. When everyone else has been

looked after, those with disabilities may or may not get something left over.

One question that comes to mind when discussing the assessments is whether the Minister has worked out how many assessment officers will be needed. Will their number also be constrained by resources? Do we have the necessary trained assessment officers in the country? How long will it take to put them in place? Those are important questions to which I would like some answers.

The Minister mentioned the appeals officers being independent. How can they be so if they are governed by or answerable to the Minister for Health and Children? They are employed by the Health Service Executive and are not independent. They should be under the auspices of the Department of Justice, Equality and Law Reform to be totally independent. They cannot be employed by the Health Service Executive and report to it.

**Mr. Fahey:** They are statutorily independent, as in the case of the Inspector of Mental Hospitals.

**Ms Terry:** I will be tabling an amendment to make them more independent by placing them under the authority of the Department of Justice, Equality and Law Reform.

The Bill has many layers of bureaucracy. I would like to know how much it will cost to set up all the layers of personnel required. Will more money be spent on setting up the administration and employing the staff for it? If we are to do it properly, it must be in place, but I want to ensure we have the available resources.

The services statement will only be effective if there are resources to implement it. Multi-annual funding means nothing if it is not sufficient to meet the demand. In this Bill, no deadline is set down by which services statement needs must be met. I am concerned about what will happen regarding those needs that are not met because of resource constraints. A timeframe should be set out for the delivery of the outstanding needs. This is an essential matter. If a service statement outlines that certain needs are to be met but the resources are not there, we must ensure a timeframe is provided for their ultimate delivery.

The term “ring-fencing” has been used a great deal when discussing the Disability Bill 2004. This Bill makes no commitment to ring-fencing disability-specific resources. If times get tough, people with disabilities will once again be marginalised. I will probably be reminded by Members on the Government side that the Minister has said that €2.9 billion has been provided for disability-specific services this year. However, that is from a budget of €38 billion for public services. We are not talking about a great deal of money as a proportion of the overall budget. It is a matter of enabling people to be independent and make a contribution to society, something that will ultimately pay back into the economy and society. We are also talking about people

who may never be able to get out into the workplace but who should be entitled to reach their potential with the necessary supports and services. They should be able to live with dignity.

Disability-proofing and promoting the equality of policy and planning must be provided for by all Departments, public bodies and publicly funded bodies. It must be demonstrated in all aspects of their work, including planning, budgeting, implementation and evaluation cycles. They should be accountable for the delivery of the services, something that is absent from the legislation. I understand that the Taoiseach agreed at a recent meeting with the DLCCG that he would examine disability-proofing. I therefore hope the Minister will be able to take that on board when I table an amendment on Committee Stage so that we can ensure such proofing and the promotion of equality of policy and planning in all Departments.

I remind the Minister that the Fianna Fáil-Progressive Democrats programme for Government of 1997, An Action Programme for the Millennium, stated: "We are committed to ensuring that disability is placed where it belongs, on the agenda of every Government Department and every public body." The speeches by the Taoiseach and Tánaiste at the launch of the national disability strategy were uncompromising in stating that they believed that the Bill was built on the foundation of an agreed Government policy to mainstream public services for people with disabilities.

The Disability Federation of Ireland states:

As a result of the clear commitment to mainstreaming in the Programme for Government (1997), the emphasis placed on the issue in the DLCCG's report Equal Citizen and the centrality of mainstreaming disability services in the Taoiseach's and the Tánaiste's speeches, DFI were dismayed at the weakness of the measures in the Disability Bill to legislate for the inclusion of people with disabilities in public services. DFI had anticipated that the Bill would have comprehensively addressed the issue that people with disabilities are equal members of the public and that the public service infrastructure is equally for all members of the public.

The Bill does not promote the inclusion of people with disabilities in all public policies and services. The Bill does not oblige all Government Departments, public bodies or publicly funded bodies/services to ensure that all services provided are available on an equal basis to people with disabilities. The six draft sectoral plans by different departments are very vague and general and do not include many important issues. Most importantly the Bill fails to oblige these statutory bodies to ensure the inclusion of people with disabilities in the development of their policies, plans, programmes and services.

I will be tabling an amendment so that we can ensure that disability-proofing is provided for in each Department. If we are serious about this legislation, that is how we must proceed. Legislation must include everyone in society, and we must not set out to exclude any individual or group. Ensuring the delivery of services to people with disabilities would be a valuable vindication of people's human rights, and disability-proofing would ensure that. Regarding the appointment of a disability commissioner, I believe it necessary that we provide for one in the legislation. To enhance the status of people with disability and assist in protecting their rights to equality in public services, the position of disability commissioner should be created. This position should have the same status as An Coimisinéir Teanga and such an officer would give the Oireachtas and the disability sector a strong basis to have ongoing engagement with Departments. I will table an amendment to deal with this on Committee Stage, which I hope the Minister will accept.

Part 5 establishes a statutory basis for positive action measures to support the employment of people with disabilities in the public service. Does the Minister agree that working people with disabilities are getting at least the minimum wage? When the Equality Bill was going through this House, the Minister for Justice, Equality and Law Reform accepted an amendment I put forward on this issue. I was surprised, therefore, to hear on the radio recently that people with disabilities not far from here are not getting the minimum wage. Can we be sure that people with disabilities are not being abused financially? Are we ensuring that they are entitled to at least the minimum wage?

