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**Wednesday,
15 June 2005**

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

Wednesday, 15 June 2005.

[illegible]

SEANAD ÉIREANN

*Dé Céadaoin, 15 Meitheamh 2005.
Wednesday, 15 June 2005.*

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Paidir.
Prayer.*

Business of Seanad.

An Cathaoirleach: I have received notice from Senator Coghlan that, on the motion for the Adjournment of the House today, he proposes to raise 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 Kerry with maps in English and road signs in Irish.

Mr. O'Toole: Hear, hear.

Ms O'Rourke: Senator Coghlan will be a hero.

Mr. J. Phelan: He is already.

An Cathaoirleach: I have also received notice from Senator Tuffy of the following matter:

The need for the Minister for Defence to provide an update on the urgent need to set up a meeting between his Department, the Department of Transport, the Irish Aviation Authority, South Dublin County Council and Kildare County Council to discuss the current and future use and development of Weston Aerodrome, Lucan, County Dublin.

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

The need for the Minister for Justice, Equality and Law Reform to clarify the anomaly with regard to the deportation of persons (details supplied) and the ensuing forced separation from their children.

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

Order of Business.

Ms O'Rourke: The Order of Business is No. 1, the Disability Bill 2004 — Committee Stage (resumed), to be taken on the conclusion of the Order of Business until 5 p.m. and No. 13, motion No. 12, to be taken between 5 p.m. and 7 p.m. There will be a sos between 1.30 p.m. and 2.30 p.m. Yesterday extra time was sought for the debate on the Labour Party motion on the Morris tribunal reports. I would like to meet the party leaders on the conclusion of the Order of Business for a brief few minutes to see if we can work out something on that. The business due to the taken following Private Members' business is concluded. Is that in order?

An Cathaoirleach: An amendment to the Order of Business will be required.

Ms O'Rourke: I understand that.

Mr. Finucane: It is more than seven years since the Good Friday Agreement. There have been many false dawns together with much frustration and fudging. David Trimble's political career is over and support for the SDLP has eroded while Sinn Féin's support has increased. The marching season is about to commence. I wish the Taoiseach good luck in London later where he will meet the DUP. He is focused on talks again having had recent meetings with Sinn Féin. We can reflect on the commitment made by the leader of Sinn Féin, Gerry Adams, at the beginning of the UK election campaign when he said he would advise the IRA to end paramilitary activity. There is speculation it will end and I hope there will be an announcement in this regard in the near future because with the marching season upon us, a cloud will hang over Northern Ireland. We would all like to see the Good Friday Agreement advanced and I hope it will be in the next few weeks.

Cancer statistics were published recently and a worrying trend emerged in the high incidence of prostate cancer in the south west between 1994 and 2001. The roll-out of BreastCheck nationally has been criticised on the basis it is not happening quickly enough. However, I would like the Tánaiste and Minister for Health and Children to come to the House to discuss this issue. The test for prostate cancer is simple. Many older men prone to the disease have medical cards. If the Tánaiste were to introduce a free test for prostate cancer, it would demonstrate a little imagination and action on her part. The test is very simple and there is proof that if prostate cancer is detected early enough, it is a treatable illness. Male illnesses of this type can often be forgotten about. I would like to see a step taken towards doing something about this cancer.

Mr. O'Toole: We debated the OECD report on third level education one month to six weeks ago. The debate was a good one but the issue was not

[Mr. O'Toole.] debated elsewhere. In the same week as that report's publication, the OECD published a report on child care that was not discussed anywhere. Senator O'Meara raised the matter of the NESF report yesterday. She has also raised related issues occasionally. It would be timely to discuss both reports now. I am conscious that serious presentations are being made to the Taoiseach on this issue at present. I support the Senator's call for a debate on the matter at a time when mortgage costs for many young people are less than child care costs. This is a matter we must examine.

I support Senator Finucane's proposal about expanding the availability of free prostate cancer tests. I raised the issue that every workplace should ensure all workers are facilitated with an annual blood test that would perform prostate, cholesterol, liver, diabetes and other tests. This can be done very easily, efficiently and simply. Much of it was available to Members of the Houses in recent times and will soon be available again. The way to address this matter is to ensure every workplace puts in place opportunities for all workers to access blood tests which would cover these important issues. Senator Henry has spoken of the importance of diabetes checks and the difficulties diabetes creates. Blood tests could be a positive development in that regard.

Ms O'Meara: I could not help but notice this morning that the Government appears to be waking from its slumber on the subject of child care. For some Ministers, there are indications they see the possibility of important announcements on the matter. I suspect we are a long way from action but I welcome the issue being on the agenda. My party will take some credit for this. As Senator O'Toole has said, it would be no harm to have a debate on child care issues.

The OECD report has been mentioned and the Leader and I discussed it previously. I have not read the NESF report yet but I assume it will be available. The Government has made proposals, if they amount to proposals. Let us have a debate and see if we can advance the issue on behalf, not only of the parents of Ireland, but of the children of Ireland also.

I support the calls for a debate on Northern Ireland. We wish the Taoiseach well today. We have had some very valuable debates on Northern Ireland and, though we are running out of time before the summer recess, I ask the Leader to consider arranging such a useful debate.

Mr. Minihan: I join with previous speakers in seeking a debate on child care. No single party has a monopoly on advancing this issue. From interacting with the community, all politicians recognise the need in this regard. Of late, all parties have been putting forward proposals. All parties deserve to have these views aired so we can

reach a consensus to advance initiatives and directives in the interests of parents and the community. I would welcome such a debate.

I agree with Senator Finucane's comments on prostate cancer, which is a worthwhile consideration that should be taken on board. It would be remiss of us if we did not have a debate on Northern Ireland before the end of this term and I urge the Leader to try to facilitate such a debate.

Mr. Bannon: Will the Leader invite the Minister for the Environment, Heritage and Local Government to the House to have a debate on the charges imposed under the Freedom of Information Act 1997? These charges are impacting negatively on public access to information. Transparency and accountability form the cornerstone of every democracy. As we have learned recently, there has been a 33% decline in the numbers accessing the services provided for under the Act in the past two years due to the high charges imposed by the Government. The Taoiseach promised a review of the legislation approximately one and a half years ago but nothing has happened. In all other European countries, no charges are imposed.

Mr. P. Burke: Hear, hear.

Mr. Bannon: They consider people having access to information to be the pillar of democracy. The high charges imposed by the Government are having a negative effect on this country. We need a review and a debate on the issue.

Mr. Hanafin: Will the Leader arrange a debate on VRT? Allowances are made in cases of disability, wherein vehicles are allowed tax relief if they are fuel efficient in terms of using alternative fuels. In light of the number of people being killed on our roads, perhaps we should consider reducing VRT on vehicles that pass certain very high safety standards in order to incentivise the companies that import them to advance safety features so we can reduce the carnage on the roads and do something positive.

Mr. Norris: I support Senator Finucane's call for screening for prostate cancer. I have it done every year as I have had a prostate problem for some time, which happens to most men over a certain age. The blood test is simple and is a good idea that should be done.

The Senator also raised the matter of BreastCheck. I received a communication this morning from Age Action Ireland pointing out that, though there is a dip in the incidence of breast cancer for those in their 40s, rates start to increase again for those in their 60s. Women over 64 are excluded from the BreastCheck service, which is wrong. This is a form of ageism. We should make the service available to everyone as it is just as much a difficulty, tragedy or trauma

for a woman of 64 or over as it is for someone younger.

I wish to raise the issue of immigration procedures, asylum seekers and so on. We must monitor this situation on an ongoing basis. I received a letter from the Minister for Foreign Affairs, Deputy Dermot Ahern, concerning the Kennedy-McCain Bill in the US and our Government's tremendous activity in lobbying for our unregistered and undocumented people in America.

Mr. Glynn: Hear, hear.

Mr. Norris: I support the Government in this but we have an arbitrary, capricious and unchristian system here. Will the Government consider removing from the Constitution the provisions referring to Christianity, as it is plainly not prepared to act upon them? I have a great regard for the Minister for Justice, Equality and Law Reform, Deputy McDowell, but he suggested recently it was regrettable that we must observe international human rights agendas when allowing people into the country. I am sure it was an off-the-cuff remark but, as with Donald Rumsfeld, these ideas travel downwards. The process can be very difficult sometimes. The phone system does not work. The office is open Mondays, Wednesdays and Fridays for a few hours. The switchboard operator will say one is wasting time trying to get through. As public representatives, is there not a special number for us to get through? There is no accountability.

Tomorrow is Bloomsday. To mark the occasion last year, a Lebanese scholar of international reputation was refused a visa to read a paper. I managed to get her into the country. I know of a situation where a graduate of Trinity College, Dublin, wants to do a degree, an extra special little exam and was refused one week——

An Cathaoirleach: I presume the Senator is seeking a debate.

Mr. Norris: I am. There are situations all over the country of people who have been here for five years and who are being thrown out. This is not what the Irish people want. The Leader knows that the decent people of Athlone rallied around a family being deported. A seven year old boy was left behind when his family was sent back to Romania. A man who converted from Islam to Christianity and who is threatened with death if he goes back was sent back. Some of the people sent back were monitored.

An Cathaoirleach: These are all fine points for the debate.

Mr. Norris: A mother stated that she was afraid her daughter would be subjected to female circumcision if she went back to her country of origin. The reason she was not allowed to stay in

Ireland was that her older daughter had remained at school in her native country. However, the officials did not realise that this tragic mutilation had already happened to the older girl and nothing more could be done. Officials do not know all the facts and they are making important decisions. They are not, but should be, accountable. A register of deportation decisions should be set up and monitored. We should also ask the Human Rights Commission to examine the situation.

Mr. Glynn: I support Senator Finucane in his calls for a debate on men's health and I have asked for such a debate on several occasions in the past. We have debated women's health in this Chamber, and rightly so. The incidence of prostate cancer is increasing. I am guided by Senator Henry's knowledge in stating that the PAS test, while providing some guidance, is not a conclusive test.

We also had a discussion on diabetes in tandem with the debate on the obesity report but diabetes, particularly type 2, merits a standalone debate. I exhort the Leader to encourage the Minister for Health and Children to debate type 2 diabetes in this House and to initiate a screening programme for this condition. A great number of people are suffering from type 2 diabetes and an even greater number do not even know they have the disease.

It is time the matter was brought centre stage in this House. Let us invite the Minister for Health and Children to the House to hear definitive proposals from her on what is to be done about prostate cancer and type 2 diabetes.

Mr. Coghlan: I support Senator Finucane in his call for a debate on Northern Ireland and on men's health. I welcome what has been said about child care and the proposals that are forthcoming. Perhaps a debate could be arranged on the matter after the National Economic and Social Forum child care document is published.

I have previously raised the issue of the cost of company law compliance statements for businesses in this House. Small businesses in particular are being penalised unfairly. The matter has been referred to the Company Law Review Group and I urge the Government to speed up that process. The threshold for compliance statements should be €20 million rather than €5 million or €7 million on turnover and €15 million rather than €7 million on balance sheet. I ask the Leader for a debate on the matter with the Minister for Enterprise, Trade and Employment.

Mr. Mooney: I support the calls for a debate on child care but I cannot let Senator O'Meara's comments go unanswered. This Government has been wide awake to the realities of child care and has spent hundreds of millions of euro since the programme was initiated in 1997. My friend and colleague, Senator Cox, raised the issue repeat-

[Mr. Mooney.]
edly at Fianna Fáil parliamentary party meetings when she was first elected. Several other party members did the same.

The phenomenal expansion of the economy has overwhelmed us. The number of people now at work has increased dramatically and last week it was up by a further 30,000. There are almost 2 million at work compared to 1.1 million less than ten years ago. It is inevitable that a response cannot be as quick as would be desired. I welcome a debate on child care and the report from the National Economic and Social Forum. There are areas that need adjustment but it is neither fair nor accurate to suggest that the Government has not been aware of this issue. The initiatives that have already been put in place and those that are forthcoming will go a long way towards addressing the problem.

I support everything Senator Norris said on immigration. This House was ably represented last week on the lobbying mission to the United States but while there, lobbyists were aware of the Achilles heel of Irish immigration laws. There is probably as great a need for immigration reform in this country as in the United States.

Dr. Henry: I support Senator Glynn and all Senators who called for a debate on what is essentially preventive medicine. I also ask for some action on the various reports produced over the years that support preventive initiatives.

The debate on the Morris tribunal report in Private Members' time tonight does not cover an issue that concerns me and I urge the Leader to ask the Minister for Justice, Equality and Law Reform to address in this House why he is continuing to pursue Senator Higgins and Deputy Howlin through the courts. They are being pursued regarding information they gave to a former Minister for Justice, Equality and Law Reform and apparently the case is due to be heard on 5 July. Senator Higgins and Deputy Howlin——

An Cathaoirleach: That matter is *sub judice*.

Dr. Henry: We, as taxpayers, object to a matter being pursued which will probably be settled on the steps of the court and cost a fortune, knowing the cost of senior counsel on a daily basis. Why can it not be stopped? I am interested——

An Cathaoirleach: An appeal in the case of Deputy Howlin is *sub judice*. The case of Senator Higgins has been resolved.

Dr. Henry: I understand what the Cathaoirleach is saying but must we continue to have such cases settled on the steps of the courts at enormous expense to the taxpayer? I ask the Leader to investigate the matter.

Ms White: I support the calls for a debate on child care. I wish to inform colleagues on both

sides of the House that I have been working on child care on a daily basis for the past eight or nine months.

Mr. Bannon: The Senator has been kissing babies.

(*Interruptions*).

Ms White: I believe I lit the spark that has created the excitement on this issue on both sides. I am conducting a public meeting on 27 June in the Carmelite centre——

An Cathaoirleach: Senator, a public meeting should not be raised on the Order of Business.

Mr. Norris: Where is the meeting and what time does it start?

Ms White: I am also meeting county councillors in the Berkeley Court Hotel on 1 July.

An Cathaoirleach: Does the Senator have a question for the Leader?

Ms White: I am calling for a debate on the matter and if any Senator, on either side of the House, wants to hear my child care proposals, he or she can come to the Carmelite community centre on 27 June.

(*Interruptions*).

An Cathaoirleach: The Senator is out of order——

Ms White: Senators are also welcome to the Berkeley Court on 1 July.

An Cathaoirleach: The Senator cannot advertise meetings on the Order of Business.

Mr. U. Burke: Over the years we have debated road deaths and carnage and their causes and all possible measures to improve road safety have been proposed. It is strange, therefore, that the National Roads Authority, NRA, has decided to object to the provision of off-road facilities on new road projects. It has joined groups like An Taisce, Dúchas and others, in objecting to improved infrastructure.

The NRA has stated that it has a strategy of improving signage to direct trucks and other vehicles off main roads and into towns and villages. This seems to be contrary to the original idea behind new and improved road structures bypassing such population centres. I ask the Leader to urge the Minister for the Environment, Heritage and Local Government to intercede immediately and request the NRA to conform with all other European countries in providing off-road stoppage points for services and rest. The authority has said that Ireland is not big enough for such facilities. However, many trucks

there are fitted with devices to measure hours of driving and if one examines the road death statistics, many are caused by articulated trucks, driver tiredness and related problems. I urge the Leader to invite the Minister to the House to indicate that he will discuss the provision of off-road facilities with the NRA and ask it to move away from the negative action it is taking by objecting to service stations, which would be required to go through the normal planning procedures.

Dr. M. Hayes: I support what Senator Burke has said regarding stops and rest points along motorways. I think it is a great source of danger and I would be glad to have a debate on this issue in the House if the Leader could arrange it.

Mr. Feighan: I also join with other Senators in calling for increased awareness of cancer, particularly through BreastCheck. In my own area in the west of Ireland, there has been an ongoing campaign where many promises have been made but so far, BreastCheck has not been rolled out. A woman from the west of Ireland has more chance of dying from breast cancer because the screening service is not available.

With the advent of summer, there are trampolines in every garden around the country. Two or three of my constituents brought this to my attention. Many accidents resulting from the use of trampolines have happened. We must address the issue of safety in their use. Many trampolines are fitted with safety nets. We could possibly call in the relevant Minister to raise awareness of the availability of safety nets and possibly to make the fitting of trampolines with safety nets compulsory because they have been a major cause of accidents in the past few years.

Mr. Dooley: I join Senator Maurice Hayes and Senator Ulick Burke in calling for the intervention of the Minister regarding the recent publication by the NRA of its proposals regarding rest areas on motorways. I have pursued this issue for quite some time with the NRA and have had a number of written contacts with it. It is wholly inappropriate to expect motorists and truck drivers to leave motorways to get services. It is driving trucks into small towns when the rationale behind the construction of bypasses was to make this unnecessary. Far more seriously, it affects motorists.

We all try to get to our destination as quickly as possible and to expect people to leave the motorway for a rest is unacceptable. It is leading to deaths on the roads. I understand that dual carriageways and single carriageways are required to have lay-bys approximately every 15 miles. It is ludicrous that the same rest areas are not present on motorways. At present, a person can drive from the Border to Portlaoise without encountering any road stop. This will lead to deaths on the roads. Recent statistics show that

fatigue is one of the growing causes of deaths on the roads. The only way to overcome fatigue is to provide rest areas and stopping areas for people to get rest.

An Cathaoirleach: Three Senators are offering. I will be able to accommodate them but no more.

Mr. McHugh: I endorse the calls by Senator Finucane and Senator Minihan for a debate on Northern Ireland. It is both timely and necessary. We must look at this in a positive light. We have moved on since 1997. I do not wish to underestimate the experience of Senator Leyden and Senator John Paul Phelan in Palestine where they had guns pointed at them. However, guns were pointed at people on a daily basis in places like Strabane and Aughnacloy. This is something we have moved on from and which we feel is part of our distant past.

We should have a positive debate on Northern Ireland regarding resources and the sharing of resources. There is considerable cross-Border activity with regard to economic expansion along the Border area at local county council, urban council and chambers of commerce level. However, this has not been transformed into proper action at national level. On the one hand, we are producing reports like the national spatial strategy, which encompasses the likes of Derry alongside Letterkenny.

An Cathaoirleach: There will be a debate during which Senator McHugh can elaborate on his points.

Mr. McHugh: A hospital in Altnagelvin, which is five miles across the border from Donegal, offers breast screening but this service is not available in Donegal. The proposed gas pipeline between Derry and Letterkenny has proved to be economically unviable. If it is economically unviable it has been established in deference to the political will on both sides of the Border. The debate that we need in this House is for national politics to transcend the local. We need a debate as a matter of urgency.

An Cathaoirleach: Senator McHugh should confine his arguments to the debate when it is held.

Mr. Kitt: I support the calls for a debate on child care and I commend the Government on the major funding provided for child care. Every successful group in Galway has received approximately €1 million. However, I am concerned that there is now talk of putting a limit of €1.1 million on all child care projects, something with which I disagree. While expensive child care proposals are submitted, they deserve our support. Local authorities have a role to play in providing sites for child care centres because it is not easy for a group to get money and then be told it cannot

[Mr. Kitt.]

spend it on purchasing a site for a child care centre.

I also support calls for the NRA to provide rest areas on motorways. This debate has been active for some time. Other Senators mentioned some facts relating to this issue. On this morning's edition of "Morning Ireland", it was pointed out that the NRA could not name any other country in Europe in the same situation as Ireland. I understand a small country like Luxembourg has rest areas 50 minutes apart on major roads. It is time that we had a debate on this issue and the NRA had a change of view.

Dr. Mansergh: Without detracting from the importance of the economic cross-Border issues mentioned by Senator McHugh, I hope that we would have some important political developments by the end of this session that would make a debate worthwhile. A television series that was broadcast a few years ago was called "Endgame in Ireland" but in a sense, that is still ahead of us.

I support the calls made by all Senators from all sides of the House regarding the NRA. The idea, as I understood it, was to have a continuous motorway or dual carriageway between our major cities. This is gradually being put in place. It is ridiculous to suggest that people add another 20 minutes to their journeys by going off into the nearest town or village for a rest. Purpose-built areas, perhaps in conjunction with places where motorists turn off motorways, are essential. The NRA is going against the unanimous political consensus in this House.

Ms O'Rourke: Senator Finucane, who is the acting leader of the Opposition, certainly set the agenda for the many debates here this morning. He wished the Taoiseach well but raised the fact that it has been over seven years since the Good Friday Agreement was signed. I have already written to the Taoiseach asking him if he would come to the House before the end of the session to debate Northern Ireland.

Senator Finucane also raised the matter of prostate cancer statistics in the south west and the fact that there is now an easy blood test which can detect the early traces of prostate cancer. The BBC also reported last night that a new early test for breast cancer has been developed that can detect precancerous tumours that could turn cancerous. It would be worthwhile if both these tests could be provided. A very fair point was made about men's health. Senator Glynn has raised the issue many times. It would be a change, and a necessary one, to hold such a debate.

Senator O'Toole raised the OECD report on child care and the NESF report, which has just been released. Senators O'Meara and White highlighted these, particularly the advisability of free one-year preschool care for all children entering primary school. Senator O'Toole also

called for each workplace to have facilities for blood tests.

Senator O'Meara said she is pleased that child care is on the agenda, as am I. I could not help but smile when the Senator said that certain Ministers might want to take credit for it. She is correct. As we know, it is women, with the honourable exception of Senator Minihan, who have led the debate on this and kept the matter to the fore. Senator O'Meara put it on the national agenda at her party's national conference, which was interesting. There was also a call for a debate on Northern Ireland but, as I said earlier, my letter has been sent to the Taoiseach.

Senator Minihan asked for debates on child care, Northern Ireland and prostate cancer. Senator Bannon spoke about the charges for freedom of information requests and said the Taoiseach was to review this after a certain period. I understand he is doing that. Senator Hanafin asked for a debate on VRT while Senator Norris spoke about screening for prostate cancer and, for women over a particular age, screening for breast cancer. He also spoke about the capricious system of decision making on asylum seekers. It is totally capricious at present. I will seek a debate on it because I cannot get the information I need without seeking it formally.

Senator Glynn sought a debate on men's health, particularly on type two diabetes, screening and other health issues for men. Senator Coghlan asked for debates on child care, men's health, Northern Ireland and the cost of compliance statements for small firms. However, if there is no compliance, matters such as health and safety and so forth will not be dealt with. People cannot have it every way. The compliance requirements on firms might appear onerous but they are necessary.

Senator Mooney spoke about child care and pointed out that the expansion of the economy has meant that we are scrambling to catch up on such matters. We have to catch up now. This House was well represented in discussions with the legislators in Washington who are dealing with the undocumented Irish in America. The delegation was well aware that we have an equal if not greater problem in that regard in this country. Senator Henry sought a debate on preventative medicine and asked why two Oireachtas Members are being harassed through the courts, which is costing money. The Cathaoirleach replied to the Senator but I will try to speak to the Minister for Justice, Equality and Law Reform, Deputy McDowell, before he comes to the House tonight and put the Senator's question to him.

Senator White is working on child care daily. This issue has gone from being unwelcome to it generating acclaim for the Senator from all sides of the House. I hope the Senator does not disappear into the Carmelites where she is due to have her next meeting.

Ms White: The Taoiseach said it was sectarian last night.

Ms O'Rourke: Senator Ulick Burke spoke about the NRA. It is putting forward a hopeless policy whereby one is expected to keep driving regardless. The NRA representative said on the radio this morning that motorists could go into a village or town but the purpose of the bypass is that they do not do that. Motorists will have to bring their truck or car into the town or village.

The problem is that Ireland is a latecomer to road building. After World War Two the other countries in Europe built all their major roads but we did not. Now that we are doing it, we seem to see these things as fripperies. They are not. It is essential that there are rest locations of various types. The matter was treated in a flippant way this morning by the representative of the NRA. I intend to telephone the NRA. Is it mad? The country will have gorgeous roads everywhere but motorists will have to leave them to use toilet or rest facilities.

Senator Maurice Hayes strongly supported Senator Ulick Burke. Senator Feighan asked about BreastCheck. The Tánaiste has given the definitive date of 2007 for the roll out of BreastCheck in the west of Ireland.

Ms O'Meara: It is 2008.

Ms O'Rourke: Senator Feighan also raised the matter of trampolines and safety nets. It is a consumer issue if there are safety concerns about the increasing use of trampolines. At nearly every children's party a trampoline is hired for the occasion. Senator Dooley also raised the issue of rest areas on motorways and said he had raised it previously. The lack of these areas could contribute to road deaths because tiredness will affect motorists.