I look forward to Committee Stage when I will table many amendments. My Dáil colleagues put forward amendments we felt were absolutely necessary but would incur a cost on the State. We were very frustrated that they were not accepted. Addressing the many anomalies in the legislation would incur a cost. Regrettably, the Minister of State rejected those amendments in the Dáil. I hope there will be co-operation on this and that the Government will work with the Opposition. We can improve this Bill and enact the legislation the disability groups want, which will ultimately deliver the service to the people who need it.

**Mr. Kett:** I welcome the Minister of State and I congratulate him on bringing this Bill before the House. It will be one of the most important Bills discussed in my time here. I commend him on the energy and enthusiasm given to it and I also commend the contributions made by Deputies O'Dea and Mary Wallace when they were in the job. I know it was not an easy task.

The publication of the report by the Commission on the Status of People with Disabilities was a watershed in the sector. It dealt comprehensively with the issues faced by people with disabilities, their carers and advocates and became the cornerstone of Government policy. This is a

[Mr. Kett.]

new beginning for people with disabilities. They will witness the positive manifestation of everything this Government has done, from legislation right through to the resources the Minister of State is putting in the sector. Nobody has suggested this is the be all and end all of legislation, but it is a new beginning. Anyone who has negative feelings about it should consider the positive repercussions it will have for those who deal with disability on a daily basis.

There are many people to commend. The DLCCG is the consultative group brought together to guide the Minister of State, the Taoiseach and others. Senator Terry mentioned that representatives of NAMHI were upset and pulled away from it. I accept their right to do that. However, the Disability Federation of Ireland represents over 150 voluntary bodies and its representatives are fairly happy with the changes made and the amendments accepted by the Minister of State.

The shame on us is that we are behind in looking after disabled people. They did not drop out of the sky and are here since the beginning of mankind. In pre-Christian Ireland, the Brehon laws categorised them, not very flatteringly, as idiots, doters, fools and people without sense. However, they were exempt from certain punishments and were protected from exploitation. Even at that time, such people were protected in some small way. Daniel Defoe was the first person to come up with the idea that these people should be housed in what he termed "fool houses". Unfortunately, his intentions were not good as the idea was to keep them out of sight, out of mind. His thinking was to protect society from them and a stigma is still attached to disability today. One only has to talk to people with disabilities, their carers and families to realise this.

Over the past 40 years, there have been many improvements, especially in the attitude of the public. In the past eight years, major resources and benefits have been given to people with disability, but not enough. It is no wonder the parents of these people felt so let down and so frustrated by successive Governments that they had to resort to other means to sort out their dilemmas. The voluntary sector then came to the fore, thanks to wonderful people with vision such as the late Lady Valerie Goulding, whom I knew and with whom I worked. Such people stepped into the breach when the public finances were not there and Governments were not thinking about the issue. The voluntary organisations today stand disabled people in good stead. They are a credit to us all. With a few exceptions, they do a tremendous job with limited resources.

The challenge faced by this Government in 1997 was formidable. There were areas where little or no service was being delivered. As someone who has worked in this area for a long time, I am heartened by this legislation, which will have a tremendous impact into the future. Its provisions represent the way forward in the area of

disability. For many families to whom I have spoken, this is the first time they have seen a light at the end of the tunnel. They consider that something real is finally on offer in place of mere aspirations. I hope we continue as we have started in ensuring that families are given all the resources and commitments they require. We are putting in place the most effective achievable combination of legislation, institutional arrangements and services to support those with disabilities and their families. This will serve to reinforce the possibility that persons with disabilities can find their way into the mainstream, live their lives in the best possible way and link into the regular workforce where possible.

The unblemished truth is that all of us have failed persons with disabilities in the past. Improvement in this area is not something that is impossible to deliver. Those with disabilities have a reasonable expectation to engage in what life offers them. This is not too much to ask and it is not too much for us to deliver. It is to be hoped that this legislation will ensure we have public policy based on an understanding of disability. This disability proofing, which was alluded to by Senator Terry, is something for which the DFI has repeatedly called.

The federation asks that those charged with the responsibility of making decisions within Departments will consider the needs of persons with disabilities. If this approach is not taken, the consequence will be poor decisions from the perspective of those with disabilities. There may be a requirement in the coming years that those responsible for making decisions that have an impact, whether negative or positive, on the lives of people with disabilities should partake in a training process that will educate them on the impact of those decisions. People often make decisions without any awareness of their potential impact on people with disabilities. A consideration of the needs of those with disabilities before any decisions are made will have a positive effect.

As the Minister of State observed, significant funds have been invested in the area of disability and there has been much effective legislation. There is no doubt that if this legislation is implemented effectively so that discrimination is eliminated, employment can be an attainable objective for persons with disabilities. Employment is a key to taking such persons out of the mire. Statistics indicate that 80% of households headed by a person with a disability struggle with poverty. This is not good enough and we, as the makers and enforcers of legislation, must ensure we monitor the legislation to ensure its effectiveness. Those who choose to ignore it should bear the full brunt of our dissatisfaction. Many Governments in the past have attempted to remove the various levels of discrimination from our society but we have failed collectively in this endeavour.

I am delighted to note the Minister of State's comments on developments following his recent discussions with the Taoiseach and the DLCCG on

the sectoral plans. More monitoring and accountability will now take place and Departments will be required to prepare and publish a plan of projected measures. Moreover, they will be required to demonstrate their achievements on a regular basis. My initial impression of the sectoral plans was that they were somewhat milk and watery. However, this brings an entirely new focus to this area and is a positive development.

Access is the gateway to full participation in society for those with a disability. Access refers not only to the ability to access a building, park or beach but encompasses the right to access transport services. We must facilitate people with disabilities in enhancing their educational prospects, seeking housing and living independently if they so desire. One of the wonderful advantages of modern technology is the opportunity it affords some of those with disabilities to attain an independent living. In short, people with disabilities should have equal rights to access those things which are accessible to able-bodied people. It is no longer acceptable that a person with a disability should have to use a back door because the front door is inaccessible, be lifted bodily up the stairs in a wheelchair or endure the humiliation of being unable to access a toilet. Such occurrences should be consigned to the past.

Part M of the Building Control Regulations 1991 refers to the necessity of ensuring ease of access and usage for persons with disabilities in respect of new buildings and significant extensions to old buildings. The inception of these provisions raised the hopes and expectations of people with disabilities but that hope has given way to weary resignation. The regulations did not achieve their objective for a reason I cannot explain. It is to be hoped that the focus on the sectoral plans will have a positive effect in terms of the sectoral plan for the Department of the Environment, Heritage and Local Government. There is no doubt that any ambiguity in the language we use in the planning regulations that relate to people with disabilities can be seized upon by designers and architects and minimised or maximised to their own benefit. In those circumstances, it is people with disabilities who will lose out.

An area not covered in the Disability Bill but which is of serious consequence and concern for those with disabilities is the issue of sheltered workshops. The Employment Equality Act 1998 and the Equal Status Act 2000 brought about a situation where change was needed in the functioning of sheltered workshops. I understand there is a draft proposal on a Minister's desk in this regard. I am not sure whether it is the Minister of State at the Department of Health and Children, Deputy Brian Lenihan, or the Minister for Enterprise, Trade and Employment, Deputy Martin. The draft proposal considers the number of workshops and the numbers of people involved.

I work for an organisation that has managed one of these workshops effectively for many years

and have seen at first hand the benefits participants derive from the workshops. Participation brings a sense of self-worth and the feeling of being part of a "workforce". At the same time, participants have the safety net of knowing there is no pressure on them to deliver anything in terms of productivity and so on. However, under the new guidelines relating to sheltered occupational services, we will now have to tell these people, perhaps after they have participated for as long as 35 years, that they can no longer be accommodated. They must now either be employed in the regular workforce, which is difficult to do with an embargo, or released from the sheltered occupational services.

This is a cause of major concern. The idea behind the workshops was that participants would be trained and educated for entry into the mainstream workforce. However, this is not a realistic aspiration for many people and in such cases, long-term participation in sheltered workshops has been provided. It will ruin some of these people if they are asked to go out and join a special occupation scheme, SOS. They simply will not do it. Such persons currently enjoy true fulfilment but they are likely to end up participating only in a day care activity. Whoever evaluated this system did not visit the sheltered workshops that are run effectively. If they did so, they would not institute the programme which they appear to be developing.

In terms of national disability standards, a consultative paper on guidelines for person-centred services has been prepared. These guidelines, which resemble the provisions of the Disability Bill on assessments and service statements, recommend that each service user should receive person-centred health services designed to meet his or her goals and needs. The essential criteria include participation in annual assessments of health service needs undertaken by a multi-disciplinary assessment team which identifies the services and interventions required to meet these needs. This implies that a voluntary organisation must have a service statement for each individual involved which must be examined every year. The Disability Bill appears to make the same provision for people who look for an assessment. Will assessments through the HSE duplicate the work of voluntary organisations? It seems pointless that, if an annual assessment of an individual is conducted, the HSE should duplicate information already recorded in his or her file. I may be as far out as a lighthouse on this matter but wonder whether a marriage of efforts may take place.

I congratulate the Minister of State on the introduction of this Bill. On behalf of people with disabilities, I look forward to its delivery.

**Ms Tuffy:** While this Bill has been subject to much discussion as it passed through the Dáil, time remains for the Seanad to bring it to the proper standard. Senator Kett was self-congratulatory regarding the Government's achievement

[Ms Tuffy.]  
in bringing forward this legislation. However, as the Government has said, much more needs to be done.

In two years, this Government will have been in power for a decade. The two parties involved will have had ten years to get this legislation right. Substantial consultation has taken place and work has been done by interested parties on this matter. This Bill is being introduced for a second time. A good monument to this Government will not be constructed if this process is completed without key aspects being addressed. While any action is welcome, insufficient progress has been made in the context of ten years of Government and the best economic circumstances this country has experienced. The past decade presented opportunities to build on experience and rectify past mistakes.