Senator McHugh asked for a debate on Northern Ireland which would focus on the economic and commercial possibilities of using resources both North and South in a combined way to bring prosperity to both parts of this island. He offered the example of Altnagelvin Hospital, which provides breast cancer screening and treatment while five miles away in Donegal women must travel to Dublin for it twice and three times a week by bus. That is an obvious area in which there could be sharing. There is some sharing of health facilities North and South but the Senator's suggestion is most interesting.

Senator Kitt spoke about child care and suggested that local authorities provide sites. Senator Mansergh is hopeful of important political developments regarding Northern Ireland by the end of the session. It is the same for the Taoiseach. We wish him well but he must get up each morning to deal with the North and say: "I have hope; I have optimism." He keeps working at it non-stop. One would think that by now he would be

battered down but he is giving it his all. We must hope that this is not another false dawn.

I wish to notify Members that two new Bills will come before the House to be dealt with before the end of session — the electoral Bill, which deals with the redrawing of the constituencies, and the commission on child abuse legislation.

Order of Business agreed to.

Disability Bill 2004: Committee Stage (Resumed).

SECTION 14.

An Cathaoirleach: Before dealing with amendment No. 29, the Minister of State wishes to make a statement with regard to section 13.

Minister of State at the Department of Justice, Equality and Law Reform (Mr. Fahey): I intend to review the provisions in section 13 to examine if it can be expanded with a view to delivering more information on the area of unmet needs. This is due to what Senator Terry said yesterday. I appreciate her concerns in this area. An improvement will go some way towards meeting those concerns by giving us more comprehensive information to enhance services. If possible, I hope to introduce an amendment on Report Stage, after consultation with the Parliamentary Counsel. On reflecting on the points made by Senator Terry yesterday, I am prepared to consider an amendment to try to accord with the views she expressed.

Ms Terry: I thank the Minister of State.

An Cathaoirleach: That is only a point of information. Section 13, as amended, was agreed yesterday.

Ms O'Meara: I move amendment No. 29:

In page 17, subsection (1), between lines 15 and 16, to insert the following new paragraph:

“(b) the contents of the assessment;”.

I speak on behalf of the Labour Party. Senator Tuffy has done and continues to do sterling work on the Bill. For the information of the Minister of State and the House, Senator McCarthy and I will manage the business on our side today.

The amendment relates to section 14, which deals with complaints regarding assessments or service statements, an important section of this important Bill. The area of assessments and service statements is critical for the person with disability in regard to accessing the services required and meeting needs, which one would hope and I assume, from all the Government has said, is the intention of the Bill. The issue of assessments and service statements is, therefore, one of the core elements of the Bill.

[Ms O'Meara.]

The Labour Party put down the amendment because we believe section 14(1)(b) in particular is unnecessarily restrictive. Section 14(1) states:

An applicant may, either by himself or herself or through a person referred to in *section 9(2)*, make a complaint to the Executive in relation to one or more of the following:

(a) a determination by the assessment officer concerned that he or she does not have a disability;

(b) the fact, if it be the case, that the assessment under *section 9* was not commenced within the time specified in *section 9(5)* or was not completed without undue delay;

The amendment seeks to insert a new paragraph after paragraph (b) above which will read: "(b) the contents of the assessment;". We seek to allow an applicant the right or facility to have an appeal against the contents of the assessment. The section as currently drafted only permits an appeal in regard to a contention that the assessment was not conducted in a manner conforming to standards set under section 9.

This is a vital amendment, indeed, we contend it is one of the most important amendments to the Bill. The existing wording is inadequate because it prevents any appeal against the contents of the assessment. The amendment would allow such an appeal. We believe it is fundamental that this facility would be available to the applicant under the Bill. Without the amendment, the Bill is inadequate and undermines the rights of an applicant.

The whole area of an appeal against an assessment is an important one. I would like the Minister to consider that the section, as drafted, is not adequate to meet the spirit of the Bill as set out. The amendment is put down in an attempt to be helpful and to allow the Bill to be as powerful as it can be. In particular, it is to ensure that the needs of the person making the application, who should be at the heart of the legislation, namely, the person with a disability, are fully met. The concept of the appeal and the manner in which an appeal can be made are important in that regard. I look forward to the Minister's reply.

Mr. Kett: There is reasonable merit in Senator O'Meara's comments. The assessment, while it is not resource driven, is key to the requirements in the first instance. I accept there is provision to disagree with the service statement if one so desires. However, if a person disagrees with an assessment, irrespective of the resources provided, that is a major problem, leaving aside what might happen thereafter. When a person disagrees fundamentally with the evaluation by the individual or individuals involved, that person is on a loser, irrespective of the service statement or what resources are provided — resources are

a separate issue. I accept the point made by Senator O'Meara in this regard. It is a matter that could be considered by the Minister.

Mr. Norris: I support Senator O'Meara. This is an important point. It is instructive, interesting and perhaps indicative that Senator Kett has found himself in large measure in agreement. Perhaps this indicates the Government may be prepared to look again at the issue. While it is useful that people can challenge on the basis that procedures were not fully followed, the contents of the assessment are the core of the entire matter.

I wish to raise a parallel issue, one where the issue of the contents of an assessment might be raised, but which has not been dealt with satisfactorily. I refer to the inclusion of people with multiple sclerosis in the definition of disability. Such people might seek an assessment but they would in many cases want to challenge an assessment, multiple sclerosis being a particular kind of disease from which there can be periods of remission.

The exclusion of people with multiple sclerosis from the definition of disability, which seems quite deliberate on the part of the Government, is greatly worrying and will lead to circumstances where they will almost invariably want to challenge the contents of the assessment. I put it to the Minister of State that the United Kingdom in its legislation had a very similar definition which excluded multiple sclerosis, but it had to change it. In other words, it changed legislation similar to that we are now introducing. In any case, we will probably have to change this legislation eventually as a result of pressure and the public highlighting of the issue.

The Multiple Sclerosis Society of Ireland wrote to the Minister asking for this disease to be included in the definition of disability but it has not received a reply — perhaps I should say the society wrote to the Department as I do not know the Minister has seen this correspondence and do not want to antagonise him by suggesting that. For that reason, I intend to put down an amendment on Report Stage to include multiple sclerosis in the definition of disability.

I understand I am wandering slightly but this issue is clearly related to the amendment, which I strongly support.

Ms O'Rourke: Like Senator Kett, I believe the amendment deals with a very important issue, as the contents of the assessment will decide what happens to a person. If the contents of an assessment are deficient or unsuitable in the eyes of the applicant or the person seeking the service, that person is not going anywhere in regard to getting his or her due rights. Members on this side of the House will not vote against the Minister because he has shown much common sense in dealing with the Bill, and put much thought into it. However, I urge him to consider this important matter.

The Bill is meant to be applicant centred or customer centred, or whatever is the friendly terminology used in it. While this may be so, if the contents of an assessment are not to the liking of an applicant, where is that person going in regard to getting his or her due rights? I urge the Minister to think strongly about this matter.

Dr. Henry: I support the Labour Party's useful amendment. This is a very important part of the Bill and involves the assessment of the person applying and stating he or she has a disability.

I am also very concerned about the point raised by Senator Norris. The Multiple Sclerosis Society of Ireland has been in touch with me and I presume its concerns relate to the definition of disability in the Bill which states that the person must have an enduring physical, sensory, mental health or intellectual impairment. As Senator Norris said, relapses and remissions can occur in cases of multiple sclerosis and other conditions. This is why this amendment is very important, so that a person would be in a position to challenge the assessment and have it reexamined. I hope the Minister of State takes Senator Kett's advice on board because he has a considerable amount of experience in dealing with people with disability. The amendment would be an additional improvement to the Bill.

Mr. Fahey: I appreciate why Senators want this change which, at face value, seems like an important improvement to the Bill. However, the requirement is provided for in the Bill when one considers the overall provisions. Amendment No. 29 seeks to insert a further ground for complaint in respect of the contents of the assessment. However, people who consider themselves as having a disability can apply for an assessment, as outlined in section 9(1). Those who apply for an independent assessment will receive one and there is ground for complaint under section 14(1) if they do not.

With regard to the content of the assessment, it is important to note that the assessor is an independent officer and there is no reason he or she will not make an assessment in association with the person applying to that person's satisfaction. The assessment will be carried out without any regard to the cost of providing the services identified and in accordance with the standards set down by the Health Information and Quality Authority. This new body will be established to set the standards for the legislation and the services provided under it. If the assessment officer does not comply with the standards, as laid down by HIQA, there are then grounds for complaint. In that specific area, the contents of the assessment are covered because it is carried out in accordance with those standards, which will be very detailed and will spell out exactly what will be in the content of the assessment, among other matters.

In addition to this section, there are other provisions in the Bill which will ensure standards are adhered to and that the involvement of the relevant expertise is taken into account in the assessment process. Section 9(8) allows for the applicant to seek a further assessment if there is a material change in his or her circumstances, if further information about personal circumstances or services becomes available or if there is a mistake of fact in the report. The assessment officer's ethos is to represent the interests of the individual. As I said yesterday, the statutory independence given to the assessment officer means that he or she stands apart from the system and therefore has a completely different role from the service statement and liaison officer.

Senator Norris made a point, supported by Senator Henry, regarding the enduring nature of a condition. This has been catered for in the Bill and we have made amendments with regard to the definition of disability in order to ensure there is no question regarding the difficulty for people who have disabilities of an episodic nature. We have widened the definition of disability to ensure that a person who, for example, suffers from bipolar depression of an episodic nature, is provided for under the terms of the legislation. While I appreciate the spirit behind this amendment and its support from all sides of the House, I do not believe it is necessary to have a situation where the contents of the assessment need to be appealed.

We must ensure that the legislation is person-centred, consumer-friendly and not hugely bureaucratic. There is a fear that an additional appeal on the contents of assessment, which is independent and not reliant on resources, would introduce an opportunity for greater bureaucracy. We do not want that to happen. Rather we want a situation whereby a person can go to an independent officer, who has no respect for resource provisions, have his or her assessment done and get on to the next stage where the liaison officer takes the assessment and puts in place a service statement outlining the required services.

I am sympathetic towards the proposed objectives, but I do not accept the amendment.

Ms O'Meara: I am disappointed with the Minister of State's response. I had hoped, in light of what his Government colleagues had said, that he would see that the amendment is necessary and would strengthen the legislation.

The Minister of State is describing an ideal world where a person applies to an independent assessment officer, the assessment is done and everything is perfect. I genuinely hope that is the case in practice and that people will be satisfied with their assessment; I have no doubt this will happen in the majority of cases. However, we do not live in an ideal world and we aspire to perfection. There is a very strong desire on behalf of authorities in the public service to deliver an excellent high-quality service in this area which is

[Ms O'Meara.]

applicant, customer and client-centred. However, even in an ideal world this does not always happen. The amendment is designed to provide for the rare occasion when somebody is not happy with the contents of the assessment and feels that it does not adequately or correctly reflect his or her situation. It gives people the right to appeal. The Minister claims this is taken care of in the overall context of the Bill, but he has not stated where it is specifically provided for. My understanding is that it is not and that is the reason for our amendment, particularly in the context of section 14 regarding complaints on assessments or service statements.

It is important, in order to build confidence in people with disabilities in the operation of this legislation and the new system, to bend over backwards to accommodate them and give them an opportunity to have their case stated and ensure their assessment reflects their needs. I would have thought this amendment underpins that desire. Without it, the Minister is leaving out something fundamental. According to the description the Minister gives, the contents of the assessment would not need to be appealed. In an ideal world that would be the case and that would be wonderful. Perhaps this will only apply to one out of a hundred or a thousand but the principle contained in the legislation is that it would be possible to alter the assessment and that is the essence of this amendment. It would strengthen the legislation.

I am disappointed with the Minister's response and ask him to do two things. Can he point out precisely where the legislation caters for this scenario? I also request that he take on board the views of all Members of this House.

Mr. Kett: I will not belabour the point as I have listened to the Minister. The person making the assessment is gleaned information from the applicant or from his or her advocate. One can imagine a situation whereby an applicant would be nervous before the assessment and forgets some piece of information needed by the assessor in order to make an absolute assessment. On realising that something has been omitted the applicant may wish to revisit the assessment but there is no scope for it to be altered in any way.

Mr. Fahey: There is scope for that. There seems to be a misunderstanding on the part of Senator O'Meara. If one considers section 8 on page 14 it answers the point Senators O'Meara and Kett have made. Section 8 states:

A person who has previously made an application under *subsection (1)* may make a further application if he or she is of opinion that since the date of the assessment-

(a) there has been a material change of circumstances,

(b) further information has become available which either relates to the personal circumstances of the applicant or to the services available to meet the needs of the applicant, or

(c) a material mistake of fact is identified in the assessment report.

If the applicant forgets something this section allows him or her to submit the information later. This section provides for continual updating of assessment because people's needs will change. In the case of early intervention, if a child is assessed as having a certain disability at the age of two, the child's situation will have changed at the age of three and there will be a need to update the assessment. Assessments are not set in stone without further consideration. The Bill provides for revision of assessments.

In addition, the assessment is guided by standards that ensure uniformity. The best way of ensuring quality and accuracy is the standard that will be laid down and that will provide a level playing pitch. We must ensure all assessments comply with standards laid down and if standards are not complied with, an applicant can complain and a complaints officer can recommend a further assessment in accordance with standards. This will provide for the point raised by Senator O'Meara.

The level playing field to which I refer is a reassurance that assessment officers must work to the same set of standards developed by HIQA. The HIQA interim board was established earlier this year by the Tánaiste and I am confident it will play an important role in supporting quality assessment delivery. If we did not have this there could be a need for this amendment but as we have detailed standards set down we do not need the additional appeal procedure suggested by the Senator, which is provided for in section 8 in any case.

Dr. Henry: I think the Minister is correct in not making the Bill too prescriptive. This would lead to great problems with exclusion of people one felt were included. The Minister's example of bipolar disorder was a good one. An enduring disability means that the underlying condition is enduring and not that one must have the symptoms or signs of the condition at the time.

People with disabilities are more likely to live in poverty and to be excluded from the community. The thrust of this Bill is to ensure they are helped but also that society be helped with the inclusion of more people in the life of the State, for example, in the fields of work or culture. This is of benefit to all of us. The points made by Senator O'Meara, supported by Senator Kett who has experience in this area, are worth considering and I hope the Minister notes these and accepts the amendment.

Ms O'Meara: I thank the Minister for his response on where this point is covered in the legislation. I am examining section 8 and I believe there is a qualitative difference between the right to make an appeal and making a new application. We may be dancing on the head of a pin in respect of this matter so I will take time to consider his response. It is likely this amendment will be resubmitted on Report Stage and I ask the Minister to reconsider this issue in light of what has been said today.

Ms O'Rourke: I am glad Senator O'Meara may table this amendment on Report Stage. I see the amendment as more fundamental and simpler than the provision in the Bill. It is more fundamental to the person being assessed and it relates to the point of interaction, where the person is assessed and realises the assessment does not meet his or her needs. Rather than addressing clinical matters it deals with the situation where an assessor does not understand what is wrong with the applicant and what he or she needs. There is great merit in the amendment.

Mr. Kett: The Minister replied to the point I made and the provision in section 8 goes some distance towards resolving the issue I raised. I do not see any danger in the amendment tabled by Senator O'Meara. There is merit in subsection 8(c) of the legislation.

Amendment, by leave, withdrawn.

Section 14 agreed to.

SECTION 15.

Government amendment No. 30:

In page 18, subsection (7), line 34, after "to" to insert "in".

Mr. Fahey: This is a technical amendment to correct a grammatical error in section 15(7).

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 31 to 34, inclusive, are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 31:

In page 18, subsection (8)(c), line 49, after "section 9" to insert "within the period specified in the recommendation".

Mr. Fahey: These Government amendments, built on amendments made in the Dáil, respond directly to the specific proposal made to the Taoiseach and me when we met the DLCCG on 25 May 2005. The group was anxious to ensure that, in addition to recommending an assessment or a

service, a complaints officer would also be able to specify the timing of the provisions. If the complaints officer could not make a recommendation about the timing of the assessment or service provision, a person who had made a successful complaint could find himself or herself at the end of the queue again for a recommended assessment or service. In response to those concerns I am pleased to bring forward Government amendments Nos. 31 to 34, inclusive, which allow the complaints officer to specify a timeframe for delivery in his or her recommendations. These amendments represent a significant tightening of the provisions to safeguard the applicant. I am particularly pleased that the positive dialogue with the DLCCG has produced this enhanced provision.

Ms O'Meara: I very much welcome the amendments and commend the Minister of State on tabling them.

Ms Terry: I also wish to thank the Minister of State for bringing forward these amendments, which should help to strengthen the legislation.

Ms O'Rourke: Well done to the Minister of State, as well as to the Taoiseach and the lobbying body. The amendments will make the legislation more precise. The thrust of many amendments to the Bill has been to tighten it up to show that the end product can be delivered in a more precise way.

Amendment agreed to.

Government amendment No. 32:

In page 19, subsection (8)(d), line 4, after "standards" to insert "within the period specified in the recommendation".

Amendment agreed to.

Government amendment No. 33:

In page 19, subsection (8)(e), line 8, after "concerned" to insert "within the period specified in the recommendation".

Amendment agreed to.

Government amendment No. 34:

In page 19, subsection (8)(f), line 14, after "appropriate" to insert "within the period specified in the recommendation".

Amendment agreed to.

Question proposed: "That section 15, as amended, stand part of the Bill."

Ms Terry: Will the Minister of State explain how independent a complaints officer can be as

[Ms Terry.]
 an employee of the Health Service Executive? Would it not be better and more independent if that person were outside the Health Service Executive, or even from another health service area? This would strengthen the legislation and ensure that complainants really would get an independent assessment. Nobody wants to question how independent an individual may be, but safeguards should be provided. In this context, has the Minister of State considered whether the independence of a complaints officer might be better served if he or she came from outside the relevant health service executive area? Perhaps an ombudsman could be appointed in this regard.

Mr. Fahey: The complaints officer is a statutorily independent post in the same way as the assessment officer. As I pointed out yesterday, for example, officers of the Department of Social and Family Affairs are statutorily independent. That they are employed by the Department of Social and Family Affairs does not, in any sense, take away from their independence in performing duties, irrespective of the views of the organisation within which they work. The same scenario applies in the case of a complaints officer. In fact, we removed a significant hurdle from the Bill whereby decisions of complaints officer could be appealed by chief executive officers of the former health boards. In order to ensure transparency and less bureaucracy, we decided to remove that provision altogether. The current situation is that a decision of the statutorily independent complaints officer will now go to the appeals officer. The latter is also statutorily independent of the Department of Health and Children, under the provisions of Part 2.

Although we will be dealing with this matter in the next section, a suggestion was made to provide an option of the Ombudsman being the appeals officer. That suggestion was, however, rejected by the DLCG. There is independence in respect of the whole system and the complaints officer is a part of that.

Question put and agreed to.

SECTION 16.

Ms O'Meara: I move amendment No. 35:

In page 19, subsection (1)(a), lines 20 and 21, to delete "appointed by the Minister" and substitute "an officer of the Ombudsman appointed by the Ombudsman and accountable to him or her".

I listened with interest to the Minister of State's response to Senator Terry concerning the independence of the complaints officer. His comments are relevant in the context of this amendment which concerns the appointment of the appeals officer. The amendment seeks to have the

appeals officer "appointed by the Ombudsman and accountable to" the Ombudsman. This proposal has been suggested to us by people with long experience of working in the area of disability as an important way of underpinning the independence of the appeals officer. I am not saying that just because somebody has been appointed by the Minister it means they are not independent. The perception is important, however, and the community must have total confidence in the appeals officer. If the latter were appointed by the Ombudsman it would underpin that independence. From the outset, it would ensure that the appeals officer is totally independent and, in particular, independent of the political system. That simply reflects the daily reality with which we must all deal. I would like to hear the Minister of State's response to the amendment. He should consider the matter favourably.

Ms Terry: I apologise to Senator O'Meara because I did not read this amendment beforehand.

Ms O'Meara: No problem.

Ms Terry: Had I realised that this amendment was forthcoming, I would not have said what I did concerning the previous one. I wish to support the amendment, which reflects the importance of the complaints officer's position being totally independent. I favour the appointment of a complaints officer being made by the Ombudsman. If we leave the complaints officer in the position as outlined in the legislation, we will have somebody who is employed by the Health Service Executive and, therefore, it will be like an internal inquiry. I wonder how transparent and accountable it will be if somebody employed by the Health Service Executive is the complaints officer. No matter how independent the Minister of State may say such officers will be, once they are in that position they cannot ultimately be totally independent. The amendment would address those concerns so I am asking the Minister of State to accept it.

Mr. Fahey: The answer to that question is to be found by looking at the independence of officers in other Departments across the spectrum, from social welfare to employment appeals and the Inspector of Mental Hospitals, who also comes within the remit of the Department of Health and Children. There is no question but that that post is completely independent of the Department. The same applies to An Bord Pleanála — a body established by the Department of the Environment, Heritage and Local Government, which is answerable to and funded by that Department. Therefore, there is no issue concerning the independence of statutorily appointed officers.

I do not envisage that the appeals officer will be accountable to the Ombudsman, as the

amendment suggests. The redress mechanisms in the Bill are designed to be independent and transparent. I do not think the particular approach of this amendment would strengthen or improve the Bill's provisions.

On Committee Stage in the Dáil, I indicated that the DLCCG had been offered the option to replace access to the appeals officer with access to the Ombudsman. This would mean that individuals would instead appeal to the Ombudsman from a finding or recommendation of the complaints officer under Part 2. The DLCCG indicated its preference for an independent appeals officer, which allows, as a last resort, access to the Circuit Court for a notice to enforce the determination of the independent appeals officer. The mechanism also provides for resolution of appeals through mediation, where appropriate, and mediation settlements can also be subject to enforcement.

The system proposed is in line with the quasi-judicial system in other sectors, and would allow for initial complaints to be dealt with by statutory officers and for their decisions to be appealed to higher bodies with a possibility of a review of those decisions. Accordingly, I do not propose to accept the amendment.

In response to my offer on Committee Stage in the Dáil, the DLCCG indicated at the recent meeting with the Taoiseach and myself its concerns about the locus of the appeals officer and its preference that it would fall under the aegis of a Department other than the Department of Health and Children. It suggested my Department in particular. It is the norm that such quasi-judicial appeals mechanisms are independent and operate under the aegis of the relevant Department for the sector. In the case of my Department, the remit for the independent refugee appeals tribunal deals with claims for asylum seekers in accordance with international standards. Placing the independent appeals officer under the locus of my Department would not make administrative or legal sense. It would not be appropriate to the subject matter, the issue of health and personal social services.

The system works well whereby the independent quasi-judicial appeals mechanism operates under the Department with overall responsibility. I have no doubt that the appeals officer in this case will be fully independent of the Department. The moral strength of the Ombudsman is greater than that of any appeals officer, which is why I offered the option of the Ombudsman as the appeals officer. However, for its own best reasons the DLCCG decided to retain the present system even though it requested that the appeals system fall under a different Department, which I cannot accept.

Ms O'Meara: It is interesting that the Minister of State believes the appeals mechanism would

work through the office of the Ombudsman. I invite him to go along with that.

Mr. Fahey: That is not the substance of the proposed amendment.

Ms O'Meara: I know that.

Ms O'Rourke: The Senator is merely offering advice.

Ms O'Meara: In the light of what the Minister of State said, I will probably bring forward an appropriate amendment on Report Stage.

Mr. Fahey: If the DLCCG were satisfied with my amendment, I would be happy to propose it. Senator O'Meara's amendment is separate. One cannot have both the Ombudsman and an appeals officer overseeing the appeals mechanism. I cannot accept that.

Ms O'Meara: I am picking up on the general remarks of the Minister of State, on his views as expressed to the DLCCG. If the Minister of State holds a particular view, why not go with it? As the Minister of State, he is in charge. We are Members of the Seanad, one of the Houses of the Oireachtas. Ultimately, we in the Houses are responsible for the legislation. My understanding is the DLCCG is a consultative body which offers a particular view. I am not suggesting the Minister of State oppose it on all fronts, but if it is his considered view that the moral authority of the Ombudsman, along with the structure and standing of that office, would work in the context of this legislation on the appeals side, I invite him to follow through on that.

Mr. Fahey: The DLCCG prefers the appeals officer mechanism because it gives the right to appeal to the Circuit Court on a point of law for a notice to enforce the determination of the appeals officer. That does not apply in the case of the Ombudsman, whose views are final. The Office of the Ombudsman has been one of the great developments of public service provision because no Department in its right mind would oppose the Ombudsman's moral authority.

Ms O'Rourke: That would bring everybody down on top of one.

Mr. Fahey: That is why I offered the alternative of the Ombudsman, but one cannot have both the appeals officer and the Ombudsman, which is what Senator O'Meara is suggesting.

Amendment, by leave, withdrawn.

Section 16 agreed to.

Section 17 agreed to.

SECTION 18.

An Leas-Chathaoirleach: Amendments Nos. 36 and 37 are related and may be discussed together by agreement.

Ms Terry: I move amendment No. 36:

In page 20, subsection (3), line 3, to delete “weeks” and substitute “months”.

This amendment refers to the timeframe in which an applicant or a person may appeal to the appeals officer. The legislation provides that the appeal should be made within six weeks of the date on which the finding or recommendation to which it relates was communicated to the person. My amendment suggests that six months instead of six weeks should be allowed.

If we do not make that change we could be denying access to appeal for a person who may be unable to make an appeal within the shorter timeframe. A person might be very ill, and incapable of making an appeal within that timeframe. That person would then in effect be denied the right to appeal a decision with which the person felt unhappy. A period of six weeks is very short for some people, though it might be adequate for the majority. Anyone unhappy with a recommendation would probably want to appeal it straightaway but, as we said earlier, we are dealing with sensitive situations, with people who may, at a particular time in their lives, have limited capacity. Someone suffering from severe depression, for example, might not be able to make an appeal within the six-week timeframe. If that were the case, we would be doing such people an injustice. I ask the Minister of State to consider accepting the amendment and extending the timeframe to six months.

Ms O'Meara: I support Senator Terry's amendment. Amendment No. 37 also seeks to strengthen the rights of the applicant. The amendment suggests the insertion on page 21, subsection (12), line 13, after “appropriate”, the words “and shall, where requested by the applicant,”. That part of the subsection would then read: “The appeals officer may, where appropriate, and shall, where requested by the applicant, hold an oral hearing for the purpose of an appeal under this section”.

Rather than leaving it entirely up to the appeals officer to decide if an oral hearing should take place, this would allow for an oral hearing to take place if requested by the applicant. I suspect that the Minister of State will say that an applicant who asks for an oral hearing is very likely to get it, which is what happens under the social welfare appeals structure. However, the amendment would strengthen the rights of the applicant. Considering the spirit of this legislation and that we are seeking to give people with disabilities a sense of their own power, to give them

an initiative, the amendment would be an important element of the legislation.

Mr. Kett: This amendment is catered for in section 18(4) which states, “The period referred to in subsection (3) may be extended by the appeals officer concerned (at the request in writing of a person referred to in subsection (1) or (2)) for a further period not exceeding 12 weeks....”. That brings the period to three months in certain circumstances, which caters for what this amendment seeks. There must be a cut-off point at some stage as to when people are at liberty to appeal, unless there are extreme circumstances, which I cannot imagine. The period of six weeks to lodge an appeal seems reasonable. I accept Senator Terry's point that certain circumstances could arise where this would not be adequate, but the three months provided in subsection (4) would cater for that.

Ms O'Rourke: I echo that view. The clause following the one referred to by Senator O'Meara provides up to three months for making the appeal. The system will get snarled up forever if we extend it to six months as people with new assessments will be waiting for consideration, etc. The idea is to simplify matters and keep appeals running without a snarling up of affairs. Three months is adequate. In other matters the usual period for an appeal is three weeks to a month. This area is somewhat different, but the period proposed is adequate. We do not want a logjam to develop where other applicants would get snarled up also. Three months is fair to provide parity and justice to each applicant.

Mr. Fahey: On Report Stage in the Dáil I moved a series of related amendments to allow a limited extension of the timeframe for appeals in exceptional circumstances. Subsection 18(4) allows the appeals officer discretion to extend the period for an appeal on a case-by-case basis where there is reasonable cause shown.

Ms O'Rourke: Is that a new subsection or was it part of the original?

Mr. Fahey: It was an amendment. Amendment No. 36 seeks to extend the timescale from six weeks to six months. I see no benefit in extending the period of appeal for such a long time. The time period in the Bill is in line with other legislation. The Government amendments made in the Dáil on Report Stage struck a fair balance between what is envisaged by the Senator and the provisions of the Bill as published. In the circumstances, I do not propose to accept the amendment.

Section 18(12) provides for an oral hearing of an appeal at the discretion of an appeals officer. Amendment No. 37 would oblige the appeals officer to hold an oral hearing if requested by the applicant. Given that the appeals officer is an

independent statutory officer empowered to administer the appeals process under Part 2, it is for him or her to make the decision as to whether it is appropriate in a particular case to hold an oral hearing. Allowing an applicant to an appeal to oblige the appeals officer to follow a particular procedure does not seem consistent with the concept of an independent statutory officer. The rights of the other party in the appeal must also be considered.

Another relevant point is that section 18 allows the appeals officer considerable discretion in matching procedures to the circumstances in each case. This provision goes a long way towards ensuring that the needs of the applicant are taken into account. The overall principle with regard to appeals is that the appeals officer has statutory responsibility for the appeals process and must be fully in charge of its administration. As Senators O'Rourke and Kett said, we have tried to reach a fair balance through the amendments we agreed with the Opposition parties in the Dáil. I do not intend to make further alterations.

Ms Terry: I am disappointed the Minister of State will not accept my amendment. I recognise that subsection (4) provides that a person may apply for an extension of up to 12 weeks. That is reasonable for the majority of people, but I seek an allowance for the minority who may not even have the capacity or be in a position to write the letter to seek the extension. I want an extension of the period to six months to allow them time to recover somewhat from their illness. I will probably submit this amendment again on Report Stage and I urge the Minister of State to consider it in the meantime in the context of dealing with a minority under this section.

Mr. Fahey: If a six-month timescale was allowed for making appeals, both the applicant and the executive or education service provider could delay lodging an appeal. We are trying to ensure we cut out long delays and bureaucracy. This is critical to the ethos of this Bill. A six-month appeals period would delay the resolution further and it would be the applicant who would suffer most from the delay. I point out that if there is reasonable cause for an extension of the timescale, subsection (4) allows for a further period, not exceeding 12 weeks, which would give a maximum of 18 weeks for the appeal. Therefore, this is adequately covered.

Amendment, by leave, withdrawn.

Amendment No. 37 not moved.

Ms O'Meara: I move amendment No. 38:

In page 23, between lines 5 and 6, to insert the following new subsection:

“(24) An appeal shall lie from a decision of the Appeals Officer to the District Court

for the district in which the applicant is ordinarily resident or carries on any trade, profession or business.”.

In light of our earlier discussion, will the Minister of State clarify whether there is a judicial remedy against a decision of the appeals officer? I think he implied there was when we were discussing the ombudsman. I would like clarity on whether it is possible to appeal the decision of the appeals officer to the Circuit Court. If that is the case, there is provision for judicial remedy.

Mr. Fahey: This amendment would allow for an appeal to the District Court on the facts established by the appeals officer. Section 20 provides that appeal to the court will arise only on a point of law to the High Court. This approach is consistent with practice in other statute-based appeals systems, such as planning and social welfare. It provides the advantage that the system of appeals is independent, transparent and has strong statutory powers. It allows people to take an appeal with full confidence of due process and a fair hearing and without incurring the costs of a court action.

The proposed amendment would undermine the strength of the appeals officer by instituting a third layer of review in addition to appeals and complaints. I am aware the Opposition favours general redress to the courts, but I do not hold that view. The appeals process in the Bill as it stands provides a user-friendly and accessible redress for people with disabilities and their families. These amendments represent a fundamental difference of approach between me and the Opposition Senators. In the circumstances, I must strongly reject the proposed amendment.

Amendment, by leave, withdrawn.

Section 18 agreed to.

Sections 19 and 20 agreed to.

SECTION 21.

An Leas-Chathaoirleach: Amendment No. 39 is a Government amendment and has already been discussed with amendment No. 24.

Government amendment No. 39:

In page 24, paragraph (b)(v), line 18, after “review” to insert “with the applicant or a person referred to in section 9(2)”.

Amendment agreed to.

Section 21, as amended, agreed to.

SECTION 22.

Ms O'Meara: I move amendment No. 40:

[Ms O'Meara.]

In page 24, subsection (1), between lines 41 and 42, to insert the following new subparagraph:

“(i) to implement a service statement,”.

This amendment relates to section 22 which deals with the enforcement of determinations, etc. The amendment seeks to insert a new subparagraph which would provide for a remedy for the enforcement of a service statement. It may seem like a small thing, but I suggest it is very important. This amendment, which proposes that a remedy will be provided for in section 22 of the Bill in the event of the executive or the head of the relevant education service provider failing “to implement a service statement”, strengthens the legislation considerably. I look forward to a positive response from the Minister of State.

Mr. Fahey: Senator Terry expressed concern yesterday about the timescale for the assessment of urgent cases. Having considered the matter further, I am prepared to review the regulatory provisions in section 21 to ascertain whether further provision can be made in this respect. I will consult the Office of the Chief Parliamentary Counsel to see whether it will be possible to introduce an amendment in this regard on Report Stage. I cannot respond further to the points made by Senator O'Meara, unfortunately.

Ms O'Meara: I do not understand the essential point made by the Minister of State. I do not know why he cannot respond further.

Mr. Fahey: I mean that I cannot accept the Senator's amendment.

Ms O'Meara: Why not?

Mr. Fahey: If amendment No. 40 is accepted, a person will be able to seek a court enforcement order, without having prior recourse to the complaints or appeals processes, if the executive or the head of the relevant education service provider fails to implement a service statement. Such a person could bypass the complaints procedures provided for in sections 14 and 15 and the appeals procedures outlined in section 18. I do not propose to accept the amendment. Applicants do not have to exhaust the entire redress process before seeking an enforcement order. Such an order may be sought in respect of any recommendation of a complaints officer that has not been made subject to the appeal. It would not make sense to allow people to bypass the complaints and appeals mechanisms. It will be possible for issues to be resolved in the first instance, for example by way of informal resolution on the part of the complaints officer.

Amendment, by leave, withdrawn.

Section 22 agreed to.

Sections 23 and 24 agreed to.

SECTION 25.

Ms Terry: I move amendment No. 41:

In page 26, subsection (3), after line 48, to insert the following new paragraph:

“(c) The compliance of public buildings with Part M shall be ensured by the allocation of certificates of compliance by a building control officer who will also be charged with the periodic monitoring and inspection of such buildings.”.

I welcome the provision in this Bill which states that all public buildings, including existing buildings which come into public use, have to be accessible to people with disabilities. Amendment No. 41 is a simple proposal aimed at ensuring that public buildings are in compliance with this provision. It proposes that each public building should be the subject of an access certificate, issued by the building control officer of the relevant local authority, just as fire certificates have to be secured for each public building from such officers. The issuing of access certificates should be compulsory under this legislation, in the interests of ensuring that public buildings are in compliance with Part M of the building regulations. The acceptance of this amendment would strengthen the legislation by ensuring that public bodies — I am especially interested in bodies which provide a service — ensure their buildings are accessible to people with disabilities. The amendment seeks to ensure that such buildings will be monitored periodically to ensure they are in compliance with their access certificates.

Mr. Kett: Given that the Government is trying to save resources, where possible, it seems to me that it would be appropriate to give responsibility of this nature to the health and safety officers who are normally employed in all organisations. Such officers are employed to deal with any problems or dangers which may arise in organisations, including organisations which are involved with people with disabilities. I wonder whether health and safety officers could be asked to ensure that buildings are in compliance with the regulations which have been introduced in the interests of people with disabilities. Safety considerations arise if a building is not in compliance with the regulations. Would it be possible to give health and safety officers a role in this regard?

Ms O'Meara: I support Senator Terry's amendment No. 41. I remind Senator Kett that the ideal conditions to which we all aspire are not being achieved under the current regime, which is quite strict. I could give many examples of buildings which are inaccessible to people with disabilities because they are not in compliance with the relevant regulations. The provisions of amendment No. 41 would be a useful addition to this Bill,

which aims to help people with disabilities to participate to the fullest possible extent in every level of society and every part of the community. The acceptance of the amendment would underpin the spirit of the legislation. Senator Terry's suggestion that building control officers be given responsibility for the periodic monitoring and inspection of such buildings is also quite useful.

Mr. Fahey: Section 25 obliges public bodies to make public buildings accessible to people with disabilities, in accordance with Part M of the building regulations. Section 25(3)(a) states that public buildings will have to comply with Part M "not later than 31 December 2015". It is proposed in amendment No. 41 that the "compliance of public buildings with Part M shall be ensured by the allocation of certificates of compliance by a building control officer". The Building Control Act 1990 provides that the enforcement of the national building regulations, including Part M of the regulations, which relates to access for people with disabilities, is vested in local building control authorities, rather than individual officers who are employed by the authority.

I am happy to inform the House that the Government intends to introduce a building control (amendment) Bill in the autumn, which will provide for the introduction of a system of disability access certificates. The building control authorities will have to certify that all planned non-domestic buildings and apartment blocks comply with Part M of the building regulations before work can commence. The proposed system will apply to a wider range of buildings than the public buildings which are covered in the amendment under discussion. The sectoral plan of the Department of the Environment, Heritage and Local Government will contain information about the measures to be taken to ensure compliance with the regulations.

For the reasons I have outlined, I do not propose to accept amendment No. 41. I emphasise that the introduction later this year of a system of disability access certificates represents a significant departure. The system will strengthen further the accessibility provisions.

Ms Terry: I welcome the Minister of State's proposal to introduce a system of disability access certificates. As he has said, it will strengthen the level of accessibility afforded to people with disabilities. Such good practices are observed in other countries, such as Australia. While I welcome the proposals, I ask the Minister of State to reconsider the possibility of introducing them in this Bill. If they are to be included in a future Bill, why can they not be provided for in this Bill? A minor amendment would be required. I do not understand why we have to endure delays in this regard while we wait for further legislation to be prepared. The Minister of State can strengthen the Bill before the House by including the proposals in question in it.

Ms O'Meara: I support Senator Terry's remarks. While I welcome the Government's aspiration to bring building control legislation before the Oireachtas in the autumn, it should be borne in mind that there is a substantial legislative backlog at present. Some 12 Bills have been passed by the Seanad but have not yet been passed by the Dáil. This House completed its consideration of the Parental Leave (Amendment) Bill 2004 in February, but it has not been debated by the Dáil even though it is now June and there are just two weeks to go to the summer recess. Senator Terry has made an important contribution to the debate on ensuring compliance with the building regulations which cater for people with disabilities. The Government hopes to bring the building control Bill to the House in the autumn, but we might have to wait another year for the legislation to be passed. If we include the relevant provisions in this Bill, they will be in place straight away.

Mr. Fahey: I do not accept that the provisions can be put in place straight away — it is a little more complicated than that. Given that the building control (amendment) Bill is more comprehensive, it will do a much better job in reaching the objective of both Senators.

Amendment, by leave, withdrawn.

Section 25 agreed to.

Sections 26 to 30, inclusive, agreed to.

NEW SECTION.

An Leas-Chathaoirleach: Amendment No. 42 proposes the insertion of a new section. The amendment is ruled out of order as it would involve a potential charge on the Revenue.

Ms O'Meara: As this was a considerable amendment, I want to record our disappointment that it was disallowed.

Amendment No. 42 not moved.

SECTION 31.

An Leas-Chathaoirleach: Amendments Nos. 43 to 45, inclusive, are related and will be discussed together.

Ms O'Meara: I move amendment No. 43:

In page 29, to delete lines 40 to 43 and in page 30, to delete lines 1 to 5 and substitute the following new subsection:

"31. (1) Each Minister of the Government,".

This amendment seeks to achieve something very straightforward, namely, that all Ministers would be required to prepare sectoral plans.

Ms Terry: I support the amendment. This is something every Department should be obliged to do. I ask the Minister of State to consider this aspect. Every Department is not included at the moment, therefore, it would be of benefit to people with disabilities if each Department was obliged to provide for its own sectoral plan.

Mr. Kett: I support that. I do not know why some Departments are not included in the network, but I believe in disability proofing. I would also encourage those people with responsibility for decision making in the Departments to be more disability aware as part and parcel of their ongoing education. If they are thinking disability, then disability will have a greater role in all the decisions made in Departments.

Mr. Fahey: Section 31 outlines the six Ministers required under the Bill to prepare sectoral plans. These include the Minister for Health and Children, the Minister for Social and Family Affairs, the Minister for Transport, the Minister for Communications, Marine and Natural Resources, the Minister for the Environment, Heritage and Local Government and the Minister for Enterprise, Trade and Employment. The Departments concerned are those whose policies make the greatest impact on the lives of people with disabilities. I would like to remind Senators that all public service providers, including all Departments and agencies, must make their services accessible in line with sections 25 to 29, inclusive, of the Bill. This must be done before the end of 2005. The sections impose significant obligations on such bodies and require them, among other things, to make all their services accessible to people with disabilities.

The six Departments to which I have referred are the six large Departments which, because of the significant work which will take time, have been required to put that work into a plan. It is for that reason we have required six sectoral plans. The other Departments which, by and large, will be required to put their plans into practice almost immediately do not need a sectoral plan. This is why there are not sectoral plans for every Department. For this reason, I do not propose to accept amendment No. 43.

The proposed Government amendments Nos. 44 and 45 will require the six sectoral plan Departments to produce reports setting out information on the progress they have made in implementing the measures set out in their plan. The Ministers will be required to produce reports at least every three years and lay them before the Oireachtas. At least every three years means it may be necessary for people to prepare reports on a more regular basis if it is clear that adequate progress is not being made. This is partly in response to the case made by the DLGG, particularly by the DFI. I welcome Mr. John Dolan to the Visitors Gallery. I noted the contents of an

article he wrote in this morning's edition of *The Irish Times*.

An Cathaoirleach: Sorry, Minister, it is not in order to refer to that matter.

Mr. Fahey: I apologise. I am acutely aware of the concerns expressed on the issue. These changes, which are the subject of amendments Nos. 44 and 45, were sought by the DLGG at its recent meeting with the Taoiseach and me. They have been considered in consultation with the other Ministers. Having secured agreement on the strengthening of reporting requirements, I am happy to table Government amendments to deliver these changes.

The Bill already requires the Departments to outline arrangements for monitoring and reviewing their plans. The enhanced provision is an indication of the importance the Government assigned to the sectoral plans and their role in shaping a more inclusive society for people with disabilities. The reports will ensure that the review of progress is ongoing and transparent, leading to the continued improvement of services and facilities. This is a positive and practical way forward.

Ms Terry: I thank the Minister for the amendment. If it is agreed, will he guarantee there will be a type of disability-proofing in each Department? When drawing up legislation or regulations, will Ministers automatically tick the box to say it is disability-friendly, in the same way as Departments must equality-proof legislation? If it does not go that far, it will not be worthwhile. The amendment tabled by the Labour Party and Fine Gael would have given greater assurance that there would be disability-proofing. It would have provided for a disability commissioner which would have been of great benefit. I am disappointed this has not been accepted. We must be assured that this requirement will provide a change in attitude in each Department. From now on, everything should be disability proofed automatically. In future, people should not have to fight for their rights. It should become the norm that everyone, regardless of whether they are able bodied or have a disability, will be provided for in every piece of the legislation a Government introduces. Nothing less will be acceptable.

Ms O'Rourke: Each Minister should be imbued with this requirement. I am aware particular Ministers have been designated. Clearly these are the Ministers and Departments which would be mainly accessed by particular applicants. At the same time, this should not be confined to those Departments. Every Minister should be imbued with the idea that people with disabilities should be treated as equal citizens and none of them should have the option of saying it has nothing to do with him or her and that it is the responsibility of another Minister. Every Minister should be

brainwashed about disability. I would drum it into every Minister because circumstances change. The Minister of State referred to the Department of Arts, Sport and Tourism, which is correct, given that people with disabilities want to go to the theatre, poetry readings and art exhibitions.

Senator Terry referred to our attitude but one cannot legislate for attitude, although I wish one could. One cannot get inside the head of every civil servant or Minister and tell them they should feel a certain way about disability. However, if it is made so pervasive that they cannot avoid it even if they wanted to, they will have to become part of the disability agenda. That is what the Minister of State is about but one cannot change attitudes. Civil servants are good on all these issues but, at the same time, they are used to viewing them one way whereas, following the enactment of the legislation, they will have to view them another way. It is difficult for everybody.

I commend very much the Minister of State's amendments, which follow the debate in the Dáil and consultation with disability interests. Every Minister should have his or her head knocked in about the issue.

Ms O'Meara: I still do not understand why it would not be possible for every Department to publish a sectoral plan. A number of Departments will draft larger plans than others and the six Departments mentioned will be at the front line.

The Leader stated one cannot legislate for attitudes but that is not the case. Legislation and action can change attitudes. For example, newer public transport modes such as the Luas are disabled-friendly and the entire community expects this because over the past number of years that expectation has been created through actions, plans and legislation. Action resulting from legislation changes attitudes. One can legislate, therefore, in a roundabout way to change attitudes and attitudes have changed significantly in this area.

Ms O'Rourke: The Senator is correct.

Ms O'Meara: There is still a long road to travel and slippage will occur. A great start might be made with a major burst of energy, for example, as a result of a major debate on legislation such as this, but if its implementation is not monitored, slippage could easily occur. Recently, the number of people with disabilities employed in the public service was published and Senator Terry has tabled an amendment regarding the public service employment quota for such people, which we will address later. It is important to make such provisions in legislation because slippage easily occurs.

The framework set out in the legislation is good and I commend the Minister of State on the amendments he has tabled in this regard.

However, we should go further than we think we might need to ensure we achieve what we set out.

Mr. Fahey: I assure the Senators there will be a change in attitude within public bodies. Whether it is called disability proofing or something else, the legislation for the first time places a significant obligation on all public bodies to provide accessibility for people with disabilities. The obligation will cost the State a considerable amount over the next ten years and that is the reason it has only been placed on public bodies. For instance, the Department of Arts, Sport and Tourism is not listed among the six Departments under this section because a private sector theatre cannot be compelled to comply with the legislation similar to public bodies, even though the theatre is subject to equality legislation and the building regulations.

Under the legislation, all public bodies, including Departments and their agencies, will be compelled to provide for accessibility. An appeals procedure involving the Ombudsman is provided for where such bodies do not comply with their obligations. While a number of representatives of the disability sector and the DLCG still have concerns, I am satisfied attitudes will change. I have taken on board the comments of these representatives who say when they visit Departments, the attitude of a number of civil servants is that they cannot carry this heavy burden. There is an obligation on public bodies under the legislation to change that attitude.

The proof of the pudding is in the eating. Hopefully, the Bill will be enacted next week but we will have to wait to see how the change will take place in the mindset of public servants. How the change occurs and how much money will be allocated to provide for accessibility will be important in the coming months and years. The response to organisations such as the DFI when they approach the Secretary General of a Department and ask him or her to outline what the Department is doing in this regard will also be important.

A review is provided for in the legislation so that there can be accountability regarding what was done in the previous year. I have listened carefully to the DLCG and the DFI, in particular, regarding this issue and I am satisfied I have put in place important strictures on performance by Departments and agencies. We will have to wait to see how the implementation goes and if it does not go in accordance with the Government's wishes, we will have to revisit the issue.

Ms O'Rourke: On the arts, we debated the position of private theatres and galleries yesterday and I acknowledge that private bodies cannot be forced to comply with the legislation. One hopes that moral sentiment will make them comply. However, the Abbey Theatre, which is our national theatre, is an exception. It is funded extensively by the State every year and there

[Ms O'Rourke.]

should be an onus on the theatre's management to comply with the legislation, given that the theatre is scheduled to move to a new building. I am aware of the building regulations referred to by the Minister of State but, at the same time, an onus should be placed on the Abbey because it is the national theatre.

Mr. Fahey: There will be for the new building under the building regulations.

Ms O'Rourke: I accept that but the Minister with responsibility for the theatre should be told it is his job to watch out for that, irrespective of the building regulations. I feel for people with disabilities who have read about exhibitions and plays but who cannot attend them because the buildings are not accessible. Public transport is accessible by people with disabilities and they can get to the venues but they cannot go inside.