The Minister of State is correct in saying that some issues have been addressed over the course of consultations with the DLCCG on this Bill and during its passage through the Dáil. Credit for this is due to the involvement of disability action groups. I will restate the five outstanding key areas which remain unaddressed. The Minister of State touches on these areas but does not clarify them in a similar manner to the various groups involved. These key areas have been addressed by groups involved with the DLCCG and those not involved with it.

The first area involves a clear and unequivocal right to an assessment of needs which is not resource dependent. The Minister of State said that assessment processes will ultimately be resource dependent. His answer is not good enough and reveals a fundamental problem in the Bill. We cannot claim that equality in any other sense, such as between men and women, should be resource dependent. Matters of equality and fundamental rights cannot be addressed in this manner. It implies that a sector of society is segregated and would be the first to fall if money is not available. That is not appropriate in the context of fundamental rights. The premise of this legislation is that people with disabilities have the same human rights as everybody else. To make the rights of one category of people resource dependent in contrast to the rest of society is to discriminate against that category. The legislation before us is based on a discriminatory perspective. Money which is being wasted in other areas could contribute to the provision of the funds necessary to avoid resource dependency.

Groups have noted that the services identified in the assessment of an individual must be provided within a reasonable and agreed timeframe. The Minister of State's response to this, which referred to the obligation on the HSE to collect aggregate data, is not good enough. People need to know that their needs will be assessed within a certain timeframe. If this is not provided for, they will never be sure of receiving the required services.

The progressive realisation of services has been discussed. Anyone should be able to expect that his or her needs will be addressed over an assessable period of time. I ask the Minister of State to re-examine the issue of timeframes. It is reasonable to ask that people are given timeframes. It should be expected that, if assessments of needs and services are to be provided, they should be carried out over a certain period. Otherwise, people see no light at the end of the tunnel because they are not assured that their needs will be met.

The Minister of State mentioned that the Taoiseach responded to the DLCCG's five areas by setting out Government policy on each but he addressed only four of these areas. The third area, namely, that the Bill must provide for clear protection of disability specific resources, has been identified in the Dáil. I ask the Minister of State to re-examine this issue because funding for this Bill should be ring-fenced. As this has been done for other legislation, why can it not be done in this instance? We need to be sure progress will be made every year in terms of the promises contained in this legislation and the realisation of people's rights.

The disability groups demand that the provisions on sectoral plans take account of the wider needs of people with disabilities. Each Department with relevant services must provide a sectoral plan. I do not understand why a mere six Departments have been identified by the Government. The issues addressed by the Disability Bill apply to all Departments. The approach should not be cross-departmental as set out in the legislation, but should take in all Departments. I ask the Minister of State to reconsider the provisions and implement the key recommendations of the disability groups.

The fifth requirement identified by the group, including those involved in the DLCCG, was for the Bill to provide for a clear statutory duty on all Departments and public bodies to include people with disabilities in their plans and services with appropriate monitoring and accountability. The Minister of State has not referred to such measures although he has mentioned important provisions such as the creation of significant requirements for public bodies in the areas of access to buildings, services, information and delivery on provisions. While these measures represent progress, it is not the significant progress the Minister of State claimed. They are superficial provisions whereas much more fundamental measures are required. The requirement for local authorities to ensure the buildings for which it provides planning permission are accessible should be enforced. People should know such matters will be followed up in a way which does not happen currently. Enforcement will not take place under the provisions the Government is delivering in the Bill.

Services are fundamental to a framework of the type the Minister of State seems to have in mind. The rights movement in the disability sector

wants legislation and the approach to disability to originate from a completely different perspective than it has until now. We must start with the assumption that people with disabilities have the same rights as everybody else and are entitled to the vindication of those rights. As one may see a cup which is half full as half empty, the completely opposite view must be taken in our approach to disability. To provide people with disability with the same human rights is not to create an additional entitlement for them. Legislation should enforce those rights and ensure they are vindicated.

The rights-based approach is not about new rights, it is about fundamental rights which already exist. It involves the same arguments one would put forward to secure equal rights for men and women or people of different races or ages. People with disabilities should have the same rights as everybody else.

**Mr. Dardis:** That is what Mervyn Taylor did.

**Ms Tuffy:** The Minister of State spoke about the €2.9 billion which is currently spent on services for people with disabilities. If we considered the matter from the perspective I have outlined, the focus would be on the €38 billion which is spent to proof expenditure to ensure everybody has his or her rights enforced, including people with disabilities and people of different genders and ages.

In their discussions with rights groups and the DLCG, the Minister of State and the Taoiseach suggested a disability commissioner would be established under the legislation. There is a precedent for the provision in the rights commissioner provided for in the language legislation. The Information Commissioner is provided for in the FOI legislation. Commissioners can play a role in the review of legislation such as the one promised by the Minister of State to take place in five years. A disability commissioner would be the ideal person to carry out a review and ensure the legislation is implemented across the public service.

Section 20 does not provide recourse to the courts. As I no longer work as a solicitor, my interest in the matter is observational rather than vested. The failure to provide such recourse is typical of the Government's approach to legal rights. Another example was the legislation it brought before the House before Christmas to deprive people of their right to compensation on foot of illegal nursing home charges. There is a negative attitude to those who attempt to pursue rights which, of course, we would not have were people not prepared to fight for them. Ultimately, people pursue their rights through the courts. As the legislation attempts to deprive them of the right, it will be found unconstitutional. It is right and fitting that the legislation establishes a separate forum people can access easily to have their rights adjudicated. While most people will want to go that way and, if the system works correctly,

accept the determination of the appeals process, they should have the right of ultimate resort to the courts.

While points of law are allowed for, the provision does not go far enough. If a person feels a decision made through the appeals process is unfair or mistaken, he or she should be able to go to court to have the matter determined. While we expect to have the facility in every other aspect of life, we are trying to take the right away from the most vulnerable group in society. The Minister of State said other countries had not provided for justiciable rights, which is an argument I do not accept. It is a fundamental right in democratic countries with proper legal systems that one can ultimately go to court to pursue one's rights. Not only are we failing to provide rights under the legislation, we are taking them away. It is a step backwards.

If the Government intends to do everything it says it will under the components of its strategy and sectoral plans, of what is it afraid? Most people do not want to go to court, they want simply to be able to assert their rights straightforwardly in the course of their normal dealings with public services. The courts are a place of last resort for the vast majority of the population and no one takes recourse to them lightly.

While any legislation represents progress and the Bill has some positive elements, the failure to address the five recommendations of the disability groups is not good enough. It is a poor effort from a Government which has had ten years to formulate the legislation. To bring forward such legislation after ten years is to close a door on all of those involved. How long will they have to wait to see legislation in this area again? Must they wait for a change of Government to have their fundamental rights recognised? In its 1997 programme, the Government promised to carry out the wishes of those involved in the disability campaign and said it was committed to ensuring disability was placed on the agenda of every Department and public body where it belonged. The Government said it recognised that disability was one of the most important social issues facing Ireland. If that was true, I urge the Minister of State to accept the five recommendations which have been put forward by the disability groups and by me today. The Minister of State should use the Seanad as a vehicle to change the legislation.

**Mr. Dardis:** I welcome the Minister of State, Deputy Fahey, to the House for this important debate. I welcome also the opportunity to speak on an important Bill, which I support though not unreservedly.

I have fewer reservations than I originally had on the basis of the amendments introduced in the Dáil. Those reservations were further diminished when I heard the Minister of State inform us of the meeting which took place on 25 May between the Taoiseach and the DLCG. He also stated that he hoped to be in a position to bring forward a

[Mr. Dardis.]

number of Government amendments to address as many of the group's proposals as possible following a detailed examination of them. As the Bill progresses I am more reassured than I was at the outset and far more reassured than I was with the original Bill, especially section 47, to which the Minister referred.

Few pieces of legislation have generated as much interest, emotion or active participation by the public and groups representing people with physical, sensory and intellectual disability. It is important to pay tribute to the work done by those people and also to acknowledge the debt society owes to them, especially those in the voluntary sector who have done such Trojan work in highlighting the needs of people with disability and in looking after and meeting those needs.

The Bill has had a long and tortuous journey to this point where we can debate it. Since I entered the Seanad in 1989 I have always tried to promote the cause of people with disability and I hope I can claim some success in securing extra recognition and resources for them. I accept I am not alone in that. Many other Members have tried to do the same. I concede that matters are far from perfect but the rights of people of people with disability have gone from being little debated or recognised to a point where they are now central within society. The Bill represents a major step forward on that path.

Every Member of the Seanad without exception wishes to vindicate, support and improve the situation of disabled people. It is entirely disingenuous to suggest that people would want to do other than their best, be they members of political parties or not, to improve the lot of disabled people. We may differ deeply on occasion on how that should be achieved but it is wrong to reduce the debate to a political point scoring and crude slanging match as has sometimes happened during recent months. No one person or group has a monopoly on knowledge, experience or agonising on how best to legislate in this area. Cynical exploitation of vulnerable people for political purposes must be denounced.

We are dealing with the complex and broad issue of disability on the one hand and the intricacies of legislation on the other. That has made legislative progress a fraught exercise. I was closely involved in the first attempt to produce suitable legislation, which was subsequently withdrawn. On that basis I welcome the fact that we have reached this stage in the legislative process and that the Disability Bill 2004 has finally reached the Seanad.

I would have had serious difficulties in supporting section 47 of the original Bill, which protected the State against legal challenge. I welcome the fact that amendments have been made. I would have had difficulty with the Bill if certain aspects had not been amended. The Bill as currently presented represents a significant step forward. It may be less than ideal but it will lead to a major improvement in the lives of disabled people and

in the relationship between them and the State. Those who are entitled to look to the State to provide them with support and services can do so with confidence.

The issue of rights has dominated the debate on the Bill in this House, in the Dáil, in the media, in consultation documents, submissions and the public meetings which many of us attended. We must try to uncover the facts. The Bill is rights based but it will not be litigation driven. That is a key point. The Bill provides new rights for people with disabilities and statements to the contrary from many quarters, both in the House and the media, are unfair and unhelpful.