The Minister of State referred to the review and pointed out that a DFI representative could question a Secretary General about what the Department has done about A, B, C or D. There should be a subhead, such as those in the Estimates, labelled "disability" under which would be the money required by the Department for the next year to meet its disability obligations. The Minister must go a-begging to the Minister for Finance in an awful and rigorous process in which the Minister for Finance says 'No' to everything. I have no complaints about this as it is the Minister for Finance's job to keep track. If he or she did not do so, this would be a wanton nation of spendthrifts. However, the disability subhead would not be touched because the Minister and Secretary General of the relevant Department would vouch that this would be needed if they were to honour their obligations regarding disability. The Minister for Finance would skip this subhead. As someone who has been reasonably successful when begging at the doors of Ministers for Finance over the years, it is a practical point.

Ms O'Meara: Concerning something said by the Leader, I would have thought that all buildings in receipt of public money would have an automatic——

Ms O'Rourke: We had that debate previously.

Ms O'Meara: I was not present for it.

Ms O'Rourke: The Senator's colleague was present.

An Cathaoirleach: Senator O'Meara without interruption.

Ms O'Meara: I speak particularly about buildings in receipt of lottery money. When being built, I would have thought that theatres, for example, would have been in receipt of or have applied for lottery funds.

Concerning the general point about sectoral and general plans and how they are referred to in this section in terms of measures being put forward to ensure Departments are disability-friendly, I sense from the Minister of State's remarks that he is very committed. This would be an immediate attitudinal change and I commend the Minister of State's commitment but why is he not going as far as disability proofing? He might say we can call it what we like but the terminology and language we use is important. If the Government makes a statement that the requirement of Departments to plan for disability proofing is contained in this legislation, it is a powerful statement. Anything less is not adequate to meet the Minister of State's level of commitment. If he is so committed, why not say there will be disability proofing?

As has been pointed out in submissions made to us by the Disability Federation of Ireland, disability proofing is contained in other legislation. This type of structure is contained in the Government's commitment to the Irish language in terms of a commissioner under the Official Languages Act 2003, which has been the subject of much comment. Why not have a disability commissioner and disability proofing? It was in one of our previous amendments but is important in the context of this discussion. The Minister of State might tell us to call it what we will but this is not enough. Language is extremely important because it both reflects and creates one's intent. The intention is not as strong without disability proofing included in this legislation.

Mr. Fahey: I am tempted to answer the question by asking the Senator what she means by disability proofing.

Ms O'Meara: Why does the Government not use the language in the Bill?

Mr. Fahey: What does the Senator mean by disability proofing?

Ms O'Meara: I think it is clear. The Minister of State would know that it means actions taken by Departments are disability proofed. In other words, are the actions of a Department such that it allows——

Ms O'Rourke: We could use my subhead idea and locate the money therein.

An Cathaoirleach: Allow the Minister of State to reply.

Mr. Fahey: The answer to the question is "Yes". There is a strong obligation under this Bill for public bodies to provide for accessibility, which is one of the few obligations in this country's legislation. In response to Senator O'Rourke's question, at the beginning of each year Ministers must set out the amount of money they will provide for disability services.

Ms O'Rourke: The money could be put in a disability subhead.

An Cathaoirleach: The Minister of State only, please.

Mr. Fahey: One could do so if one wanted to.

Ms O'Rourke: I did not know that.

Mr. Fahey: The Minister states the amount of money at the beginning of the year but that amount cannot be ring-fenced due to the requirement of Ministers to take account of their other responsibilities. We have agreed to disagree with the DLCG on this issue. Senator O'Rourke was herself a good Minister in the education and even the health areas. As I have pointed out time and again since the start of this debate, if one requires a Minister to state at the beginning of the year the amount of money being provided for disability services and also requires him or her to provide for multi-annual spending, it would take a brave Minister to withdraw some or all of the money that has been dedicated to disability services. Due to the responsibility for good governance and expenditure of public moneys, we cannot simply ring-fence a specific amount of money.

The ethos of the Bill is that it statutorily underpins the foundation of increased expenditure. One cannot take matters much further. I had frank discussions with the Minister for Finance and his officials on this issue.

Ms O'Rourke: I would say the Minister of State had.

Ms O'Meara: I can imagine.

Mr. Fahey: One must agree when they point out that in the interests of good governance and responsible expenditure of Exchequer money, one must leave flexibility in place. While one may have the desire, determination and so on to provide for these services, as the Government does, one must do so within a statutory framework that is sensible and responsible. We got the balance right in this legislation in that regard.

This will ultimately be about the amount of money in the Estimates that the Government decides will be made available to deal with these issues. The six sectoral plans apply to six Departments only, due to the significant work that must be done therein. The plans do not apply to other Departments because they have very little to do. What must be done must be in place by December 2005. Section 5(3) refers to the Minister providing money at the beginning of the year and sections 25 to 28 provide for the other Departments having their plans in place by December 2005.

Ms O'Meara: I was not finished. On the disability proofing statement, the Minister of State

probably knows that this is the view of the Disability Federation of Ireland. It proposes that each Department and public body produce an annual disability proofing statement of its policies and services. This would show the level of progress in opening their services to people with disabilities. The Minister of State will say this is provided for in the Bill generally but it falls short of requiring Departments to publish a disability proofing statement. It is important they would do so as it is a statement of intent and makes a strong public statement.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendment No. 44 was discussed with amendment No. 43.

Government amendment No. 44:

In page 30, subsection (4), between lines 36 and 37, to insert the following new paragraph:

“(d) a statement of the intervals at which reports shall be prepared relating to the progress made in the implementation of the plan, being intervals of not more than 3 years from the date of publication of the plan under this section.”.

Amendment agreed to.

Government amendment No. 45:

In page 31, between lines 5 and 6, to insert the following new subsection:

“(7) When a report is prepared by a Minister of the Government under this section, it shall be laid before Dáil Éireann as soon as may be.”.

Amendment agreed to.

Ms O'Meara: I have a technical question.

An Cathaoirleach: The amendment has already been discussed and agreed.

Ms O'Meara: In that case, I have a question on the section.

Question proposed: “That section 31, as amended, be agreed to.”

Ms O'Meara: What is meant by the phrase, set out in amendment No. 45, “as soon as may be”?

Ms O'Rourke: I propose that the amendment should state that the report should be laid before Dáil Éireann and Seanad Éireann.

Mr. Fahey: In answer to Senator O'Meara's question, that is a standard provision in legislation.

Mr. Quinn: I query the reference to Dáil Éireann and not to the Oireachtas. Is there a reason for that?

Mr. Fahey: We can include Seanad Éireann by all means.

Ms O'Rourke: The amendment is demeaning to us, given that we are here, debating the Bill.

Mr. Quinn: The phrase has only just caught my eye.

An Cathaoirleach: Amendment No. 45 has already been agreed.

Mr. Quinn: We are discussing the section now. I have a concern about the section because it states in amendment No. 45 that the report will be laid "before Dáil Éireann" as soon as possible. Surely that should state "before the Oireachtas"?

Ms O'Rourke: It would be better to state "before the Houses of the Oireachtas".

Mr. Quinn: If the omission was not intentional, is the Minister of State willing to amend the amendment?

Mr. Fahey: We will consult with the Parliamentary Counsel and revert to the issue on Report Stage.

Ms O'Rourke: This issue arose with another Bill, Senator Quinn spoke on it and the Minister agreed, there and then, to change the phrase to "Houses of the Oireachtas". If we are fit to debate this Bill—

An Cathaoirleach: The Minister of State has agreed to examine the point and revert to it on Report Stage.

Mr. Fahey: I do not have a problem with the Senators' point, but we will have to consult the Parliamentary Counsel.

Mr. Quinn: I suggest that, within the section, we amend the phrase to include Dáil Éireann and Seanad Éireann.

An Cathaoirleach: That cannot be done. The amendment has already been agreed.

Mr. Fahey: We will revert to the issue on Report Stage.

Question put and agreed to.

SECTION 32.

Ms Terry: I move amendment No. 46:

In page 31, subsection (1), between lines 13 and 14, to insert the following new paragraphs:

"(d) the introduction of National Standards for Disability Services and the statutory inspection of such services,

(e) the consideration of the primary care needs of people with disabilities when developing the new model of primary care,".

This amendment deals with the sectoral plans of the Minister for Health and Children. I ask the Minister of State to accept it to further strengthen this section. The sectoral plans are very vague and general at present. The amendment strengthens the section and obliges the Department to bring forward national standards for disability services, which would benefit users of such services. It also ensures that these services are inspected on a regular basis.

We must make special mention of services for people with disabilities in the context of primary care. I would hope that in ten years' time we will not need to make special reference to people with disabilities; they will be part of the agenda automatically and included in the daily thinking of Ministers, Governments and departmental officials. However, special reference is required for the moment, given our history of neglect of people with disabilities, for which we must all accept responsibility.

I cannot assert that when this legislation is passed in the autumn that everything will change and that our minds and attitudes will alter overnight. That will not happen and until such time as disability is embedded in our thinking, we need to make statements such as those provided for in the amendment. I hope that in five or ten years, we will be able to remove many of these special references because it will be accepted that people with disabilities are entitled to the same service as every other member of a community. We will all be one and each person will be entitled to the service that he or she requires. In the meantime, however, we must ensure that nobody slips through the net and my amendment aims to do that. I ask the Minister of State to accept it.

Mr. Quinn: I support Senator Terry on this issue. Her arguments are in line with points made by a number of Senators on Second Stage and Committee Stage, regarding the promotion of a positive attitude, rather than simply removing negatives. Senator Terry has made her point well and I urge the Minister of State to accept her amendment.

Mr. Fahey: Amendment No. 46 has two elements, the first requiring that the sectoral plan of the Department of Health and Children contain information on the introduction of national standards for disability services. I do not consider it necessary to specifically refer to these standards in the Bill. The Department's sectoral plan already provides that it will contain information concerning proposed arrangements to implement Part 2 and any other matters the Minister con-

siders appropriate. The national disability standards prepared by the National Disability Authority will provide an important focus for future action. The existing framework of the National Disability Authority Act provides adequately for the monitoring and reviewing of these and other standards. A new independent body, the health information and equality authority, HIQA, will deal with standards in health services, including disability-specific services.

The second element of the proposed amendment deals with the mainstream health service needs of people with disabilities. The Bill as drafted allows for consideration of the issue in the context of the sectoral plan if the Minister for Health and Children considers it necessary to include it. I do not propose to specifically provide for primary care needs in the manner suggested in the amendment, therefore, do not propose to accept it.

Amendment, by leave, withdrawn.

Section 32 agreed to.

Sections 33 and 34 agreed to.

SECTION 35.

An Cathaoirleach: Amendments Nos. 47 to 49, inclusive, are related and may be discussed together by agreement.

Government amendment No. 47:

In page 32, subsection (1)(a), line 25, to delete “taken, and” and substitute “taken,”.

Mr. Fahey: Sections 31 to 37 outline the content of the six sectoral plans of Departments and section 35 relates specifically to the sectoral plan of the Department of Communications, Marine and Natural Resources. The Disability Legislation Consultation Group, DLCCG, at a recent meeting with the Taoiseach and myself sought to have this section reviewed so that it would be consistent with the approach taken to other sectoral plans, which allows those plans to deal with matters that the Minister concerned deems appropriate.

Having reviewed the provision in consultation with the Department of Communications, Marine and Natural Resources, I now present Government amendments Nos. 47 to 49, inclusive, which seek to amend section 35 so that the sectoral plan can also deal with any other matter which the Minister considers appropriate. This will ensure that the requirements are consistent with those of the five other Departments that will draw up sectoral plans.

Amendment agreed to.

Government amendment No. 48:

In page 32, subsection (1)(b), line 31, to delete “taken.” and substitute “taken, and”.

Amendment agreed to.

Government amendment No 49:

In page 32, subsection (1), between lines 31 and 32, to insert the following new paragraph:

“(c) any other matter which the Minister considers appropriate.”.

Amendment agreed to.

Section 35, as amended, agreed to.

Sections 36 to 46, inclusive agreed to.

SECTION 47.

Ms Terry: I move amendment No. 50:

In page 40, between lines 46 and 47, to insert the following new subsection:

“(5) The Minister shall, as soon as may be after the passing of this Act, prepare and lay before each House of the Oireachtas, a report on the possibility of increasing the public service employment quota for people with disabilities above 3 per cent.”.

This amendment proposes that after the passing of this Bill, the Minister for State would prepare and lay before each House of the Oireachtas a report on the possibility of increasing the public service employment quota for people with disabilities above 3%. I do not know who took action to ensure that public bodies would have a quota of 3% of people with disabilities working for them. It was a very good decision and certainly opened up great opportunities for so many people who heretofore were not able to secure employment. We all accept that many people with disabilities, particularly severe disabilities, can make an enormous contribution to the workforce, not only in the level of their work but in terms of the general environment and atmosphere in which they work. Everybody benefits from the communication and the interaction with different types of people.

People with disabilities should be given every encouragement possible and the Government must lead on this. Hopefully, this will have a knock-on effect on the private sector. It is having a knock-on effect in this sector. As I mentioned yesterday, Senator Quinn is a very good employer of people with disabilities. There are other employers like him. The recent O₂ ability awards ceremony showed that many private companies are taking this on board. This is because it is led by the Government.

We have come very far in that regard and it is now time to go further and increase the 3% quota. We know that some public bodies, includ-

[Ms Terry.]
ing local authorities, have still not reached the 3% quota, which must be regretted. We must set the bar very high and set the standards. By accepting this amendment, we are giving the legislation great strength and power and giving a lead in this area. I ask the Minister for State to accept this amendment.

While I am speaking about employment, I would like to repeat a point I made on Second Stage. The Minister for State did not have the opportunity to respond to me then and I hope that he will respond today. An amendment of mine was passed during the debate on, I think, the Employment Equality Bill. The amendment stipulated that people with disabilities should get nothing less than the minimum wage. I wish to ensure that this happens. We heard recently on the radio that people with disabilities working in the environs of this House are not receiving the minimum wage. I would like the Minister for State to make the point that any employer employing someone with a disability must offer him or her the minimum wage and nothing less should be accepted.

Mr. Kett: I agree with the general thrust of Senator Terry's comments because this is an area that is very important to people with disabilities. We are back to disability proofing and thinking disability. People who employ or do not employ people with disabilities, particularly in the Civil Service, should be forced to think more deeply about the abilities of people with disabilities. Senator Ryan on Second Stage spoke about someone who he would not originally have taken on for a certain position. Senator Ryan was unable to attend the person's interview and the person was taken on and turned out to be, in the Senator's words, exemplary. We are again talking about people's attitudes and how a person with a disability can be regarded as incapable of doing a job because of his or her disability. Modern technology allows people with disabilities to do a far greater range of work than they could do before. They can be a great asset to a work environment.

We must look at the jobs we give to people with disabilities because too many of them work in meaningless jobs. We need to consider them for meaningful jobs; jobs that provide job satisfaction and allow people with disabilities to feel good about themselves. Feeling good about oneself is vital. A statistic was cited some time ago in this House to the effect that 80% of families headed by an individual with a disability live in poverty. This statistic bears out the fact that people with disabilities who are employed are working in jobs that are of less status than those that would have been available to them if they were able-bodied.

We must educate people charged with the responsibility of deciding whether to employ people about the abilities of people with disabilities. They must be educated themselves. I

said on Second Stage that it would do no harm if people charged with these responsibilities were to go out into the disabled sector and find out what is available to them. Senator Quinn is a shining light in terms of the employment sector. He has committed himself to employing people with disabilities over the years and should be commended for that.

I generally agree with the thrust of Senator Terry's contribution but I would like to see all public sector agencies reaching the 3% quota. I know that I previously asked whether these agencies were all living up to their 3% quota and was told that they were there or thereabouts. I am not so sure what the situation is at the moment but if they are not reaching the quota, they should be brought into line.

Mr. Quinn: I thank Senators Kett and Terry for their kind words. Setting targets for people is a great way of trying to achieve something. It appears that Senator Terry's amendment is very worthy. Even if it is difficult to achieve, it sets standards that others strive to attain. I know that many employers around the country who did not realise that the Government had set a target of 3% until it was publicised began to strive to achieve it themselves once they discovered its existence. I think of the Aisling Foundation and the O₂ ability awards, which have done so much to draw attention to this issue. It acts as a real incentive.

There is a danger that people outside think of people with disabilities solely as wheelchair users. We are talking about all of the talents that so many others who are not necessarily in wheelchairs possess. They could be blind or deaf or have another type of disability and discover that they have abilities that are worthy if we manage to tap that resource. It is good for business and customers like to see a company doing something of this kind. Therefore, I support Senator Terry's amendment.

Mr. Leyden: Senator Terry's amendment is very reasonable. I know the Minister for State has been more than helpful in bringing forward amendments to this Bill in both Houses. He has been more than open to good suggestions. As Senator Quinn noted, quotas are a good example of setting targets. A quota of 3% seems to be very low in this day and age. If we had a quota of 3% for either men or women, it would be very unacceptable. I do not see why there should be limitations on quotas. A minimum quota should be set but there should be no maximum figure. I know that Senator Quinn has given great leadership to the private sector through his work in his own company and has been very much admired for this. Actions speak louder than words so he is in a very strong position to speak on this particular issue because of his support for people with ability. These are the people he has employed. I do not wish to burden the Minister but both our

spokesperson and the Leader have given great time to this Bill as well. I would appreciate it if the Minister will consider this before returning to the House later.

Ms O'Meara: I concur with the other speakers and I commend Senator Quinn on putting words into action in his business. Other employers are doing the same and it makes a difference. It makes a difference because the Senator's customers will have the experience of meeting somebody with a disability in an environment where they might not otherwise have met them. It creates an air of normality which is important. This is particularly so in light of the ESRI report this week which shows that people with disabilities are twice as likely to be living in poverty than the rest of the population. Clearly, that is related to employment and access to employment.

We must push the boat out on this issue. Senator Leyden said what I wished to say. The figure of 3% is extremely low. It can also create the effect of a lid. If the 3% is reached, people can say they have done their bit and do not need to do more. How does one create a sense of going beyond that? One can make the figure 5% but that puts the lid at 5%. I do not know the answer to that question but the issue must be examined. Actions speak louder than words and implementation is everything.

Senator Terry's amendment is good and I agree with it. However, it is probably quite mild. She is being nice to the Government by asking the Minister to prepare a report on the possibility of increasing the public service employment quota. What about a report on how it is to be done? The report should be on the actions that must be taken to have the quota fulfilled or even extended. It is a useful but mild amendment. I cannot see how anybody could not agree with or accept it. The spirit of this part of the legislation is crucial.

Ms O'Rourke: Like the previous speakers I commend this amendment. I always rail against quotas, including quotas for women. There are no quotas for men.

Ms O'Meara: There are hidden ones we are not told about.

Ms O'Rourke: I have worked in Departments where the 3% quota has been filled and in Departments where it has not been filled. All types of excuses are offered as to why the 3% is not filled. I agree with Senator Quinn that it is "think ability", not disability. There is great potential in everybody, regardless of one's disability. If one has a disability, one will generally be capable of something else. The encouragement of the capability rather than pointing to the disability is key. Jobs should be considered in the context of providing job satisfaction for some-

body rather than saying, in a dismissive way, that the person cannot do the job, as I have heard on occasion in Departments. Another type of job might be ideally suited to the person's ability.

Yesterday and today, the thrust of Members' comments has been how to change how people think on this issue. We must strengthen and encourage people's thought processes to think of ability and what they can do, rather than sighing and moaning about it. The amendment is mild but then Senator Terry is a lady.

Ms Terry: A woman.

Ms O'Rourke: The Senator is obviously both.

Mr. Quinn: I am sure she is a lady as well.

Ms O'Rourke: She is a woman and a lady. This would be good for the Civil Service because Civil Service personnel will be implementing it. A Secretary General will be obliged to perform and report what has been done about this matter. He or she will have to think about it and might discover that 20 or more people are required. It is a good amendment in that it will propel the Secretaries General and civil servants at the highest levels to increase the number of people with disabilities who are employed in their Departments. There is plenty of scope for employment in Departments. I hope the Minister can consider the amendment, even if the civil servants will not like it.

Dr. Henry: The thrust of the Bill is to integrate people with disabilities into society. That is of benefit to everyone as well as to the individuals concerned. This is an area where we have influence in a way that can be measured. It would be wise of the Minister to accept this amendment given that it is receiving support from all sides of the House.

Senator Quinn has rightly been praised for the amount of employment he gives to people with disabilities in his business. However, he is not employing them because he believes he is a charity. These people are well able to do the work. The Senator is not doing this as a sop to society. I meet these people in the shop in Blackrock and they are well able to do the work. We must also take note of the dreadful levels of unemployment among people with disabilities. We now have a chance to include something measurable in the legislation. We would be most grateful if the Minister would accept Senator Terry's amendment. Be she a woman or lady, she would be delighted to get it accepted under any guise.

Mr. Fahey: When I was a Minister with responsibility for labour, I took a particular interest in trying to improve the lot of people with disabilities and their access to employment. The big problem was the lack of awareness among employers of the abilities and advantages

[Mr. Fahey.] of employing people with disabilities. I concur with the views expressed about Senator Quinn. I remember arranging a series of seminars throughout the country in addition to the one organised in Dublin by Caroline Casey. In Limerick, Waterford, Cork, Galway, Sligo and other big locations there was a significant effort to bring in employers and show them the Government supports that were available and the advantages. In particular, we had some of the more enlightened employers who already employ people with disabilities show the impact that such employment had on their companies. However, few people turned up.

One of the most telling things that happened to me when I was in that Department was when I participated in a programme on Galway Bay FM with the Gay Byrne of Galway. He asked me why people were not turning up at the seminars and why employers were not taking greater note of them. This person is also the chief executive of Galway Bay FM so I said: "How many people with disabilities are employed by Galway Bay FM?" He took two gasps of breath before replying, "Nobody". When I asked why, he said that they had never thought about it. That is the problem. I can legislate as much as I wish for the public or private sector but that is the reality.

I asked organisations such as Workway, which operates with FÁS, and the sheltered employment organisations for good examples of disabled employees. A little filling station outside Ennis is one of the most successful filling stations in the country. It is run by a young man with a disability. He is such a wonderful character that he attracts significant business. He is running the show. That is his ability.

Ms O'Rourke: Perhaps the Minister will think about this amendment over lunch.

Progress reported; Committee to sit again.

Business of Seanad.

Ms O'Rourke: I propose a change to the Order of Business. Private Members' business will begin at 4.30 p.m. instead of 5 p.m.

An Cathaoirleach: Is that agreed? Agreed.

Sitting suspended at 1.30 p.m. and resumed at 2.30 p.m.

Disability Bill 2004: Committee Stage (Resumed).

Debate resumed on amendment No. 50:

In page 40, between lines 46 and 47, to insert the following new subsection:

"(5) The Minister shall, as soon as may be after the passing of this Act, prepare and lay

before each House of the Oireachtas, a report on the possibility of increasing the public service employment quota for people with disabilities above 3 per cent."

—(Senator Terry).

Minister of State at the Department of Justice, Equality and Law Reform (Mr. Fahey): In response to the concerns of some parties, I am examining the definition of genetic testing under section 41 to clarify that it captures the proper spectrum of testing procedures which may apply to people affected by genetic disorders. If necessary, I may seek to introduce some minor technical amendments in this regard on Report Stage.

No matter what one does in respect of legislation, it is all about attitudes and awareness with regard to the employment of people with disabilities. Section 47(3) allows Ministers to make orders specifying compliance targets in respect of the recruitment and employment of people with disabilities. Where no orders are made, a target of not less than 3% will apply under subsection (4). The Bill already provides that a Minister can make an order setting compliance targets above 3%. There is a large range of public bodies of differing sizes and different operational requirements involved in the public sector. Experience points to the need to implement support measures which take account of the reality of how different public bodies operate. That is why Part 5 establishes an approach which will allow closer monitoring and reporting. The provisions also allow for a new focus on recruitment.

This approach derives from a search conducted in regard to the existing system which pointed to the need to monitor more clearly measurable elements, such as recruitment levels. Overall monitoring through the National Disability Authority will facilitate the ongoing review of progress. Therefore, I believe the objectives contained in the amendment seeking to enhance supports in public service employment are already sufficiently provided for in Part 5.