The point has been made about disabled people having the same human rights as anyone else. Everybody would agree that this should be the case. That has been enshrined in law. A body of law going back ten years provides equal status and prevents discrimination against people on the grounds of disability, sexual orientation, religion or any other reason. That is as it should be. However, one cannot provide superior rights to one group of people. Irrespective of how worthy we might be, we all stand equal before the law.

To bring Ireland to the highest international standards with a legal basis for services should be and has been the objective of the Government in drafting the legislation. The rights provided for people with disabilities are extensive and welcome. The Government has committed itself to introducing rights of assessment, appeal, provision and enforcement for the disabled. I commend this progress which will put Ireland in the first rank in terms of international practice. Several references have been made to the constitutional protection afforded to disabled people in South Africa and I will return to this point later.

The issue of rights has been at the heart of the debate, especially the right to the provision of services. So much so, that the other rights provided in the Bill are somewhat ignored, which is to be regretted. The right of provision must be and will be limited by the availability of resources. That is standard practice in legislation. I have found no case internationally that is otherwise. No matter how much we would like it to be otherwise we should be honest and say that is how it must be. Anyone who intends to challenge this view in the debate in this House in the coming days should reconsider the basis for his or her claims.

No State can provide for unfettered absolute rights for any group, able bodied or otherwise. The State must act in the interest of all its citizens. These rights cannot be justiciable. The State should provide equal rights to all its citizens but cannot and should not provide for superior rights for particular individuals, however worthy they may be.

No country has provided a right to court enforced services, irrespective of resources. To do so would be unrealistic, unwise, disingenuous and irresponsible. There will be those who will persist and argue this point. Most likely they will say that

what people with disabilities want is the right to court enforced services, irrespective of resources. The Minister of State has told us about the cost of court enforced services. He made the point that for every €1 which the litigant received, the legal services received €4. We do not want another charter that is a gravy train for the people in the Law Society. The absolutist view must be challenged. What people with disability want are predictable, deliverable and quality services, proper recognition and a good quality of life. They do not want court cases which would not be helpful for them.

Individuals and groups that referred to the South African constitutional provision of rights to services have gleaned much political capital. I wish to put the record straight on this issue. The provision is an empty one. It is meaningless, unimplemented and unimplementable. Prominent Irish activists in intellectual disability have assured me from their recent visits to South Africa that the level of services provided on the ground is very poor and is much worse than that in Ireland at present. While it is part of the constitution, there is no evidence that the constitutional protection has been implemented on the ground.

Before citing examples of what Ireland should aspire to in terms of services for the disabled, people should look at the reality on the ground.

Providing for something unrealistic in a constitution or anywhere else is not the same as making it a reality.

*8 o'clock* I am satisfied that rather than including empty provisions, the Bill is realistic in what it states it can do for people, which is what they deserve. We must move away from allowing the argument to dominate discussion on the Bill. It will serve no purpose other than to deflect from the other sections of the legislation which should be examined by the House. One such issue, which is an integral one, is definition. I had concerns about the definition of "disability" in the original draft of the legislation. My concern centred on the definition in section 2(1) of the Bill which referred to "a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life ...". This definition is less than ideal, it is vague and raises questions. For example, how does it sit with the experience of the many blind or deaf people who are pursuing great careers and have very fulfilling lives? Is their blindness or deafness considered a disability under the legislation? Should it be?

I also have reservations about the word "enduring" as used in the phrase "an enduring physical, sensory, mental health or intellectual impairment". This raises questions about those less-enduring or episodic illnesses which the majority of people would still consider to be disabling, particularly in terms of mental illness.

I am very much reassured by the amendments to section 6, now section 7(2). This ensures clarity on the inclusion of those with mental health impairments and children requiring early inter-

vention. The raft of equality and non-discrimination measures introduced by successive Governments over the past 15 years supplements the amendments and provides the necessary legal protection to vindicate rights where necessary.

Debate adjourned.

**Acting Chairman (Mr. J. Walsh):** When is it proposed to sit again?

**Mr. Dardis:** At 10.30 a.m. tomorrow.

### Adjournment Matters.

#### Hospitals Building Programme.

**Mr. Kitt:** I thank the Chair for allowing me to raise the issue of the health campus for Tuam, County Galway. For many years the Bon Secours order had a hospital in Tuam, known locally as the Grove hospital. It was very disappointing that it was sold some years ago. I was thankful that the former Western Health Board bought not only the hospital but also the surrounding property from the Bon Secours sisters. I pay tribute to them for their work in Tuam over many years.

The former Western Health Board acted quickly not only in calling for the purchase of the property by the health board and for funding from the Government, but also in sending a design brief to the Department in October 2002. The brief envisaged not only a community hospital to replace the existing hospital but also an Alzheimer's unit, a child care training centre, a primary care unit and an ambulance base. The community in north Galway and I are very anxious for approval to be given by the Department to proceed to the design stage. With such a large number of projects involved, it would be very useful if even one part of the project could be expedited.

There is no ambulance base in north Galway at present, which is quite appalling. This, combined with many complaints regarding the out-of-hours doctor service, means people feel very isolated if they are ill, particularly in the evening or at night. I hope progress is made on the ambulance unit.