I amended this section of the Bill in the Dáil so that Departments would be required to take on, for training and work experience programmes, people with disabilities over and above the target of 3%. I was anxious to increase the target, but when I looked at the practical implications, especially for smaller State agencies and Departments, the reality of having a target level above 3% could be quite difficult. The flexibility that is now provided in requiring Departments to give work experience and training opportunities to people with disabilities is a better system.

The necessity for reporting is covered by the dedicated monitoring provisions in the Bill in which the NDA has a critical role. I am confident we will see the benefits of these provisions in the coming years. It would make no sense to report of possibilities of increasing targets directly after passing the Disability Act before the new

arrangements and structures are put in place to support progress.

Senators should bear in mind that the National Disability Authority Act is also being amended, pursuant of section 52, by the insertion of a new subsection (6) in section 15 of that Act. This will require the NDA to report annually in respect of progress in achieving the target and this report will be laid before both Houses of the Oireachtas. When one considers that Act together with this legislation, and in addition to the amendment which I made in the Dáil, we have adequately covered our requirements and objectives with regard to employment of people with disabilities.

Ms Terry: I am disappointed the Minister of State is not accepting the amendment, particularly in view of the consensus in favour of it. This is the type of commitment we all wish to see. We must try to encourage greater numbers of people with disabilities to enter employment.

We should put structures in place whereby State organisations or public bodies would be obliged to fill at least 3% of staff positions with people with disabilities. In many other areas we have seen that if structures are not put in place and organisations are not obliged to act the desired measures will not take effect. People will take the easiest route. In some situations employing people with disabilities requires a greater input from employers.

People with disabilities in employment have a huge contribution to make but, as the Minister of State is aware, employers initially do not think of employing someone with a disability. In order to avoid such a situation we must make employers think about it. The way to do this is to oblige them to employ a quota of people with disabilities. If the State does not undertake this measure we cannot expect the private sector to do it. We must lead by example. I ask the Minister of State to reconsider, to accept this amendment and thereby make it possible for many people with disabilities to access employment.

There are many people who have achieved a considerable amount through educating themselves, despite difficult circumstances. These people need the breaks as there are walls preventing people with disabilities from entering employment. The State sector must set the example and we must set standards and quotas. Unfortunately that is what is required, otherwise many capable people will be left behind. I do not accept the Minister of State's response, and ask him to reconsider before I table this again on Report Stage.

Ms O'Meara: I join with Senator Terry in expressing disappointment at the Minister of State's response, particularly in light of the unanimity in the House. The public service plays an important lead role in many areas and we expect it to comply with the highest possible standards

across the board. There is an expectation that it would take a lead role in employing people with disabilities. Not enough is being done and section 47 contains far too many outs and backdoors. The term "In so far as practicable" is a great example. One may simply respond that a particular measure is not practicable. Another example is "unless there is good reason to the contrary for not doing so" and there are far too many occurrences of "may" instead of "shall". We are used to that kind of terminology.

I am disappointed because I believe the Minister of State is committed and wants to achieve change. He genuinely believes that matters will progress because of this Bill and I hope he is right. The framework provided for in the legislation is the foundation and it is not sufficiently solid in this case.

Mr. Dardis: I apologise to the Minister of State and to the House for my absence from the debate on Committee Stage this morning. I attended a meeting of the Joint Committee on European Affairs and the Joint Committee on the Environment and Local Government. It is disappointing that we should have to specify any figure, regardless of whether this is 3% or 2%. It is unfortunate that we must do this to concentrate the minds of some people on their obligations. The situation anticipated in the amendment is covered in the Bill under section 47(3)(d)(i), which states that the Minister may specify "the numbers or percentages of persons with disabilities to be recruited by the public body concerned". There is an implicit flexibility that allows the import of the amendment to be met.

I appeal to the most senior people in all Departments, not just those specified in the Bill. I apologise if this appeal was already made this morning. These people have a responsibility to employ people with disabilities and a responsibility to ensure that Departments are accessible to people with disabilities. The entire Government must recognise the rights of people with disabilities.

In an article in *The Irish Times* this morning the chief executive of the Disability Federation of Ireland, Mr. John Dolan, states that "A disabled person has no more or no less rights than any other person". This is a point I made on Second Stage but we must acknowledge that these rights exist. The political mindset has changed considerably over the period of my time in this House and there is a general acknowledgement among all parties and politicians of the need to have disabled people incorporated into our societies. I am not sure that mindset has changed within Departments. Anything we can do to ensure everyone in the Civil Service is aware of what is required is beneficial.

The local authorities have been more successful than Departments in this respect. In my area, County Kildare, significant progress has been

[Mr. Dardis.]

made in respect of people with sensory, physical and intellectual disabilities. Senator Quinn suggested focusing on the ability of people rather than on their disability. As a member of Kildare county council I came into contact with these people and realised how much ability they had. Only when this ability was released, recognised and allowed to find expression was progress made. The Minister needs to inculcate in the public service the absolute need to be conscious of these matters.

At a recent meeting in Luxembourg I entered a large assembly hall and saw wheelchairs lined up inside the door. If someone got out of a car and needed a wheelchair it was available. How many places in Ireland have the same facility? It should be routine. The question of money is not important, rather it is attitudes that need to change.

Ms O'Rourke: We had a long discussion this morning about knocking heads together within the Civil Service where attitudes have to change. As I have said all along, one cannot legislate for changes in attitude. One can, however, legislate in cases where change comes about as a result of people being obliged to adopt certain attitudes, even if such circumstances are forced upon them. Perhaps the Minister of State did not get a chance to have lunch, but I had hoped that over the lunch break he would have re-examined this matter. Has the Minister of State or his officials information on which Departments fulfil the 3% target? If so, could he read the details to the House? I think those statistics would be very significant. When I was Minister for Public Enterprise, my Department used to furnish these figures, which is why I am aware of such monitoring. It would be interesting if the Minister of State could provide a list of Departments that are complying with the 3% target figure for employing people with disabilities. Does he have those figures?

Mr. Fahey: I do not have them with me.

Ms O'Rourke: Perhaps the Minister of State's officials have the figures and, if so, I will wait until they are available.

Mr. Fahey: The amendment seeks, in page 40, between lines 46 and 47, to insert the following new subsection: "(5) The Minister shall, as soon as may be after the passing of this Act, prepare and lay before each House of the Oireachtas, a report on the possibility of increasing the public service employment quota for people with disabilities above 3 per cent."

I could do that without inserting it in the legislation so it would not be of great benefit to insert it in the Bill. As I have already pointed out, there is quite an amount of obligations on the NDA

and the Equality Authority to promote equality. The Bill goes further concerning the obligations placed on public service employers which, together with the reporting procedures that are being introduced in the Bill, will further increase the pressures on employers.

In addition to that, the amendment I have already made in this regard will provide for an increase in numbers above 3%. That will be done on the basis of people being taken on above 3% so they can undertake periods of training and work experience. There is no ceiling as to the number of people that can be taken on in that respect. When one takes into account that amendment plus the reporting procedures in the Bill, they more than cover the spirit of this amendment which seeks a report to be prepared immediately after the Bill is enacted.

Ms Terry: The whole debate on this Bill is pretty frustrating from my point of view and that of the Opposition generally. We spend hours preparing for the debate and then spend hours debating the various amendments, but we do not really get anywhere. Perhaps, therefore, it would be better if the Minister of State came in at the beginning and said, "I'm not going to accept any of your amendments", thus ruling them all out of order.

Ms O'Rourke: He did accept some.

Ms Terry: This is a simple amendment which does not seek too much, yet the Minister of State has not provided me with a good enough reason not to accept it.

I accepted a number of points the Minister of State made during the debate. He made them constructively, putting forward an argument as to why my amendments should not be accepted. I have agreed with him along the way, but in this case he has not provided any good reason he will not accept this amendment. Everybody has spoken in favour of increasing this percentage, yet we know there are public bodies that have not even reached the 3% quota. Why have they not reached their quota and what is the Minister of State doing to ensure they will do so? The Minister of State is resistant to trying to raise that quota. He said it would create a cost or make it difficult for employers to employ—

Mr. Fahey: I did not say that.

Ms Terry: I am sorry if I misrepresented what the Minister of State said. I thought he said it would make it more difficult and I would disagree with that view. We are talking about the public sector and we must set the standards so others will follow. Earlier, everyone praised Senator Quinn for what he and others have done in the private sector. The Minister of State has not convinced me as to why he will not go beyond the

3% quota. Everyone here, including Members on the Government side of the House, supports this amendment.

Dr. Henry: This is very disappointing. I fully support what Senator Terry said. All that is being sought is the possibility of increasing the public service employment quota above 3% for people with disabilities. No commitment is being made to increase it beyond that level. It is very little to ask. It is being sought so there will be some numerical target to achieve. Senator Terry is quite right in saying we strongly suspect that many Departments and other public bodies do not currently employ even 3% of staff with disabilities. It is difficult to obtain the relevant figures. This amendment represents an attempt by the Oireachtas to show solidarity with people with disabilities who are seeking employment. They are seeking jobs, not charity.

Mr. Fahey: Senator Terry is being somewhat disingenuous in her accusation that I am not prepared to accept amendments. It is not normal to review matters and return the following day and agree to make some amendments. That was because on this occasion the Leader of the House asked me to be especially vigilant in trying to accord with the views of the Opposition.

The amendment simply proposes that I report on the possibility of increasing the public service employment quota for people with disabilities above 3%. I could say there is no possibility of that. The amendment does not seek that the quota should be more than 3%. That is the first reason I am rejecting the amendment. The second reason is that Ministers can make orders to this effect. The 3% figure is a quota but there is nothing to stop individual Ministers or Departments going above 3%. Section 47(3) states:

(a) The Minister for Finance may, with the consent of the Minister, by order specify compliance targets relating to the recruitment and

employment of persons with disabilities in public bodies the members of whose staff are civil servants and the public bodies accountable to him or her.

(b) The Minister may, with the consent of the Minister for Finance, by order specify compliance targets relating to the recruitment and employment of persons with disabilities in the public bodies accountable to him or her.

Therefore, the legislation does provide for employment targets above 3%. The Minister may make orders to ensure that employment targets above 3% are adhered to. The reason the figure of 3% is included in the legislation is because it represents the minimum number that can be employed. Having worked in a Department with responsibility for labour matters in my last job, I was anxious to ensure the maximum number of people with disabilities would be employed in the public service. I tried to see if we could get a percentage higher than 3%. However, for practical reasons, my officials and I decided it was better to opt for this formula of a minimum 3% quota, plus ministerial orders to go above that level. In addition, in order to ensure an open door policy regarding people with disabilities, we added a further amendment to the effect that training and work experience places would be provided over and above the 3% quota.

I do not need to be convinced of the absolute necessity for the public service to lead the way in the context of employment opportunities for people with disabilities. I remind Senators that this does not refer to the private sector. All we can do is try to increase that sector's awareness. With all due respect to Senator Terry, this amendment will do no more than ensure a report to the Houses of the Oireachtas, which I can do without any legislation.

Amendment, by leave, withdrawn.

Question put: "That section 47 stand part of the Bill."

The Committee divided: Tá, 30; Níl, 18.

Tá

Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Glynn, Camillus.
Hanafin, John.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
MacSharry, Marc.

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

Níl

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Paddy.
Coghlan, Paul.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.
Hayes, Brian.

Henry, Mary.
McCarthy, Michael.
McHugh, Joe.
Norris, David.
O'Meara, Kathleen.
O'Toole, Joe.
Phelan, John.
Ross, Shane.
Terry, Sheila.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators O'Meara and Terry.

Question declared carried.

SECTION 48.

Government amendment No. 51:

In page 41, subsection (2), line 19, to delete "compliance," and substitute "compliance".

Mr. Fahey: This is a technical amendment which improves the comprehension of the provision.

Amendment agreed to.

Section 48, as amended, agreed to.

Sections 49 to 51, inclusive, agreed to.

SECTION 52.

Question proposed: "That section 52 stand part of the Bill."

Mr. Fahey: I indicated on Committee Stage in the Dáil that I would consult with the Parliamentary Counsel on the feasibility of reflecting the term "designed for all" to have the same meaning as "universal design" in the work of the new centre of excellence to be established by the National Disability Authority. The advice available to me is that there are legal and technical reasons as to why it is not possible to provide in the Bill that "universal design" means also "design for all".

The words in each case may be interchangeable, based as they are on usage nationally and internationally. However, the words in legislation have specific meaning and I am informed that it is not the practice to use certain words in a statute and to state in the same statute that other words, even though not used anywhere else in the statute, may be defined as having the same meaning. As far as can be identified, there is no precedent in our legislative code.

The wording in the Bill, "universal design", is in line with the use of those words internationally. No doubts arise for legislative purposes about their meaning. They achieve their purpose in the Bill as it stands. I am satisfied, on the advice given to me, that there is no need for change.

Mr. Daly: Will the Minister of State give us some indication of where the centre of excellence will be located and who will run it? Has any decision been made on this or is it something that will be decided later?

Mr. Fahey: The proposed centre for excellence in universal design will be within the ambit of the National Disability Authority. It is obvious that various interested parties in the disability sector will be consulted. I have met representatives of groups with a specific interest in design issues which affect people with disabilities. I assure the House that such people will be involved in the proposed centre for excellence, which will be within the ambit of the National Disability Authority.

Ms O'Rourke: What will the centre of excellence be? Will it be just a building?

Mr. Fahey: The centre of excellence will ensure that the needs of people with disabilities will be taken into consideration when decisions are being made on all aspects of the design of buildings, such as the information technology aspects of buildings. It will be involved in advance architectural and other planning work. It will have regard to planning regulations and other regulations governing IT developments, etc. It will be a centre of excellence in design. It will ensure that the disability sector is included in modern developments.

Mr. Daly: I recently attended a function in Ennis at which environmental awards were presented to those who designed buildings of outstanding architectural merit. I was amazed to note that many of the buildings which won such awards were not accessible for people with disabilities. When I drew this matter to the attention of the architects, planners and designers who won prizes, I was amazed by their lack of awareness of the need to deal with this issue. They seemed to think it was a matter to be considered by other people. I welcome the proposal to develop a centre of excellence. I hope it will be successful and will receive the publicity it deserves. Its existence should be drawn to the attention of this country's planners and designers, some of whom seem to be blissfully unaware of the problems

which are encountered by people who cannot access public and private buildings.

Mr. Fahey: I am surprised to learn of the Senator's experience. The planning laws require that people with disabilities be afforded ease of access to new buildings. I would be interested to hear about the specific cases referred to by the Senator.

Mr. Daly: I was surprised.

Mr. Fahey: It comes as a surprise to me to learn that certain people involved in the planning sector are unaware of the legal requirements. The main objective of the proposed centre of excellence will be to work with the professional bodies to ensure that the principles of universal design are taken into consideration during all kinds of design work and architectural planning. The work of the centre will complement technological and other developments.

Question put and agreed to.

SECTION 53.

An Leas-Chathaoirleach: Amendments Nos. 52 to 55, inclusive, are related and will be discussed together.

Government amendment No. 52:

In page 48, line 34, after "impairment" to insert "persons who are blind or partially sighted".

Amendment agreed to.

Government amendment No. 53:

In page 48, line 37, to delete "teletext services, and" and substitute "teletext services,".

Amendment agreed to.

Government amendment No. 54:

In page 48, line 38, to delete "subtitling," and substitute "subtitling, and".

Amendment agreed to.

Government amendment No. 55:

In page 48, between lines 38 and 39 to insert the following:

"(IV) audio description,".

Amendment agreed to.

Section 53, as amended, agreed to.

Sections 54 to 56, inclusive, agreed to.

SECTION 57.

Ms Terry: I move amendment No. 56:

In page 50, between lines 19 and 20, to insert the following new subsection:

"(2) (a) Nothing in this Act, shall be taken to contravene, or constitute any alteration, to the rights and protections prescribed in the Equal Status Acts 2000 to 2004.

(b) Nothing in this Act, shall be taken to contravene, or constitute any alteration, to the rights and protections prescribed in the European Convention of Human Rights Act 2003.

(c) Nothing in this Act, shall be taken to contravene, or constitute any alteration, to the rights and protections prescribed in the Employment Equality Acts 2000 to 2004."

Ms O'Rourke: I thought amendment No. 56 was a Government amendment.

An Leas-Chathaoirleach: No. It was incorrectly highlighted in the printed list as a Government amendment. It was tabled by Senator Terry.

Ms Terry: I am sure the Leader was prepared to accept the amendment.

Ms O'Rourke: I never opened my mouth. I am not a bit like that.

Ms Terry: I will be happy when the Government parties accept this amendment, as I am sure they will. The amendment seeks to ensure that this legislation complies with other legislation that is already in place. I want to ensure that nothing in this Bill affects or diminishes the rights and protections contained in Equal Status Acts, the European Convention of Human Rights Act 2003 and the Employment Equality Acts. We all need to accept the ideals which underpin such legislation, which was passed by the Oireachtas. Nothing in this Bill should diminish the rights and protections afforded to people with disabilities under the Acts I have mentioned. The Minister of State did not answer the question I asked earlier about minimum rates of pay. Perhaps I did not ask it in the correct context. An amendment was made to the Equal Status Acts to ensure that public and private sector workers with disabilities are entitled to a rate of pay that is not less than the minimum wage. That amendment ensures that the rights of such people under the Equal Status Acts and other Acts are upheld rather than diminished.

Mr. Dardis: While I am not sure about Senator Terry's amendment, it is clear that she has raised an important issue. I was contacted by representatives of the Kildare network of People with Disabilities in Ireland. They said the possibility that

[Mr. Dardis.]

the Bill might undermine some of the strengths of the Equal Status Acts is of pressing concern to them. They have called on Senators to keep that possibility in mind during the debate on this Bill, especially as the Equal Status Acts seem to be working reasonably well for people with disabilities. I said on Second Stage that I think the provisions of the Equal Status Acts cover any circumstances which are not covered by this Bill. It is important for the Minister of State to clarify this issue so that there is no confusion about it.

Dr. Henry: I support the comments made by Senator Dardis. I have also been contacted by representatives of People with Disabilities in Ireland. It would be dreadful if this Bill, which has been introduced to assist people with disabilities, were in any way to remove some of their rights under existing legislation. I am sure that is not the Minister of State's intention, but he can ensure it will not happen by accepting Senator Terry's amendment.

Ms O'Meara: I ask the Minister of State to assure the House, in light of what has been said, that the amendment is not necessary.

Mr. Kett: I understand the argument being made by other Senators. We should not confuse the minimum wage that is given to people with disabilities who are in actual employment with the wage that is given to people with disabilities who are engaged in training. People in the latter group are also entitled to receive a limited amount of money under the disabled payment maintenance allowance scheme. If such people earn more than a specified amount of money, however, they will lose a portion of their allowance or the benefits which derive from it. Those who argue that people with disabilities are being taken for granted under the minimum wage system may not be aware that such people are in danger of the losing the moneys they receive under the disabled payment maintenance allowance scheme if they earn more than a certain amount.

Mr. Fahey: The minimum wage of €8 per hour applies to all employees, including people with disabilities. I would be interested in hearing about cases of the minimum wage not being paid, if Senators can cite such examples. In some cases, employers may be exempt from paying the minimum wage to people in training, but that exemption cannot last for longer than a certain period of time.

Ms Terry: How long is that period of time?

Mr. Fahey: It lasts for a maximum of three years. The exemption normally applies to people who are being trained under sheltered employment conditions. Under section 35 of the

Employment Equality Act, people with disabilities will be entitled to the same minimum wage as anyone else.

While well intentioned, I am concerned that amendment No. 56 may not achieve the purposes for which it is drafted. Provisions of this nature are best avoided unless they bring beneficial clarity to the interpretation of the relevant enactments. Perhaps I should outline my concerns in regard to each element of the amendment.

The proposed amendment has three elements. The first element would require that nothing in the Act should be taken to contravene or constitute any alteration to the rights and protections prescribed in the Equal Status Acts 2000 to 2004. Section 14 of the Equal Status Act 2000 already provides that nothing in that Act shall be construed as prohibiting the taking of any action that is required by or under any enactment. As a result, the positive measures contained in this Bill, which amount to statutory obligations on public bodies, will be applicable, even though less onerous anti-discrimination provisions are contained in the Equal Status Acts 2000 to 2004.

An important point to note in regard to the provisions concerning the Employment Equality Acts 1998 to 2004 is that the content of the legislation is not directly germane to the Bill, except for section 33. The section contains an exclusion saying that nothing in the legislation shall render unlawful positive employment measures for people, including people with disabilities. The Bill takes up on that provision and requires public bodies to adopt the employment measures for people with disabilities.

On the third element of the amendments relating to human rights legislation, section 3 of the European Convention on Human Rights Act places an obligation on every organ of the State, as defined in section 1 of the Act, to perform its functions in a manner compatible with the State's obligations under the convention. Section 4 of the Act requires that all statutory provisions or rules of law enforced before or after the commencement of the Act must be interpreted and applied in a manner which is compatible with the State's obligations under the European Convention on Human Rights. It is clear from the European Convention on Human Rights Act 2003 that every court, in considering or interpreting any section of any Act, any statutory instrument or rule of common law, must seek to do so in a manner which is compatible with the European Convention on Human Rights and Fundamental Freedoms unless it is impossible to do so. In circumstances where it is not possible to interpret the statute, statutory instrument or rule of law concerned in a manner which is compatible with the convention, provision is made in section 5 for the superior courts to make a declaration of incompatibility which will be laid before the Houses of the Oireachtas.

In view of these provisions, I see no advantage in including the third element of the proposed

amendment in the Bill. I do not propose to accept the amendment.

Ms Terry: I accept that what the Minister of State said is true in regard to the content of the Acts to which I have referred in the amendment. As has been said on a number of occasions, what we are trying to do here is to strengthen and give power to this legislation, which is ground-breaking and for which many people have fought for many years. This will be used like their Bible. They want the legislation to be as strong as possible, giving them a strong voice and support. While these other Acts exist to uphold people's rights, there is nothing wrong with including this strong statement in the legislation. As far as I am concerned, it will strengthen the legislation; it certainly will not diminish it. When reviewing the legislation in five or ten years' time, many measures can be omitted, which I hope will be taken for granted when the time comes. Today we are dealing in an environment which is still not broad-minded enough to accept many of the issues that face people with disabilities.

I ask the Minister of State to reconsider the matter and accept the amendment in the spirit in which it is intended, namely, to strengthen the legislation.

Mr. Fahey: There is no doubt the proposed amendment may render inapplicable the positive duties on bodies under the Act and replace them with limited provisions under section 4 of the Equal Status Act 2000, which deal with reasonable accommodation and nominal cost. Some people expressed concern about the impact the Disability Bill could have on the obligations placed on public bodies under the Equal Status Acts. They believe these obligations could be diluted by allowing these bodies to seek exemption under section 14 of the Acts.

Section 14 of the Equal Status Acts reads as follows:

Nothing in this Act shall be construed as prohibiting—

(a) the taking of any action that is required by or under—

(i) any enactment or order of a court,

All I can do is assure Senator Terry that there is no basis for the concern she expressed. The Equal Status Act prohibits discrimination on the grounds of disability among other grounds. The Disability Bill imposes further duties on public bodies, requiring that they take a range of positive actions, particularly in regard to buildings and services, which must be made accessible within the timeframe specified.

Amendment, by leave, withdrawn.

Section 57 agreed to.

Section 58 agreed to.

Schedule agreed to.

TITLE.

Ms Terry: I move amendment No. 57:

In page 5, lines 7 to 12, to delete all words from and including "OCCASIONED" in line 7 down to and including "-CATION," in line 12 and substitute the following:

"OF PERSONS WITH DISABILITIES,
TO ENABLE MINISTERS OF THE
GOVERNMENT TO MAKE PROVISION".

I will be interested to hear what the Minister of State has to say on this issue. My amendment proposes to change the wording of the Long Title to read, "an Act to enable provision to be made for the assessment of health and education needs of persons with disabilities, to enable Ministers of the Government to make provision for services" and so on. I am deleting a number of words which will make it a better Title. I am making the point that we should ensure provision will be made for the delivery of the services. While the services and funding will not be ring-fenced, there is no commitment in the Bill to ensure multi-annual funding. Even though the Minister of State states that multi-annual funding has been in place for a number of years, there is no long-term commitment to this in the Bill. However, the Bill does not provide for a long-term commitment to multi-annual funding.

Ms O'Meara: I very much support this important amendment. The Long Title sets out the intention of the legislation. Senator Terry seeks to delete the following words: "occasioned to persons with disabilities by their disabilities, to enable Ministers of the Government to make provision, consistent with the resources available to them and their obligations in relation to their allocation,". Allocations are always made consistent with the resources available; that is automatically a condition.

By contrast, Senator Terry's amendment will ensure the Long Title is clear, straightforward and powerful. It would state, "An Act to enable provision to be made for the assessment of health and educational needs of persons with disabilities, to enable Ministers of the Government to make provision for services to meet those needs...". This is a critical difference in emphasis because the conditionality of the Long Title is removed.

It would not then mean Ministers would have to make provision without the necessary resources available but it would empower them to make the necessary provision. It would also make clear that the legislation is designed to make provision where required. This is the core concern of people with disabilities regarding the legislation. They are concerned the same conditions will apply as previously and people with disabilities will find themselves at the end of the line when resources are allocated. For example,

[Ms O'Meara.]

spending on mental health services has decreased considerably during the lifetime of the Government, despite the greater availability of resources. Unless a direct and powerful statement is made, there is always the fear and possibility that the necessary resources will not be allocated. This amendment is, therefore, important.

Mr. Fahey: The amendment proposes to remove ministerial discretion in making provision for people with disabilities in the Long Title by deleting the reference to resource availability. Fundamental differences between the Government's position and that of the Opposition were evident during Second Stage. It will not, therefore, come as a surprise that I do not intend to accept the amendment. I wish to retain the Long Title, which adequately describes the intent and purpose of the Bill.

No Bill has ever been passed predicated on resources or on a guarantee regarding resources and the same applies in this case. The fundamental elements of good governance and responsible public expenditure are laid down in the procedures pertaining to the budgetary and Estimate requirements of the Department of Finance and other Departments. It is not practical to suggest that a Bill could be predicated on the resources made available under it.

Senator Terry referred to multiannual funding. The Government agreed a five-year rolling programme of funding and the Minister for Finance devoted more than half of his Budget Statement to the announcement of that programme. It would be ridiculous for a Government to announce a five-year spending programme and not implement it. However, it will be implemented as part of the budgetary and Estimates process. Such a programme is not part of the legislative process whereby the legislation is intended to underpin it.

The Senator is correct that there is nothing to prevent the next Government pursuing a different policy but all parties are agreed substantial additional resources are needed over the next five to ten years to provide services for people with disabilities. All parties also acknowledge that in the mid-1990s when every party spent time in Government, funding increased by only €1 million annually. Fianna Fáil, the Labour Party, Fine Gael, the Progressive Democrats and a number of Independent voices were in various Governments.

Dr. Henry: What I am being blamed for now?

Ms O'Rourke: The Progressive Democrats were not in Government at that time.

Mr. Fahey: Yes, they were. We must face up to that reality. For some reason best known to ourselves as a society, people with disabilities did not rate. That is the reason the Church and volun-

tary bodies carried the can on their behalf completely and they are still involved. That is also the reason the culture in the State until recently was that people were locked up in the most horrendous fashion. We are trying to make up the ground following years of neglect. This year an additional €440 million will be provided by the Minister for Finance between the budget and the Estimates, giving a total allocation of €2.9 billion.

There is no question that the Government and its successor must considerably increase funding to provide proper services for people with disabilities. I do not care whether Members refer to acute hospital services, educational facilities or infrastructure because the spending priority must be services for people with disabilities. We have all met individuals and organisations who have made a cogent case that the legislation must represent a turning point. I can put my hand on my heart and say it does. The Government is committed to providing the significant additional resources required. The Minister for Finance stated on budget day that he would provide €900 million over the next five years. He did not say that would prevent him from providing additional money each year and he must provide more money if we are to bridge the gap that exists. It is not necessary to amend the Long Title but it is necessary for all of us, no matter which political party we represent, to commit ourselves to the provision of the significant additional resources required. That is the Government's intention.

Ms O'Rourke: The Minister of State referred to good governance but I would call it good housekeeping. One cannot spend what one does not have whether one is buying clothes, food and so on. One's credit card can only hold so much before one begins to receive letters. The amendment seeks to delete the words, "...to make provision consistent with the resources available to them and their obligations in relation to their allocation". This is just good housekeeping. The Minister will fight for his or her resources and then spend them. There will hopefully not be an underspend in a particular Department. While I am in agreement with many of the amendments tabled this evening, I know from my experience in Government that one cannot do other than what is in the Long Title.

Ms Terry: Does the Minister of State know if the words "consistent with the resources available to them" appear in other legislation?

Ms O'Meara: Exactly.

Ms Terry: We know what they mean. Whether we are discussing a transport Bill or any other legislation, they all cost money. Will the Minister of State point to any legislation that includes these very words imposing restrictions to the effect that the Minister can only spend the resources available? We accept that one can only

spend what one has, as Senator O'Rourke said. We each look for a new road, train or classroom every week. We know they cost money and that Ministers can only provide as many new classrooms or buses as resources allow. Why must these words be included in the Bill? Are these same words used in other legislation that provides for services or facilities?

Ms O'Meara: I think I can answer Senator Terry's question. These words do not appear elsewhere as this legislation is resource-based not rights-based. The Senator's amendment would make it rights-based legislation whereas the Government's words make it resource-based legislation.

I have been a Member of this House for nearly eight years and do not recall this particular configuration appearing before. It is not normally necessary. As Senator O'Rourke said, if one does not have the money, one cannot spend it. This Government has chosen to specifically state this in the Bill's Long Title and to define the legislation completely as resource-based, which has been the biggest bone of contention between the disability groups and the Government. As the Minister of State said, this is a fundamental point of disagreement between the Government and the Opposition parties. Do we have rights-based or resource-based legislation? As set out clearly in the Long Title, this is resource-based legislation and will, therefore, always be the case.

I welcome the Minister of State's commitment to the provision of €900 million over five years. Perhaps it will be more, which would be great as there is much catching up to do. Be that as it may and despite whatever amount of money is spent, the Bill, which creates the long overdue framework for the development of services for people with disabilities in this country, has a resource-based ethic rather than a rights-based one as its fundamental cornerstone.

Mr. Dardis: In my experience, it is a standard feature of legislation that it explicitly states there is no financial dimension to it.

Ms O'Rourke: Subject to the——

Mr. Dardis: It would state in one of the sections that no cost is incurred by the Exchequer. The unusual feature of this Bill is that there are several Ministers involved and not just one. In other words, if we were discussing the Garda Síochána Bill, we would not need to put this stipulation into it because it is within the budget of the Garda Síochána and the Department. If we do not put it in here and if we change the Long Title to enable Ministers to make provisions without placing a restriction on them, they could spend whatever they like. Whether in disability or another area, this cannot happen. Disability is a

worthy area but we cannot have a blank cheque in any area, however worthy.

We must remind ourselves about the commitment that has been evident. The Minister of State pointed out the figure of €2.9 billion, 7.5% of gross current public expenditure, which has increased three and a half times since 1997. The financial commitment is not in question because it has been demonstrated. It is a question of being practical. I do not like that this debate is being presented as rights versus resources. It is not a question of either rights or resources but rights and resources.

Ms O'Rourke: Rights to resources.

Mr. Dardis: The rights are enshrined in the Equal Status Act and other legislation. People want equal rights. As I said on Second Stage, I have not heard anyone say they want superior rights. Equal rights are enshrined in the legislation that surrounds this area, some of which was introduced by a Labour Minister during my time in the House.

Ms O'Rourke: Does the Senator refer to former Minister for Equality and Law Reform, Mervyn Taylor?

Mr. Dardis: Yes. There must be a stricture. The unusual dimension of this Bill is that it enables Ministers over a range of Departments whereas Bills generally deal with one particular aspect within a Department using that Department's budget.

Mr. Kett: We have discussed the issue of resources as it relates to the Bill since yesterday and I am not surprised it has arisen again. All Government activity is resource-based, as the Government can do nothing unless it has the money to do so. If there were not a reference to resources in the Long Title, I would be very suspicious. One must show one's resources if one is to carry out certain activities. As someone who works in a voluntary organisation and is fighting day and night with the Health Service Executive to try to get more money from it, I understand the complexities of getting that money. It is a difficult argument to make. Even though I would love working in the area if I could pick up the telephone and say that I need X, Y and Z, it unfortunately does not operate that way. We must do this.

I take on board what the Minister of State said about the legacy of voluntary organisations. They have been a tremendous conduit for people with disabilities through the years and were there when the Government and the money were not. They are still there. Even though it has been suggested they are not being well resourced, I am happy to say that they have been to a point in recent years. I can say this with factual know-

[Mr. Kett.]

ledge. I could give chapter and verse of situations of great improvements that have been made within our own organisation, from special needs assistants to bus escorts to various technological advancements for children doing homework and so on. It is unfair to say improvements in this area have not been made as significant improvements have occurred, particularly over the past five years. I understand where the Minister of State is coming from when he explains this to us. With the best will in the world, I say that we must have a resource-led package.

Dr. Henry: No one denies there has been a significant increase in the amount of resources spent on people with disabilities, so that is not a problem. I cannot remember any other Act where “resources allowing” was written into the Long Title. On the matter of the Bill pertaining to several Departments, what about the Children Act 2001, which spanned several Departments and required considerable resources? The resources have not yet been made available to implement the provisions of the Act but this is beside the point. We did not put in the Long Title of the Act that we would only invest whatever resources were available as we all knew this.

These words were not in the Long Title of the Mental Health Act 2001. We knew there would be trouble regarding resources but we expected resources to be made available. We
4 o'clock were not going to say that these words were an excuse for not investing something. As the Leader said, this is about what is available and what can be provided for these people. I am well aware of the extraordinary legislation that sometimes comes from the Department of Justice, Equality and Law Reform regarding financial implications. I was utterly astonished to read the explanatory memorandum at the end of the Criminal Law Insanity Bill, which states there are no financial implications. Of course there will be difficulties regarding funds and we praise the Government for providing extra resources for this area. However, our argument is with putting an excuse into the Long Title of the Bill which is not present in any other piece of legislation that any of us can recall.

Mr. Fahey: In response to Senator Terry’s question, the Long Title takes its present form because it reflects the provisions contained in the Bill. This is a cross-cutting Bill, involving several Departments and, as Senator Dardis has said, it is necessary that the Long Title of the Bill reflects the provisions therein. This is one of the most complex pieces of legislation that has ever been brought before the Oireachtas. It was five years in gestation, involved 11 different Ministers and the Taoiseach has admitted that it took up more of his time than any other piece of legislation since he became a Member of the Oireachtas.

Every piece of legislation has a provision in it, in some shape or form, which states that it is subject to resources. It is stated in this manner in this legislation because of the cross-cutting nature of the Bill, reflecting the provisions therein. Senator O’Meara mentioned the issue of rights. If the Labour Party and Fine Gael were in Government tomorrow, I predict that they would not be able to introduce justiciable rights-based legislation. Justiciable rights are not in any legislation in any part of the world, with the possible exception of South Africa. Even the most forward-thinking countries like Great Britain, the United States, Canada, New Zealand, Australia and Sweden do not have justiciable rights-based legislation. It is not possible.

I examined the issue when I went into the Department, the Bill having been published at that stage. It comes down to the simple question as to whether we want the Four Courts to run the country or the Oireachtas. Senator Dardis is right in that it is not a question of either rights or resources. Senator O’Meara has posited that it is a question of either-or, but it is not. Even if one had justiciable rights-based legislation, as is the case in education, that would not guarantee proper services for people with disabilities. When one examines the experience in education, for every €1 given to people who sought educational services through the courts, €4 was paid to lawyers. If one examines the high profile cases of recent years, they did not bring about the desired results. I am convinced that people are being led astray by talk of justiciable rights by those who are propagating that idea. I have heard a large amount of uninformed comment about justiciable rights in the past six months, all of which is coming from the same source and it is wrong. It is not about rights or resources. There are rights throughout this Bill, but there is no justiciable right and I am convinced that this is in the best interests of people with disabilities. Having said that, I reiterate that the challenge for this Government and future Governments is to ensure that it is not necessary for people to resort to the courts to have their rights vindicated.

This Bill will underpin the phased expenditure of the money required to bridge the gaps in services that exist at present and which we all accept are urgently in need of being bridged. For that reason, it is not necessary to accept this amendment and the House should, in good faith, accept the bona fides of the Bill and the provisions it contains, as reflected in the Long Title.

An Leas-Chathaoirleach: Is amendment No. 57 being pressed?

Ms Terry: Yes.

Amendment put.

The Seanad divided by electronic means.

An Cathaoirleach: Due to problems with the electronic voting system, the vote must be taken manually.

Mr. B. Hayes: On a point of order, is it not provided in Standing Orders that when a vote is cancelled for some reason, the bells should be

rung again to allow colleagues who were unable to get to the Chamber another opportunity to do so?

An Cathaoirleach: The bells will ring for two minutes.

Amendment again put.

The Committee divided: Tá, 19; Níl, 31.

Tá

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Paddy.
Coghlan, Paul.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.
Hayes, Brian.
Henry, Mary.

McCarthy, Michael.
McDowell, Derek.
McHugh, Joe.
Norris, David.
O'Meara, Kathleen.
O'Toole, Joe.
Phelan, John.
Ross, Shane.
Terry, Sheila.

Níl

Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Glynn, Camillus.
Hanafin, John.
Hayes, Maurice.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
MacSharry, Marc.

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

Tellers: Tá, Senators Terry and O'Meara; Níl, Senators Moylan and Minihan.

Amendment declared lost.

Title agreed to.

Bill reported with amendments.

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

Ms O'Rourke: Next Tuesday.

Report Stage ordered for Tuesday, 21 June 2005.

Morris Tribunal Reports: Motion.

Ms Tuffy: I move:

That following the publication of the first and second Morris tribunal reports that Seanad Éireann calls on the Government as a matter of urgency to initiate steps to provide for:

- an independent policing commission to identify the structures needed to ensure accountability and independent scrutiny

of the Garda Síochána as well as partnership with the community;

— an independent policing authority

— an independent, one-person Garda ombudsman

— and the immediate implementation of the recommendations of the Morris Tribunal reports."

While I am glad the Minister of State at the Department of Justice, Equality and Law Reform, Deputy Brian Lenihan, is in the House, I am sorry the Minister for Justice, Equality and Law Reform is not present because he has been very stubborn on an issue which is fundamental to policing and the Garda Síochána Bill.

As he and the Minister of State will be aware, Deputy Rabbitte, the leader of the Labour Party, put forward a proposal that the Minister would set up a commission to review the issue of policing in the State. It would be similar to the review carried out in Northern Ireland under the Patten commission, which took approximately 12 months to carry out its work. However, because of the work already done in this regard, we pro-

[Ms Tuffy.]

pose that a similar commission could carry out its work in six or nine months. Northern Ireland is not the only place to have had that type of commission. For example, a royal commission on the New South Wales police force came up with recommendations for reform of that force.

The public is disillusioned with the Garda Síochána. The majority of gardaí are good people but there is a crisis in confidence in the overall structure of the Garda Síochána. The public mood was moving in that direction but it has been brought to a head due to the latest findings and recommendations of the Morris tribunal. If we are to bring about reforms in our policing structure, it would be best to have an independent policing commission to consider all options, consult widely, including with the Garda Síochána and other interested parties, hold public meetings, for example, as was done in local town halls in the North, and then come up with a report. That would bring people on board and give them ownership of any new structure we would come up with.

As the Minister of State will know, Labour Party policy proposes there would be an independent policing authority. We believe a good example of this type of authority is the independent Northern Ireland Policing Board. However, there are many examples of policing authorities throughout the world. Any one would serve as a good starting point.

This policy is not new for the Labour Party, which came up with the proposal five years ago. We considered the Patten commission and its proposals, as well as considering policing policy and best practice throughout the world. Given that, we still favour a policing commission to review this area before any decision is made. The Labour Party policy is that the proposed policing authority would draw up a four year strategy to set objectives and priorities, provide indicators assessing the effectiveness of the police force, outline budgetary requirements and so on.

A policing authority would draw up a four-year strategy which would do the following: set out objectives and priorities; provide indicators for assessing the effectiveness of the police force; outline budgetary performance; be responsible for adopting an annual policing plan; and present the annual Garda budget for negotiation with the Minister. The Commissioner would still have full operational responsibility for the force, as is the case in Northern Ireland.

The Labour Party has outlined many other proposals in respect of the Garda authority's responsibilities. However, most importantly, it should be independent. The Northern Ireland model is very good because it includes political representation. The Minister has ridiculed the idea of having public representatives included on a policing authority, but he is wrong. If we want a truly open and accountable authority then it must involve publicly-elected representatives. Mr.

Denis Bradley, the vice chairman of the police authority in Northern Ireland, recently spoke to the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights. He felt that without a policing authority we are not doing what is fundamentally required to reform our police force, which is something I have stated on many occasions in this House and which the Labour Party has been pushing. Mr. Bradley said he would not start from here if the aim is to go where he thinks we should be going. He made a number of important points and lamented the absence of a police authority between the Department of Justice, Equality and Law Reform and the appointment of the Commissioner and senior Garda officers. He pointed out that the Conroy report of 1968 made such a recommendation and also the importance of having a political yet independent group of people acting together to make senior appointments in order to maintain a distance between Government and the police.

The Morris tribunal has identified problems with the Garda Síochána which only an independent police authority can take on board and tackle in an open and accountable manner. From the tribunal's point of view, the Garda Síochána is very inward looking and homogenous. Mr. Bradley also referred to this, in particular to the tendency for a terrible centralism, where power is centralised, hierarchal and mostly male.

Professor Dermot Walsh was recently interviewed on "News at One" and he spoke about the same situation. He said that we need an independent policing authority if we really want to do something about the culture which has given rise to the type of issues raised by the Morris tribunal. We must be much more radical in terms of recruitment and have more diversity within the force. He suggested that recruits should study alongside other third level students, as opposed to being locked away in their own group for the rest of their career. The police force should second more officers from other police forces and use their expertise.

Our other recommendation has been raised in a controversial manner in recent days. Senator Maurice Hayes was appointed by the Minister to oversee Garda reform. He is an expert on policing reform because of his work in the North. He has said that there should be an independent one-person Garda ombudsman with its own independent staff. Deputy Rabbitte and the Labour Party feel that this has also been indicated by the Morris tribunal in a statement regarding the role of the Oireachtas in terms of implementing the recommendations of the Morris tribunal. Mr. Justice Morris stated that:

The Tribunal was very much concerned by the lack of any independent body to receive legitimate concerns about Garda behaviour. The provisions of the Garda Bill need to be reviewed by the Oireachtas, so as to satisfy the legitimate disquiet that arises from the Tri-

bunal's study of the documents in this case. . . Whatever measures are put in place must ensure that there is, indeed, a body to whom people with legitimate concerns are able to turn to.

I have argued this point with the Minister in this House on many occasions and pushed the Labour Party line that there should be an independent Garda authority and one-person ombudsman. The Minister has argued that we simply want to copy Northern Ireland, that it is unique and the Republic of Ireland is different. I wanted to rebut that and have spent the past few days studying what has been done in other countries. Northern Ireland is not unique. It has possibly learned from the mistakes of other jurisdictions throughout the world and successfully followed on from what they have done. What Northern Ireland has achieved in terms of the Patten commission and the independent policing board is more the norm than the exception. It is the Republic of Ireland and the Minister, Deputy McDowell, who are lagging behind and being pulled, kicking and screaming, into the 21st century.

New South Wales had a similar commission to the Patten commission. This was in response to a collapse in public faith in the police force and allegations of corruption. The terms of reference of the Patten commission stated that Northern Ireland is supposed to be moving into an open and peaceful society and it is therefore appropriate that this body be in place. That is why Northern Ireland has an independent policing board and ombudsman. The Minister's logic would say that it should have had such bodies when it was in a crisis state and there was no ceasefire.

We must also examine the idea of these bodies being cross-community. One of the criticisms of the Garda Síochána is that it is too homogenous and inward looking. We need more diversity, women and people from different backgrounds in the police force and we must take in people from other forces throughout the world. We must also include people who have worked in other careers so they can bring their experience to bear.

Much of the Northern Ireland policing legislation goes beyond what is done in other countries. The police ombudsman, Nuala O'Loan, accepts complaints by telephone whereas they must be made in writing in other jurisdictions. The ombudsman is very accessible, and we have seen this—

Acting Chairman (Mr. Mooney): The Senator should conclude. She is well over her time.

Ms Tuffy: Northern Ireland is not unique and is becoming the norm. We are the ones lagging behind. Countries all over the world have introduced reforms. I find it hard to understand, but I think the Minister is of the old guard and not prepared to move forward in regard to our policing structure. He is too conservative and wants to

keep a hold on the situation. He should remember that he will not be the Minister for Justice, Equality and Law Reform for ever. People will not trust him to take account of the recommendations of the Morris tribunal simply because he says he will. We need an independent policing authority to carry out these recommendations. We should examine examples of where this has been done in situations of crisis regarding policing in other countries where they have looked at and responded to the situation and implemented radical reforms such as those suggested by the Labour Party.

Mr. McDowell: I understand the Minister for Justice, Equality and Law Reform was scheduled to be here but is delayed because of a bereavement. I understand his mother-in-law died suddenly today. I wish to record my condolences to the Minister and to his wife, Professor Brennan, on their loss.

Like most colleagues I have been relying on press summaries for information on the content of the Morris report. I received a copy of the report this morning and spent a few hours reading selected extracts from it. It has been a salutary experience as the press summaries do not do it justice. The language used in it is striking, the sort one would associate with the militant left or people traditionally antagonistic towards the Garda Síochána rather than a learned member of the Bench. He does not hold back in describing the appalling scandals in Donegal and in condemning many individuals involved. It is important that we record our appreciation for the work Mr. Justice Morris has done in uncovering the scandalous events over a period of years in Donegal.

This was not a series of acts of omission, a case of human frailty, or honest endeavour gone wrong. These were deliberate acts of commission that were obviously corrupt from the start. Mr. Justice Morris points to the use of an informer, and the use of information gleaned from an informer, to progress the careers of individual gardaí. He refers to the destruction of documents by very senior gardaí and while he stops short of calling it a deliberate conspiracy, clearly he has suspicions. The events he describes amount to systematic corruption and he does not hesitate to ascribe fault. He says that it amounts to corruption and-or connivance at the medium level of Garda authority and serious mismanagement at senior level.

This demands a response of all of us. Where appropriate, prosecutions should be brought against individual gardaí who were found to be at fault and who may be suspected of an offence. It is equally important information is used to bring disciplinary procedures as soon as possible. I reiterate the disquiet articulated elsewhere at the initial actions taken by the Garda Commissioner. It does not seem adequate to the Labour Party or the public to allow senior gardaí to retire and to

[Mr. McDowell.]

transfer lower ranking gardaí to Dublin. I appreciate that this is not the full response but even as a starting point it seems inadequate.

Perhaps the source of greatest concern is that the report finds the ethos of the Garda Síochána a major problem. Mr. Justice Morris refers to circling the wagons. Earlier this week the chairperson of the Garda Complaints Board referred to a wall of silence encountered when complaints against gardaí are investigated. None of us in this House is naive and we appreciate that a sense of loyalty is a positive thing in a disciplined, largely male, force. If one is requiring gardaí to put their lives at risk combatting serious crime and terrorism a measure of loyalty between colleagues is a good thing. However, there comes a point, as in this case, where loyalty simply serves to cover up wrongdoing, slovenly practice and corruption.

The responsibility for dealing with this resides at management level, from the Commissioner down. The report does not pull its punches, labelling management structures in the Garda Síochána as wholly inefficient and ineffective. An ethos or mindset of watching one's back existed. One did what one was told to do and no more. There was no sense of taking responsibility for getting the job done. If a superior officer told one to look in a particular drawer in order to find something, one did not use one's initiative to look in adjoining drawers. It will come as a great surprise to many lay people that the notion of accounting for duty is apparently foreign within the Garda Síochána. I strongly support the recommendation that this be dealt with and I suggest it is very urgent.

As well as the need for management to change the ethos, there is political responsibility here. That is where the arguments made by Senator Tuffy are relevant. As well as stating that we expect the highest standards, the Minister must also put in place procedures to ensure we get the highest standards. Perhaps 30 years ago we were prepared to give a loose rein to the centres of authority in this State, including the clergy, teachers, the medical profession, the legal profession and the Judiciary. People are no longer willing to vest blind faith in anybody. It is important that we put in place procedures to allow complaints to be investigated and to allow an independent ombudsman to investigate something that stinks. This measure is not permitted by the new Bill. There needs to be a structure that allows policy making that is responsive to the needs of the community, and I am not referring to the consultative forum with local councillors set up under the new Bill.