The issue of the primary care unit was very much in the news a year ago. We were in competition with Erris in County Mayo regarding the location of such a unit. It was finally located in Erris and north Galway lost out. Therefore, it is very important that the primary care unit be very much at the centre of the submission on the design brief.

The health campus, particularly the hospital, not only proposes to include north Galway but also south Mayo and part of west Roscommon. It is vital that a response be made on this matter. I know the Minister for Health and Children, Deputy Harney, has met many community groups, the town council in Tuam and other

[Mr. Kitt.]

deputations in respect of the hospital. Since there is such a large number of issues associated with the health campus, I hope the Minister of State will at least ensure that progress is made in respect of some of them.

An ambulance service is very important for Tuam and the north Galway area. Most of the GPs who work in the area know this to be true and I have discussed it with them. I thank the Minister of State for taking this matter. The submission regarding the design brief has been with the Department since October 2002, which is over two and a half years. I hope I can report progress to the people of north Galway who have been advocating the development in question for some years.

**Minister of State at the Department of Health and Children (Mr. T. O'Malley):** I thank Senator Kitt for raising this matter on the Adjournment. I am responding to it on behalf of my colleague, the Tánaiste and Minister for Health and Children, Deputy Harney.

Following the closure by the Bon Secours order of the Grove hospital in Tuam, the former Western Health Board, now the HSE, Western Area, which is responsible, in the first instance, for the provision of health services in the Tuam area, took a decision to build a new 50-bed community hospital on the grounds and adjoining lands to replace the existing facility. This new hospital will comprise a mix of up to 30 beds for continuing care and the remaining beds will consist of direct access beds, rehabilitation or convalescent beds, respite beds and palliative care beds.

In line with what is generally provided in HSE district hospitals, the service will have a very significant mix of multidisciplinary staff, including medical, nursing, nursing support and paramedical staff, as well as other complementary therapists. Coupled with this, the HSE, Western Area, envisages the Tuam hospital functioning as the hub of a comprehensive outreach service providing home care programmes, including physiotherapy, occupational therapy, chiropody, home nursing, home help and other flexible packages of care. These specialist care facilities will be supported by social support services such as community welfare and home advisory programmes. This project does not, therefore, envisage the re-opening of the old hospital for nursing care purposes.

The Government has made services for older people a priority and is fully committed to the development of a comprehensive health service capable of responding quickly, fully and effectively to the health service needs of older people. In recent years, health and social services for older people have improved, both in hospitals and in the community. Since coming into office, the Government has substantially increased the level of funding, both capital and revenue, in respect of services for older people. Between 1997 and 2004, total additional funding allocated

was approximately €287 million and additional revenue funding of €15.228 million was announced for this year. This serves to demonstrate the Government's ongoing commitment to improving services for our older population.

Significant capital funding for the health sector has been provided since the commencement of the national development plan in 2000. Total expenditure for 2000 to 2004 was approximately €2.1 billion.

Considerable progress has been made in addressing the historical deficits in health infrastructure and improving the standards of facilities required for quality modern patient care. The national development plan is providing considerable capital funding for services for older people. On a national basis, this will enable a comprehensive infrastructure of community nursing units and day-care facilities to be put in place as well as the refurbishment of existing extended-care facilities and the replacement of old workhouse-type accommodation. Older people deserve first-class facilities and we intend to provide these in appropriate locations.

As the House will be aware, the Health Act 2004 provided for the Health Service Executive, which was established on 1 January 2005. Under the Act, the HSE has the responsibility to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. This includes responsibility for the proposed developments at Tuam hospital.

The HSE, Western Area, has prepared a project planning brief for the Tuam health campus incorporating a community hospital, Alzheimer's unit, child-care training centre, primary care unit and an ambulance base. As responsibility for the development of services now rests with the HSE, any decisions relating to this project, including its phasing, will be a matter for that body, having regard to the western area's overall capital funding priorities in the context of the HSE's service plan for 2005 and beyond. The Tánaiste and Minister for Health and Children believes that there is scope for innovative partnership working in the development and delivery of projects such as those proposed for Tuam and this is something that has been suggested for consideration by the HSE in respect of this particular project.

The House might wish to note that the Minister met with a cross-party delegation from Tuam Town Council at the end of January and was briefed on the proposal to develop a health campus on the grounds of the hospital. During the meeting the Tánaiste acknowledged the importance of utilising facilities which were purchased by the State for health care use, but this would have to be done in the context of the HSE's service plan for the western area. Members of the delegation put forward a number of suggestions on the options concerning the possible use of the Grove hospital building. The Tánaiste undertook to examine these options and to revert back to Tuam Town Council. I can assure the House that the Department will continue to liaise with the

HSE to progress this project in the context of the HSE's service plan.

**Mr. Kitt:** I thank the Minister of State. Is he in a position to say whether the partnership to which he refers is a PPP?

**Mr. T. O'Malley:** It was something akin to a PPP. The Tánaiste asked them to be innovative. It would be something like that, but I do not want to circumscribe it.