There is another issue of political responsibility. It is clear from the report that in 1999 alarm bells started to ring in the Department of Justice, Equality and Law Reform. It is clear from the contribution of Mr. Aylward that the Department started to take the matter seriously when it received parliamentary questions from the

Deputy Higgins. It took another three years from that point, until just before the 2002 general election before the Attorney General at the time, now the Minister, and the then Minister for Justice, Equality and Law Reform, Deputy O'Donoghue, were persuaded to set up an independent tribunal to determine the facts.

We are aware that there are regularly complaints against gardaí. They are processed by the Department, passed on to Garda headquarters, sent to the division and then to the garda against whom the complaint was made. It is an ineffective system. Often the complaint may not be well-founded, sometimes it is a genuine complaint that is not examined, and occasionally one comes across a serious case of systematic corruption.

Let us give the Department and the Minister the benefit of the doubt. Perhaps it took until 1999 before it was obvious something was systematically wrong. Following this there was a period of two years when the Minister looked at an Irish version of the appalling vista, decided that it could not be true and then decided that if it was true he would tell no one about it and it would be dealt with internally. There was a responsibility on the Minister to publicise this information and he failed in this duty.

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

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

- notes the Government decision to accept in full the findings in both reports;
- commends the Government for the action it is taking to respond to the findings and recommendations in the reports;
- supports the Minister's proposals to reform the organisation and management of the Garda Síochána as set out in the Garda Síochána Bill;
- declares that in a modern, republican democracy, the Garda as a national police force must be accountable to the Houses of the Oireachtas as an important branch of the executive arm of Government and should not be placed outside the application of constitutional accountability and responsibility;
- in particular welcomes—
 - the proposals in the Bill to strengthen the democratic accountability of the force to the Minister and the Oireachtas,
 - the establishment of a fully independent ombudsman commission to investigate complaints against members of the Garda Síochána,

- the establishment of a Garda Síochána inspectorate to provide objective assessment of the operational efficiency and effectiveness of the force, and
 - the establishment of joint policing committees and local policing fora to promote deeper engagement between the force and the local community it serves;
- notes the Minister's intention to bring forward further proposals for inclusion in the Garda Síochána Bill in response to the findings of the Morris tribunal;
 - supports the Minister's call for the enactment of the Garda Síochána Bill as a matter of urgency; and
 - welcomes the Minister's decision to establish a review group to oversee the urgent implementation of the provisions of the Bill on its enactment."

I reserve my right to speak later.

Acting Chairman: By agreement, Senator Cummins has allowed Senator Maurice Hayes to use his slot. Is that agreed? Agreed.

Dr. M. Hayes: I am grateful to Senators Jim Walsh and Cummins for their kindness on this matter. I wish to be associated with the sympathy extended to the Minister and his wife expressed by Senator McDowell.

I remember when the Patten report was published and was discussed in this House. I suggested there were lessons to be learned in this jurisdiction, to the derision of the
5 o'clock then Minister for Justice, Equality and Law Reform. I was assured that the Garda Síochána did not need these measures and that there was absolutely no need for a Garda ombudsman. Times have changed. It is no longer recalled that an intrinsic element of the Sunningdale agreement was that two police authorities would be established in Ireland — one in Northern Ireland and one in the South. While the Northern Ireland authority was set up, the other one was quietly forgotten about.

If there had been an agreement at that time to establish a commission, as suggested in the motion, three or four years ago when the Patten report came out, I would have supported it. I fully agree with and support the diagnosis that has been made up to now by the proposer and seconder of the motion. I would, however, have reservations about starting the process now. We spent a year working on the Patten report and the Northern Ireland Office took a year to respond. It took the best part of another year to draft the Bill so it was approximately four years later before one got things in place. I do not think we can wait that long to modernise Garda management as a result of the Morris report.

I wish to join with Senator McDowell in thanking Mr. Justice Morris for his report. The way in which he has uncovered matters is impressive and he has marshalled his arguments meticulously in clear and unambiguous language.

The Garda Síochána Bill provides, in embryonic form, for most of the necessary structures. The Morris report has produced an enormous engine for Garda reform and it would be a pity to lose the force of that. There is a wind behind it, along with a political will and public outrage arising from what people have read in the Morris report. If the matter is left to lie for a while, it might be more difficult to get the impetus for change going again. I still have reservations about parts of the Garda Síochána Bill so I hope the Minister will use whatever window of opportunity he has between now and the ending of that procedure, to take into account the more salient recommendations of Mr. Justice Morris in order to incorporate them into the legislation, even at this late stage. It would be a great help if he did so.

As has already been stated, the Bill is not all about structures — it also concerns culture and management. More than anything else, it is about leadership. Mr. Justice Morris disclosed a scandalous state of affairs in Donegal and, at this stage, I am quite content to allow the individuals concerned to be pursued through disciplinary procedures or the criminal courts. There is evidence of a clear systemic failure — or even a lack of systems — in addition to a failure of leadership. The greatest resource of the Garda Síochána is the people in it, who deserve to be cherished, led and encouraged in their endeavours. What is occurring can do nothing whatsoever for the morale of the force.

Garda training was mentioned earlier in the debate, but I would take training out of Templemore immediately.

Mr. Cummins: Yes.

Dr. M. Hayes: I would allow Garda recruits to be trained with social workers and others, alongside whom they will be working for the rest of their professional lives. I would also provide for lateral entry to the Garda Síochána at different levels. I have already made my views on the ombudsman clear to the Minister for Justice, Equality and Law Reform. He knows what they are and I will not labour them now. I believe, however, that visibility is a very important issue.

Ms White: On the streets.

Dr. M. Hayes: If people see gardaí on patrol it embodies the value of the watchdog principle, but there is no point in having a watchdog if it is starved to death. This is as much a matter for the paymasters as it is for the Minister, so the Government must be prepared to put resources into this area.

[Dr. M. Hayes.]

If I were the Minister, I would put a great deal of faith into another instrument of the Bill, namely, the police inspectorate. Those people should bring to bear the best of international practice, although at the moment they will have a job in establishing a benchmark from which to move.

I would still argue for the establishment of a police authority. The fact that politicians are members of the Northern Ireland Police Authority was referred to earlier in the debate. The reason we put politicians on that authority was to make them take responsibility. In that way, they could not sit on the ditch and criticise the people who were responsible for policing, making appalling and impossible demands on policing without having to take some responsibility for it themselves. I know the Minister has strong views on this matter and I will to deal with those in a minute. In the North, we thought it was important to have a kind of tripartite structure between the Minister, the police and the policing board. It does create tensions and makes it difficult to work, but the system is none the worse for that because people are conscious they must work within that matrix.

I fully appreciate the Minister's difficulty in that he is responsible for State security and, therefore, cannot delegate that role to a police authority. That happens in many other jurisdictions also, however. None of us wants a separate political police force or secret service, because the work should be done by ordinary gardaí. It does create a difficulty for the Garda Commissioner or the Chief Constable who are working, in a way, to two masters. They deal with a policing board for what I might call ordinary crime in civil society, while they must deal with a Minister in other cases. That is not impossible, however, and it is a risk worth taking. It would insulate the police from the political process, while insulating the political process from policing. I hope that can be done.

I wish to take this opportunity to express my disquiet about one other aspect of the Garda Síochána Bill. It is the fact that in order to gain access to some Garda stations, at least, the ombudsman would have to ask the Minister to ask the Commissioner, who could appeal to somebody else as to whether or not he or she could get in. The Morris report on the situation in Donegal showed what can happen if one does not get in quickly when people are being held. I appreciate that what the Minister has done represents progress from where we were at the beginning. He has said that he would designate major Garda stations, stating that for those stations alone — particularly if it concerns a death in custody — the ombudsman could ask the Minister to consult with the Garda Commissioner for permission to gain entry. Those are likely to be Garda stations where members of the Special Branch are based. Since those people have access

to arms, those are the places where the type of things that create disquiet and trouble are more likely to occur than in ordinary Garda stations. While it is necessary to protect the integrity of intelligence, it is also necessary for the public to have faith in the ability of the ombudsman to go into Garda stations. In his concern to protect the information, however, the Minister is actually protecting the premises.

The way this works in other jurisdictions — and it certainly worked when I was Ombudsman in Northern Ireland — was that the Ombudsman had access to anything and could go in. The Minister could stop the publication of sensitive information, however. That system worked very well and the ban on publication of information never arose in practice. It is not something that is going to arise because one hopes that sort of case would not occur too often. The symbolism of the ombudsman having to seek permission to go into those very Garda stations where most of the trouble is likely to happen, is not positive. We should find some formula for dealing with that matter. It could be dealt with, for example, by having a protocol between the Garda Commissioner and the ombudsman, so that the ombudsman is not sending every Tom, Dick and Harry clumping along in hobnail boots to look after these matters. Carefully designated people could be entrusted to do the work.

I congratulate Mr. Justice Morris on his report. I support the Minister who has been courageous in taking on this matter. I do not think anyone else will apply the same pressure regarding this matter, and it would be a great pity if we were to lose momentum now.

Mr. Cummins: I join in the condolences offered to the Minister for Justice, Equality and Law reform, and his wife, on their family bereavement.

I compliment Mr. Justice Morris on the frankness and straight talking in both of his reports to date. It is refreshing that his recommendations are clear and concise and should provide any willing government the opportunity to address the many concerns outlined. The Minister may say he will address the concerns in the Garda Síochána Bill and I have no doubt that some of them will be addressed. I wonder if, however, it is time to step back from the Bill as it presently stands and request an urgent analysis from independent experts to ensure that best practice and accountability are fully in place and catered for.

I urge the Minister to consider this request. I expect this independent analysis to take place within a short timeframe of between three and four months, because the sooner we have legislation in place to address the concerns of Mr. Justice Morris, the public and indeed the ordinary members of the Garda, the better it will be.

What happened in Donegal was appalling. To have a family systematically targeted, as were the McBreartys, was shocking and raises serious

questions about transparency and accountability of the Garda force at all levels, with specific reference to the inadequacies encountered in Donegal. Several questions need to be answered and we need no fudge on the issue raised in the Morris tribunal. Why were the former Garda Commissioner, the former Minister for Justice, Equality and Law Reform and the former Attorney General left outside the remit of the terms of reference of the tribunal while, at the same time, some of these figures had full legal teams attending the tribunal on a watching brief? Meanwhile, the central figures, the McBreartys, were not allocated legal costs. It was a disgrace that the innocent parties were forced to face the might of all the legal eagles of the State, while they were denied their legal rights and costs.

There was a plethora of Garda investigations into the Donegal debacle, possibly eight in total. How much did these investigations cost and why will the Minister not publish the relevant reports? Why not have everything on the table at this stage? It is time for complete openness and transparency on this issue and I call on the Minister of State to answer the question this evening about the publishing of these reports, and the investigation costs.

There is grave public disquiet at how the main Garda figures mentioned in the Morris tribunal have been dealt with by the Garda Commissioner. That issue was previously raised in this house. The Commissioner should have awaited a decision from the Director of Public Prosecutions before deciding to allow Garda superintendents to retire with full pension rights and golden handshakes. The decision to transfer the five gardaí mentioned in the report to full duties in another district is also questionable, to say the least.

Many questions remain to be answered and I call on the Minister for Justice, Equality and Law Reform, his predecessor, Deputy O'Donoghue, and his predecessor, Ms Nora Owen, if necessary, along with Garda Commissioner Conroy and his predecessor, former Garda Commissioner Byrne, to come before the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights to answer questions and account for their actions regarding what is termed the McBrearty affair, from beginning to end. This would be the proper forum for the people in question to be questioned on their actions and indeed their inaction on this issue.

One question that must be asked is why the McBreartys were not informed at the inquest stage of the re-designation from a murder investigation to one of a hit and run. Why did the Minister for Justice, Equality and Law Reform not place this information on the record of the House at that time?

The question of whether we should have a one-person Garda ombudsman or a three person commission, as advocated in the Garda Síochána Bill and by the Minister, was discussed at length in this House during the Bill's passage. No matter

what argument was put up regarding the success of one ombudsman, as is the case in Northern Ireland, the Minister seems intent on his commission idea. He should take cognisance of what Senator Maurice Hayes said in this House today, and of the reservations expressed by Professor Dermot Walsh of the University of Limerick.

An ombudsman or commission, if put in place, must investigate all complaints, not some. Gardaí should never be in a situation where they are investigating other gardaí for minor or other complaints. If a Commission is put in place, it should do the job fully. This is the view of gardaí and superintendents to whom I have spoken. With regard to the police inspectorate meant to monitor the performance and accountability of the Garda, we must have assurances that this will be carried out by an independent body totally separate from the Garda or former senior gardaí, otherwise the lessons outlined in the Morris tribunal will be lost on us.

Mr. Justice Morris spoke of a circling of the wagons culture, which may have contributed to a situation of obstruction and which may have gone back to the monolithic origin of personnel deployment within the Garda, and their training. I agree with Senator Maurice Hayes that the current type of training of gardaí in Templemore is fundamentally wrong and needs to be changed. There is a need for change in the collective thinking and attitude that currently exists. Recruits should be interspersed with other third level students, pursuing relevant courses, as Army cadets currently do. In Boston, recruits mix with ordinary students in third level colleges, in courses specifically designed to meet the challenges of everyday life in law enforcement, and that is viewed as a positive step. Why not adopt best practice of other countries when possible?

The image of the Garda force has been damaged by the malpractice of some members in Donegal. What happened there should in no way tar with one brush the vast majority of decent members of the force. It should not provide a platform for subversives to attack a force that has defended the institutions of this State in difficult times over the years. However, this should be taken as a wake-up call which will see a new root and branch reform of the structures of the Garda, and that responsibility lies ultimately with the Minister. I hope the Minister of State will respond this evening in the open and transparent manner which he and all of us expect the Garda Síochána to exhibit. I hope we will get answers to the questions I posed here this evening.

No person has yet been apprehended and charged with regard to the death of Richie Barron. This fact must not be lost in this debate. How must the Barron family feel in its grief since after all these years, nobody has been charged with Richie Barron's death? We should not forget that this is where it all began. The Minister has a golden opportunity to act in a responsible manner and put in place all necessary structures to ensure

[Mr. Cummins.]

the Garda force will act properly at all times in the future. He should be prepared to listen to constructive criticism and ideas in order to improve the Garda Síochána Bill. I ask the Minister of State to address the matters I have raised here this evening.

Mr. Minihan: I welcome the Minister of State to the House. Any democracy needs a fully functioning police force.

Ms White: May I ask a question on a technicality? I would like to get a copy of the Minister of State's speech as soon as I can. I was expecting him to speak.

Acting Chairman (Labhrás Ó Murchú): That is not a matter for the Chair.

Ms White: I am not happy. I have been sitting here for the past three quarters of an hour. I do not like it that people pop in and out to read their speeches. I am sitting here and I would like to hear what the Minister of State has to say, or to have his speech in front of me.

Acting Chairman: I do not control that matter.

Ms White: I am just putting a marker down.

Mr. Minihan: I would like to withdraw and reserve my position to speak later. I would like this matter raised as there is a sequence laid down in Standing Orders. The Minister or Minister of State has the privilege to come in whenever he or she wants. I am quite happy to allow him to speak.

Acting Chairman: The Senator has started and should continue.

Mr. Minihan: The Senator's comment applied to me. It concerned me just walking in to speak. I came in to take the slot prescribed for my party.

Mr. Cummins: The remark that somebody just pops in to speak is grossly unfair.

Ms White: I stand by what I said.

Mr. B. Hayes: On a point of order, it is the prerogative of the Chair to call speakers as he or she chooses. Second, as the Chair knows through the Committee on Procedure and Privileges, it is a long-standing tradition in this House at Private Members' time that groups are called in accordance with a well set out sequence. The Senator was in possession. It was the turn of his group in that sequence.

Ms White: I thought our acting leader was going to speak next. I want to clarify this issue. I got the impression when sitting here that Senator Maurice Hayes was facilitated by the House. I

came here to hear the Minister of State. I asked for his speech, but I am not allowed to get it until he speaks. It is an awful mess.

Acting Chairman: I have a list to which I work. The turn of Senator Kate Walsh came and I understood Senator Minihan was taking that spot, as agreed with her.

Ms K. Walsh: Yes.

Ms White: I had heard that our acting leader, Senator Walsh——

Acting Chairman: With regard to the Minister or Minister of State's speech, it is not circulated until he or she has spoken.

Ms White: Yes, but I would like to get it. It would help the debate.

Mr. Cummins: The order was agreed by all sides.

Ms White: If we are to have democracy here, I would like to be able to hear what the Minister of State has to say when I come to sit here for two hours, rather than have people popping in and out.

Acting Chairman: That is a matter for the Senator's group.

Ms White: I am just putting a marker down. It is not about procedure or the Progressive Democrats. I heard Senator Jim Walsh saying he did not wish to speak ——

Mr. Cummins: The Senator's comments are completely out of order. Can we proceed with the debate?

Ms White: The Minister of State has said he does not want to speak. What is the point of sitting here?

Acting Chairman: The Senator's opportunity to speak will come. Will the Senator allow——

Ms White: I am not looking for an opportunity to speak for myself. I want to listen to what the Minister of State says.

Acting Chairman: Allow me speak please. Everybody's opportunity will come. I have been presented with a list by the group leaders and I am working to it. That is the current position. The Minister of State is on the list at No. 7. If he is prepared to address us now, we can take it from there if that is all right with him.

Minister of State at the Department of Justice, Equality and Law Reform (Mr. B. Lenihan): I am in the Chair's hands. I would not like to——

Ms White: I like to sit here and listen to my colleagues speaking, or speak myself.

A Senator: The Senator must sit here to get ideas.

Ms White: I never repeat what other people say. I would like to formally state that I like to sit for the full session and hear what people have to say. I would like to hear the Minister of State—

Mr. Cummins: The Senator is disrupting the debate.

Ms White: It is not Senator Cummins's problem.

Acting Chairman: Excuse me. The speech is here. First, it is not a point of order. The Minister of State had the floor. Can we allow him to speak now?

Mr. B. Lenihan: The Chair calls and I am delighted to speak. I commend the amendment to the House. Earlier this month the Minister published the second report of the Morris tribunal which dealt with two issues, namely, the Garda investigation into the death of Richard Barron, and the making of extortion phone calls to Michael and Charlotte Peoples. There was a connection between the issues and Mr. Justice Morris dealt with them together.

The report makes for shocking reading and right-thinking people have been appalled at the events it has uncovered. The Government has accepted the findings of the second report, as it did the findings of the first report. I thank the Senators who have spoken so far for the constructive tone in which the debate has been conducted. It is easy to imply political responsibility in this matter, but the reality is that the wheels of justice run very slowly. Successive Ministers for Justice have attempted to address these issues.

The people of this State were let down badly by the behaviour of a number of gardaí of different ranks in Donegal. Among those most troubled by these findings are the majority of men and women in the Garda Síochána who give loyal and dedicated service to the State. As the Minister said on the publication of the second report, it is difficult to overstate the disservice done to the ordinary decent members of the Garda Síochána by the type of misconduct outlined in this report.

Mr. Justice Morris and his team are owed a great debt for the work they have done to date. They are to be commended for getting as near as anyone could to establishing the terrible truth of what happened. I commend Mr. Justice Morris for undertaking this great work of public service. After a long and distinguished legal career — he served in the High Court and was, ultimately, President of the High Court — he embarked on

this inquiry, which must be as distasteful to him as it is to us.

Neither the Minister nor the Garda authorities have been found wanting since the first and second reports of the tribunal were published. Action has, is and will be taken by the Government and by the Garda Commissioner against those in the force who were found to have been guilty of serious wrongdoing and negligence.

Dealing with individual wrongdoing is only one aspect of the matter, albeit important. It is also necessary to look at the structures and statutory framework under which the Garda operates. The Minister stands by the overwhelming majority of honest and decent members of the force by bringing forward the reforming measures they and it need to address the challenges of this century. One of the major priorities of the Minister since his appointment has been to undertake a programme of the most comprehensive reform of the organisation and structures of the Garda Síochána since the foundation of the State.

That has resulted in the Garda Síochána Bill which was initiated in the Seanad. Since the Bill was published, the Minister has introduced and accepted many changes to it as it has progressed through the Oireachtas. It has benefited from this process and this will make for more robust and effective legislation. It is to the Minister's credit that he embarked on this wide-ranging exercise embodied in the Garda Síochána Bill before the report of this particular module of the Morris inquiry. This shows he is more than aware of the concerns the public and he, as Minister, feel require addressing in this context.

The Minister proposes to bring forward further amendments to the Bill in light of the findings and recommendations of the second Morris report. These will be published shortly. The Bill is currently before the Dáil but the Minister intends to have it back before this House before the summer recess so it can be enacted without delay. He believes that to be fair to the majority of loyal and hard-working members of the Garda Síochána. This is the least we can do. It is also necessary to take account of the excellent work done by the Morris tribunal.

The proposals for legislative reform are based on two very important principles. The first is that the accountability of the Garda must continue through the Minister of the day to Dáil Éireann. The second is that the measures should underpin and enhance public confidence in the force.

One of the new additional amendments to the Bill being proposed will require gardaí to account for their actions as members of the force. It had been intended to include this in the Garda disciplinary regulations, but it is now intended to enshrine this duty in the Garda Bill. Breach of the duty will carry a sanction up to and including dismissal. This new duty has been identified as a crucial necessity by the tribunal and this proposed amendment to the Garda Bill will be a key

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response to the findings and recommendations of this module of the tribunal.

Given the principles which have informed the Minister's approach to legislative reform, Senators will appreciate that he is not prepared to agree to the proposals in the Labour Party's motion. They differ significantly from how the Government sees progress being made in this area. There would be no tangible advantage at this stage in a policing commission touring the highways and byways seeking opinion on proposals for reform of policing. While there may have been merit in this idea in the past, the view of the Minister when he assumed office was that there had been enough talking and that it was time for action.

Senators will appreciate that as Attorney General, the Minister already had cognisance of this distasteful affair. I say it for the record that the Minister's conduct as Attorney General in this matter is entirely unblemished. I regret the criticisms that were made in that regard. Clearly he acted with expedition in this matter. Any obstacles which were placed in his path existed by virtue of the law of the State and the Constitution. He did everything in his power to expedite this matter and to ensure that a resolution to it was obtained.

The proposals in the Garda Síochána Bill reflect the outcome of a thorough process of review and consultation. The operation of the force was reviewed as part of the Government's strategic management initiative. Some key principles for the future management of the force, which were outlined in the report that followed the review, have been taken on board. The report stressed the need for clarification of the roles and functions of the Minister and the Garda. It recommended that operational responsibility, including financial responsibility, should be assigned to the management of the Garda. It suggested that the force's level of democratic accountability be enhanced. According to the report, such changes need to be achieved in an open and transparent fashion.

The Minister, Deputy McDowell, has always been conscious of the need for wide consultation on the Garda Síochána Bill. When he published the general scheme of the Bill in July 2003, he invited submissions from interested groups and the general public. He consulted Garda management and held meetings with a number of Garda associations. He discussed the draft proposals with the Joint Committee on Justice, Equality, Defence and Women's Rights and listened to the views of members of the committee on the proposals. The Minister is grateful to those who expressed views on the general scheme of the Bill. He is anxious to avoid the danger of talking for ever without making progress.

I was delighted to hear Senator Maurice Hayes say that while improvements could be made to the Garda Síochána Bill, which contains concrete

legislative proposals, he understands the importance of reforming the Garda's management structure as soon as possible as a matter of priority. The Minister does not accept the argument that a policing commission is needed to identify the structures which are necessary in the interests of accountability. The way forward for the force is set out in the measures included in the Bill, which will put in place accountability structures appropriate to our democracy and political system. It is time for the Oireachtas to take action. We do not need a policing commission. I support the Minister's request to Senators to support the measures in the Bill when it comes before the House. The Bill is needed if we are to give the Garda the structures and accountability framework it requires and deserves if it is to continue its proud tradition of serving and protecting the people of the State and earning and retaining their confidence.