### Pension Provisions.

**Ms Terry:** I thank the Minister of State for staying to take my Adjournment motion. I put the question to the Minister for Social and Family Affairs, but it was referred to the Minister for Finance. That is somewhat of a problem for the two Departments in terms of which of them deals with pensions. Will the Minister of State provide me with a breakdown of the €2.5 billion tax breaks enjoyed by the pensions industry? This figure was given to me by the Minister for Social and Family Affairs during the debate on pensions last year.

However, there was some confusion when the Minister came to debate the ESRI report on pensions, when he said the tax breaks amounted to €1.5 billion. I had to remind him he had told me earlier the tax breaks were to the value of €2.5 billion. It is important that we should know where these tax breaks are going. It is not the ordinary man or woman in the street who is benefiting from them. They are benefiting the better off in our society.

When we are discussing pensions and planning to make them compulsory, with no guarantee of a return on that money, it is critical that we look at who is benefiting from the tax breaks. I remind the Minister of State that at a time when many PAYE workers are being told by employers that their defined benefits schemes are being wound up or are under-funded and they are being encouraged to take out defined contributions schemes, those same employers are making enormous contributions to their own pension funds and gaining very significant tax breaks. Some of these directors are adding €1 million a year to their pension schemes, while telling employees that their pension funds are being wound up. Therefore, tax breaks as regards pensions are grossly inequitable in the way they are dealt with by the Government.

For some people tax avoidance schemes involving pensions are probably the most beneficial mechanism ever devised for reducing tax liability. This needs to be looked at and made more equitable, so everyone benefits from these tax breaks which should not be just accessible to the wealthy. Such people are well off. Many company directors are on very good salaries to start with. I am more interested in ensuring PAYE workers have decent pensions when they retire. I hope the Minister of State can tell the House who is benefiting from these tax breaks. I doubt whether he

will name the people who benefit, but I would like him to. At any rate, I want to know which schemes are benefiting and to what extent. Can he put a figure on the amount involved?

As I told the Minister for Social and Family Affairs, if all those tax breaks were to be cancelled and the same money put into old age pensions, they could be doubled overnight for every worker in the country. That might not be in the best interests of everybody but the tax breaks as set up at present are not fair and I would like this to be addressed. I want the Government to be open and transparent as regards who is benefiting from these tax breaks.

**Mr. T. O'Malley:** I thank Senator Terry for raising this matter. I am replying to her motion on behalf of the Minister for Finance, Deputy Cowen.

The ESRI report referred to is entitled Pensions Incomes and Replacement Rates in 2000, published in May 2005. Page 38 of that report states, "The Revenue Commissioners estimate that the net cost of the tax reliefs for private pension saving by employees, employers and the self-employed in the year 2000/01 amounted to €1.5 billion." This ESRI figure is €1 billion less than that mentioned in the Adjournment motion.

The following estimates of the cost for 2000-01 of certain pension reliefs are contained in table IT6 dealing with the cost of allowances and reliefs in the Revenue Commissioners' statistical report for 2002: employees' contributions to approved superannuation schemes — €471.9 million; employers' contributions to approved superannuation schemes — €646.2 million; exemption of net income of approved superannuation funds (contributions plus investment income less outgoings) — €1,292.3 million; and retirement annuity premiums — €205 million. The first three of these four figures are stated in the Revenue report to be particularly tentative. The total of the four figures comes to €2,615 million, which is broadly in line with the €2.5 billion mentioned by Senator Terry. There is no breakdown available of the first three figures as these are tentative estimates.

The €205 million figure relating to retirement annuity premiums is the Exchequer cost of the contributions to retirement annuity schemes, which schemes can be taken out by self-employed persons and by employees who are not members of an occupational pension scheme of their employers. There were 101,703 contributions made to retirement annuity contracts for 2000-01 relating to this €205 million Exchequer cost. There is no breakdown available to hand of the amounts claimed in respect of the ten highest contributions made. In any event Revenue confidentiality would rule out the identification of the individuals concerned.

With regard to the issue of obtaining further information on the Exchequer cost of pension reliefs, the Department of Finance and the Revenue Commissioners have been working closely

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recently to investigate data capture issues with a view to improving data quality and transparency without overburdening compliant taxpayers. Arising from this work, provisions were included in the Finance Act 2004 requiring employers to give information regarding the total employer and employee pension contributions in the annual P35 form detailing PAYE paid and so on. The preliminary data should become available from early 2006 after the relevant income tax returns are filed.

It should be stated that the purpose of these various tax reliefs is to encourage employers to provide pensions for their employees and to encourage employees and the self-employed to contribute to or to provide for their own pensions. This has been long-standing Government policy. It is also Government policy to increase pension coverage and these tax reliefs play a key

role in this regard. It should be borne in mind that when pensions are eventually drawn down in retirement they are taxable subject to the usual income tax rules. Thus, a significant part of the Exchequer cost of the reliefs is eventually recouped.

It should be noted that these tax reliefs for private pension provision reduce the burden on the State to provide a larger amount of direct pension provision. In contrast, a number of other EU member states such as Germany, France and Austria whose pension provision is largely or almost entirely State funded have had to take major corrective action in the pensions area over the past five years because of the pressure on the public finances caused by demographic and other factors affecting pension provision.

The Seanad adjourned at 8.15 p.m. until 10.30 a.m. on Wednesday, 1 June 2005.