I do not propose to mention every reforming measure in the Garda Síochána Bill. I will refer to a few of the most important measures, which will provide the accountability that is necessary in our democracy. The Bill provides for the establishment of a Garda ombudsman commission, which will independently investigate complaints against members of the force. This new body, which will replace the Garda Síochána Complaints Board, will have the power to investigate complaints of serious wrongdoing by members of the force. Its powers will be modelled on those of the police ombudsman in Northern Ireland. The commission will be able to recruit investigators from abroad, enter Garda stations to seize documents and, if necessary, arrest members of the force. The Minister is determined that the commission will have the resources it will need to do its challenging job. He is confident that the establishment of a new and independent investigation complaints authority will underpin public confidence in the force.

I have not heard any serious criticism of the powers or resources to be assigned to the ombudsman commission. Some people have expressed concerns about its structure, however. Senators are aware that the Minister is opposed to the idea of a one-person commission. I do not doubt that this aspect of the matter will be discussed when the Garda Síochána Bill comes before the Seanad. The Government was influenced by a number of considerations when it decided to establish a three-person commission. Contrary to the suggestions of some commentators, it is not the case that multi-person ombudsman commissions, such as the three-person body to be established in this jurisdiction, are unusual. Multi-person ombudsman commissions are in place in Canada and Britain. Members of the commission are entitled to be absent for good reasons. The work of the body should not come to a halt if one of its members is indisposed or taking a holiday. There are good reasons for

determining that there should be more than one person on the commission.

I would like to speak about the ombudsman model in operation in Northern Ireland. It must be remembered that the Police Service of Northern Ireland is a regional constabulary. It covers a relatively small geographical area and comprises 7,500 police officers. The Garda Síochána, on the other hand, is the police force of a sovereign state and covers a much more substantial territory. The Minister anticipates that the force will soon have 14,000 members. The equivalent commission in Britain has nine members. It would not be appropriate to provide for such a large membership in a jurisdiction of this size. There is a need to strike a balance.

In making his decision on the composition of the proposed ombudsman commission, the Minister for Justice, Equality and Law Reform did not seek to detract in any way from the position in Northern Ireland. He was charged with bringing proposals before the Government, which had to decide on the appropriate number of members of the commission. I do not doubt that tremendous progress has been made in policing in Northern Ireland since the ombudsman in that jurisdiction took office. The positive changes on the other side of the Border should not distract us from the need to put in place a structure that is appropriate to this State's current stage of development. The shared view of the Minister and the Government as a whole is based on a balanced assessment of what is required in this State at this time. There is no single correct model. The decision to create an ombudsman commission with more than one member will have compensating advantages.

The Minister has decided that he is disposed in principle to providing that one member of the ombudsman commission will be deemed to be its head. It is desirable that one of the members of the commission should be identifiable as its leader. Such a person will act as the chair of the commission. The Minister will table an amendment on Report Stage in the Dáil to give effect to this decision. While it is desirable that the commission should have a chairperson, the Minister does not accept that the only proper formula is a one-person ombudsman commission. The Minister does not want his opinion to be considered as a criticism of the arrangements in Northern Ireland, as I have said. He has made a decision on the basis of his and the Government's assessment of what is appropriate in this jurisdiction.

I would like to mention another reforming measure at this point. The Minister decided, on foot of a specific recommendation in the first report of the Morris tribunal, to amend the Garda Síochána Bill to provide for the establishment of a Garda inspectorate. One of the roles of the inspectorate, which will examine and report on the force's effectiveness and efficiency, will be to promote public confidence in the Garda. Such

confidence is indispensable if the force is to carry out its duties successfully.

The establishment of the Garda ombudsman commission and the Garda inspectorate, along with the Bill's general reforms of the Garda and its relationship with the Government, will transform the force's system of accountability and oversight. The Minister has underlined his commitment to introducing the changes set out in the Garda Síochána Bill by appointing a committee, to be chaired by Senator Maurice Hayes, to oversee the implementation of the legislation as soon as it has been enacted. The Minister has asked the committee to report to him by the end of this year.

The Labour Party has called yet again for the establishment of a police authority. It is natural that people are impressed with the work that has been done by the Patten commission. I refer in particular to the commission's seminal report on policing in Northern Ireland. Who could not be impressed with the report, which was a major undertaking, and its recommendations? As the Minister has said in this House and in the other House, however, we should be careful about applying recommendations which were drawn up in the specific context of the proper development of the policing function in a divided and polarised society to circumstances in which such considerations do not arise. The creation of a police authority in Northern Ireland was recommended by the Patten commission. It made sense in light of the need to accommodate and give a voice to the various strands of political opinion there.

I am aware that other states have police authorities. The idea of regional police authorities may have some merit in England and Wales, where there are over 40 regional constabularies. There is just one police force in Ireland, however. It is a basic principle of democracy that a police force should be accountable to the democratically-elected representatives of the community it serves. The best way to provide for that in this jurisdiction is to do so directly, through immediate and effective procedures which ensure ministerial accountability to the Parliament. Police forces which are organised on a regional level are normally accountable to the appropriate local government representative. Police forces which are organised on a national level are normally accountable to a minister in the central government. That is the case in respect of the FBI in the United States, the Royal Canadian Mounted Police in Canada and the police forces in most EU member states.

A fundamental distinction needs to be made between this State and Northern Ireland. Responsibility for security and policing matters was not devolved to the structures which were established under the devolved arrangements which were put in place in Northern Ireland under the Good Friday Agreement. Political responsibility for the police force in this jurisdiction rests with the Minister for Justice,

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Equality and Law Reform, who is accountable to the Dáil for every garda stationed between Malin Head and Mizen Head, or between Rosslare and Erris. We cannot ignore that fact when we are devising legislation that deals with the Garda.

The Minister considers that the role of Members of the Oireachtas in respect of the Garda should be strengthened rather than weakened. We need proper oversight by the representatives of the people over the Garda, which has been given the significant powers it needs if it is to tackle those who will not abide by the rules of our democratic society and who undermine that society with criminal behaviour. Such powers are uniquely entrusted to our police force. Given the nature of these powers, it is appropriate if not essential in a democratic society that our police force should be accountable to the highest law making and executive authorities of the State.

Surrendering or diluting in any form the oversight role that the Government and the Oireachtas, as the representatives of the people, have in regard to the Garda Síochána, and the accountability the Garda Síochána has to the Minister, and through him to the Oireachtas, is not in the best interests of the State. The way forward is not to hand over responsibility for the Garda Síochána to an unelected, unrepresentative and, ultimately, unaccountable policy authority.

Returning briefly to the specific recommendations of the tribunal reports, I assure the House on the Minister's behalf, that they are being taken forward without delay. There are already developments well under way to address many of the issues identified in the reports in regard to matters falling within the responsibility of the Garda Commissioner. In particular, at the Minister's request, the Garda Commissioner undertook a comprehensive review of the findings of the first report and its implications for the management of the force. This review covered nine specific areas. It is now complete and the Commissioner has published his proposals for management reform within the force.

I thank Senators for their contributions to date and I look forward to this discussion.

Mr. Quinn: I wish to share my time with Senator O'Toole.

Acting Chairman (Dr. Henry): Is that agreed? Agreed.

Mr. Quinn: The Minister of State used words which record what most of us feel such as "deplore", "appalled" and, "therefore, public confidence in the force has been seriously damaged". However, when I talk about public confidence in the force, I am not just talking about the public confidence that was shattered recently in Donegal. I am worried about damaging even more the public confidence we need in the force

to ensure it does what we need it to do, namely, to enforce the law.

We have a State for 80 years in which we have had confidence in a generally unarmed police force. We must not allow what happened in Donegal to damage our confidence in that force. Just as I expect to get electricity when I turn on a switch, and just as I expect to get water when I turn on the tap, which does not always happen in other states, whenever I picked up the phone to the Garda Síochána over the past 40 years I have been in business or at home, I always got a response. I do not want us to find ourselves in a situation where we damage or hamper the ability of the Garda Síochána to do the job we value so much, namely, protecting citizens and their property.

I recall on one occasion being called to a break-in at one of our supermarkets and the gardaí followed me. I recall a garda opening the fridge door and inside were two men armed with knives. It was 2 a.m. I was never as grateful for that garda who protected me and the others who were on the premises. This is just one example of the many occasions we as citizens have called on the Garda and relied on its members. I am concerned at some of the calls in recent times, and understandably so, because our confidence and trust in the Garda may have been damaged and we may overreact.

I am pleased to hear the Minister of State speak today about a balanced response. The legislation which will be introduced must be watched carefully, whether it relates to the ombudsman, the administration or the management of the Garda. I agree with one other issue to which the Minister of State referred, namely, management. Good management practice should mean the buck will stop somewhere. I am concerned about the suggestion that we should have some other type of Garda authority. The Minister of State gave a good response to that suggestion when he spoke about the United States and Canada not having a police authority. If we had this type of authority, we would still be howling for the Minister's head if anything went wrong, and he would be out of control because the administration would be in place.

The buck should stop here and at the Garda Commissioner's head and, if he does a bad job, he should be dismissed. If the Minister does a bad job, he should be dismissed. Therefore, I support the proposals in the legislation. I hope the Minister and the Government will respond to any amendments tabled. We are very fortunate to have Senator Maurice Hayes and to be able to benefit from his experience. Given that sensible head on the shoulders of one of our Members, and the words of the Minister of State, I believe our opinions will be listened to. My real concern is that we might damage the ability of the Garda Síochána to do the job it has done very effectively in the past 80 years, with very few exceptions. When introducing good management practice, we

must ensure that it will not hamper gardaí from doing the job they are required to do. We know about the few bad apples but we must ensure that what happened in Donegal and elsewhere will not encourage us to take steps that will hamper gardaí from doing the job they do so effectively, and for which we have been very grateful over the past 80 years.

Mr. O'Toole: I will speak from the point of view of my great admiration for gardaí. My father was a garda and a founder member of the GRA. I was raised with that culture and I have not left it. I support the local gardaí. It pains me to see the way gardaí have been dragged down by the events in Donegal. It has been appalling beyond our wildest expectations. It has been worse than I could ever have believed. That is the reality and it must be dealt with and dealt with firmly.

I also support the Commissioner. I put myself in his position last week when the report was published. I asked what could he do in the situation. It appeared he had four choices. He could have decided to do nothing and leave the gardaí where they are. If he decided to sack them, he would have lost due process, they would have a case against him and we would never have been able to take action against the identified gardaí. He could have suspended them, and they could have gone home and done the gardening or gone on holidays, and we would have been paying them for doing nothing. He could have kept them working somewhere else. He could have moved them to where they would not have been in touch with the general public but they would still be doing a day's work. My honest belief is that this is the only option he had. I do not like it. My visceral response to it is to put the boot in and put it in hard. However, it is a time where wiser council can prevail and, if due process is to take its course, we must be careful in the way we deal with the issue.

As Senator Quinn said, we need to restore public confidence in the Garda. We should begin by restoring our sense of confidence in the Commissioner. The Commissioner must win back our confidence. He can do so but he must be seen to take action. As public representatives, we must recognise that he is also delimited by due process, by the code of discipline, by the law of the land and by the way in which justice must take its course. In the end, if he is found not to have acted correctly, honourably or responsibly in the manner in which we would expect, then he must take the rap for it. No more than the rest of us, he had to sit back and watch this tribunal take its course and he must sit back and watch what happens next. At that point we will come to a judgment.

This is the worst episode in the history of the Garda. There have been other incidents over the years, including the heavy gangs, but we must now ensure there is public confidence in the Garda. The issue concerning Deputy Roche during the week does not help. It is another example

whereby we must ensure complaints go through the process and land on the desk to which they were headed. We cannot have people interfering with this process. I support strongly the Labour Party proposal that there should be a one-person ombudsman. It is the only way the process can work. I agree with the Government's position that gardaí should be accountable to the constitutionally-elected authority, namely, the Houses of the Oireachtas. However, there is nothing in the Labour Party motion which would undermine this approach. I support strongly the Labour Party motion and I am sorry the Government cannot support it.

Mr. Minihan: To indicate there is no ill-feeling, I would like to begin by quoting a distinguished Member and former leader of the Fianna Fáil Party who said in County Clare many years ago, "As I was saying".

Any democracy needs a fully functioning police force that commands the respect and confidence of its citizens. Our democracy needs such a force. Reform of the Garda is necessary and that is the kernel of the debate. I join previous speakers in expressing support of the Garda. I have the distinction, unlike other Members, of having worn the uniform of the State for 21 years and working closely on operational duties with the members of the force. During that time, I encountered fine, upright, honest, brave and hard working members to whom all citizens should be indebted for their daily duties. However, because of the actions of a limited few, we are in danger of an overreaction, which could demoralise the many fine, hard working and honest members of the Garda. As legislators, we should bear that in mind when we comment on the entire force.

The motion addresses police reform, a process manifest in the Garda Síochána Bill 2004, which contains the most important legislative proposals on policing ever to come before the Oireachtas. The Minister should be commended for bringing forward legislation, which will act as a constitution for a modern and even more professional police force. A culture of reform has been needed within the force for a number of years. The proof that such reform was necessary was provided by Mr. Justice Morris in his tribunal reports. It must be ensured the Garda Síochána Bill 2004 should be enacted without delay.

I, along with many Members, was astounded by the forthrightness of Mr. Justice Morris's second report and its conclusions, on which he should be complimented. The second report was harder hitting than the first and I commend the Minister's statement on the day of its publication that recommendations contained in the reports would be taken on without delay. The people of Donegal, wider society and, most importantly, gardaí need that to happen if confidence is not to be lost in the force.

Confidence or *esprit de corps* is an essential element of a military or police force. Gardaí do a

[Mr. Minihan.] difficult and dangerous job and they must rely on their colleagues. They must have confidence in the honesty and integrity of those standing beside them. It is the responsibility of those in supervisory roles within the Garda to ensure *esprit de corps* is not perverted and used to erect a wall of silence such as that which faced the chairman of the Garda Complaints Board.

The Association of Garda Sergeants and Inspectors stated the findings of the second report of the tribunal represented a black day for the force and the shortcomings it identified need to be addressed. The responsibility of addressing them and rebuilding morale will fall largely on the shoulders of the AGSI members and other senior officers within the force. They will have to ensure, in future, *esprit de corps* does not take precedence over honesty, integrity and truth. It is an onerous task but with rank comes responsibility and the Garda is capable of responding to that challenge.

A democracy needs a force that commands the respect and confidence of its citizens. If citizens continue to believe members of the Garda are inclined or willing to reject evidence that points to the innocence of a person or coerce statements from, pursue, arrest, frame and harass innocent people, respect will evaporate and confidence will totally dissolve. Our society needs reform of the Garda, as promised by the Garda Síochána Bill 2004.

The motion correctly highlights the urgency required to make that reform happen. Under a programme of reform, the Garda Síochána Acts, 1924 to 1989, should be replaced by comprehensive modern legislation. The functions and objectives of the force should be established in law and the relationship between the force and the Garda Commissioner with the Minister for Justice, Equality and Law Reform and the Government should be redefined. A fully independent body should be established to deal with complaints and examine practices and procedures within the force. New mechanisms should be designed to secure and maintain public confidence and a reform process must establish an inspectorate, which will review and report to the Minister regarding practices, standards and performance within the force. The review should be benchmarked against best practice in other comparable international police forces. Local policing committees should also be established with the Garda and local authorities representing communities so that they can co-operate and work together to address local policing problems.

The Garda Síochána Bill 2004 addresses such reform and, for the first time, comprehensive legislative reform of the force is being addressed. The timing of the report by Mr. Justice Morris and his team was an ironic coincidence. The Bill has not been passed and amendment is likely. The report of the Morris tribunal emphasises the

requirement of us, as legislators, to ensure the necessary legislation is enacted without delay.

The motion refers to the so-called one-person ombudsman. There is a reluctance and inability among a number of groups to get their heads around the concept of an ombudsman commission. A fully independent body is needed to deal with complaints and to examine the practices and procedures of the Garda. I am not hung up on whether that body comprises one person or a few people. However, I welcome the Minister's proposal to table an amendment on Report Stage in the Dáil to appoint one person as the chairperson of that body. As he stated in the Dáil, the Supreme Court operates on a group rather than an individual basis. If the legislation provides for a one-person ombudsman, how will holidays and other absences be covered? We should not be hung up on the numbers as long as the job is done.

The goal is to increase internal debate, deliberate action and carefully thought through consequences. I support these objectives and call on all groups to get on with making the necessary reform provided in the new legislation a reality as quickly as possible. The Morris tribunal, the experiences of the Barron and McBrearty families and the needs of the Garda and society demand that much of us.

Mr. B. Hayes: I wish to share time with Senator Bannon.

Acting Chairman: Is that agreed? Agreed.

Mr. B. Hayes: I am grateful to the Labour Party for tabling the motion to allow the House to respond to the second Morris tribunal report. As Senator O'Toole has stated on the Order of Business in recent months, the fact that we have not debated the first report to date is regrettable but we are doing so this evening. We all owe a debt of gratitude to Mr. Justice Morris for his report and its clear findings and the way in which he conducted the tribunal. Others could learn from him. When the second report was published, I welcomed the courage of the AGSI because the association was honest and up-front and it recognised the scale of the problem unlike others, who refused to comment on the day. It was a difficult day for senior management figures within the force but they were up-front and honest.

I made comments yesterday about the suitability of the decision made by the Commissioner in respect of transferring five of the officers cited in the report. I still disagree with that decision. Senator O'Toole outlined four options, of which the worst was transferring people from one division to another. The better option would have been to suspend the officers until such time as the DPP decided whether charges stemming from the report were to be made. If not, it would be another matter. It was the wrong decision to shunt five of the officers mentioned in the report

from one division to another. I stand over this comment but I understand the difficulty the Commissioner obviously faced at the time.

I recommend to the House the comments made by Senator Cummins this evening when he effectively suggested we would park the Garda Síochána Bill 2004, which is due to return to this House before the summer recess to report amendments made in the Dáil. It would be wise to co consider the Bill for another three or four months. The Bill is timely and no one is suggesting it should be shelved but the only legislative change the Government has proposed in response to the Morris tribunal report concerns the requirement for gardaí to account for their actions as members of the force. There may be another amendment in the offing and I welcome the Minister of State's comments in respect of the ombudsman commission, but it would be wrong to suggest the only response the Government would make to the Bill would be the amendment to which I referred. It is the view of our group that we should take our time on Report Stage when it returns to the House.

Senators Cummins, Jim Walsh, Tuffy and I contributed during the lengthy debate on the Bill in this House, as did many others. Senators will remember we spent a full week on Committee and Report Stages. We put much time into the Bill but events have moved on. The issue of the ombudsman must be addressed. I met Mrs. Nuala O'Loan in Northern Ireland. I was impressed by her office and by the fact that many of the cases that came across her desk were handed out to very experienced officers, some of whom are from the London Metropolitan Police service, who are able to investigate and determine the validity of the complaints made. This is the model we need. On Senator Maurice Hayes's point about visibility, there is a significant advantage in terms of the visibility of one person being the ombudsman for this area. I ask the Government to dwell on this matter between now and the report of the amendments from the Dáil. The Minister of State's comments reflect this somewhat.

Another argument concerns the inspectorate. It is not just a question of complaints. The public has questions about the deployment of gardaí and detection rates. Where I live, we have seen our division's detection rates fall by one third in the past four years. The question of why this has been allowed to happen at a time when the Government argues that resources are being invested in additional officers on the beat must be asked of senior and middle management. The public has legitimate questions about deployment, whether we are getting the best use of the force's resources and whether we are getting the best value for money in terms of the resources that are made available. For this reason it is important we have some independent assessment, a type of international best practice. How is Manchester faring on detection rates? How is Paris faring?

In his speech, the Minister of State referred to why it is important to have a national police force. If one reads the recommendations in the Morris tribunal report, the first chapter deals with the issue of the role of head office. Mr. Justice Morris is critical of this area because there is such a distance between County Donegal and Dublin. We may need to re-examine the regionalisation of the force's command structure. The great lesson of the Morris tribunal must surely be that certain elements of the force in County Donegal were out of the control of middle management. This is something we must learn for the future.

In response to what the Minister of State said, we may need to re-examine this issue as a means of giving better accountability in terms of the resources present. I am a supporter of the Garda Síochána. It is one of the great success stories of this young State, which is over 80 years old. We must support the Garda Síochána while also supporting the valuable requirement for reform of the force to make it more accountable.

Mr. Bannon: I support the spirit of the motion and join with Senator Cummins and others in praising the work of Mr. Justice Morris, which has led to explicit and straightforward reports. It is now incumbent on Government to oversee the immediate implementation of the recommendations of the Morris tribunal. Further fudging and procrastination will not be tolerated by this House or by the citizens of this country.

While supporting the motion, I would like to query why these issues were not dealt with in the Garda Síochána Bill 2004. Why does the Government not see the connection and interrelations that are apparent to the rest of us? Why is the Government sitting on the numerous reports into the extraordinary events in County Donegal? What of the Carty report? The Government plans to release it into the public arena next September but why is there a delay? This is the question asked by the people of County Longford. The report was completed in the past few months. In the interests of accountability, it must be published sooner rather than later. It has been five years since John Carthy was shot dead by Garda marksmen at Abbeylara in County Longford and it is strange that the Government refuses to publish the report if it has been completed.

The now familiar Superintendent Shelly of Mullingar station was in charge at the time. What did he get out of this? He got a full retirement pension and no questions asked of him. If he was asked, the answers were brushed under the carpet. This occurred despite the accusations of alleged bullying made by other gardaí against him. I ask the Minister of State what he has to say to Marie Carthy and what explanation does he have for her for such an unprecedented and inexplicable delay in answering her questions about what happened to her brother. She would like an explanation, as would the people of County Longford and I.

[Mr. Bannon.]

What of the McBrearty family fiasco? The family members' request for an independent inquiry into their nightmare situation was ignored by the Government for several years. Trails of whitewash had to be laid, influential names cleared and people protected, never mind clearing the good name of the McBreartys. This request by a family that was wronged could hardly be said to be unreasonable and it is my belief that there has been a definite apathy in the State's response to wrongdoing.

During the past number of years, questions abounded among the community about what happened. It is now reassuring that, through the Morris tribunal report, some of these questions will be answered, though a bit late. The Government and the various Ministers with responsibility for justice have not come out of the wash particularly well. The Government must now do its utmost to ensure that such situations are never allowed to recur.

Acting Chairman: Senator Bannon's time is up.

Mr. Bannon: Whatever the outcome of the debate or whether we should have a Garda ombudsman or commission as put forward by the Minister for Justice, Equality and Law Reform, Deputy McDowell, the proposals in the Garda Síochána Bill should be reviewed as a matter of urgency.

Acting Chairman: I am sure it will be.

Mr. J. Walsh: In putting down the motion, the Labour Party has given us all an opportunity to discuss this important topic. Mr. Justice Morris has done us a service in his report. I will address it under four points. The first point is that the gardaí deserve our support and our commendation. They place themselves at personal risk to ensure that law and order and quality of life for every citizen are maintained. Many of them have paid the ultimate price in that regard. As a body, the Garda Síochána has a proud record, which is mentioned in Mr. Justice Morris's report. It has been unfortunately tarnished in this incident.

My second point relates to the reference to corruption in the report. Corruption in the Garda Síochána or any police force is a serious matter. The tribunal has come to the conclusion that the Garda Síochána is losing its character as a disciplined force. This is something that is disturbing to the Houses of the Oireachtas and to the wider public. It is detrimental to morale and impinges on the proud record of the Garda Síochána.

My third point concerns the negligence that is highlighted in this report. Unfortunately, there is a catalogue of evidence therein. The communications failure following the accident involving Mr. Barron and the indolence in responding to the call from the public is inexcusable. Also inexcusable is the failure to preserve the scene and

the absence of a garda from duty because he was drinking. The contents of this report mirror, to some extent, the failures of the Garda Síochána in pursuing the Dublin and Monaghan bombings investigation which took place over 20 years ago and was examined by the Committee on Justice, Equality, Defence and Women's Rights. It concerns me that 20 years after that investigative failure a similar situation occurred in the mid-1990s.

I wish to address the serious management failures within the Garda Síochána. I have raised this issue in this House in the past and I have seen that where there are good people in management positions, the rank and file conform to best practice and perform to an acceptably high standard. However, where management is deficient, the opposite occurs. There is a need to examine this issue because the problem is highlighted in areas such as contemporaneous reporting not taking place and a failure in the preparation of files, which Mr. Justice Morris points out is fundamental to any effective and fair judicial system. The judge suggests that files should be routinely inspected by management, there should be an ongoing management review of procedures, systems should be clearly set out and random audits should be undertaken. He further suggests that a manual on handling informants should be produced. All of these suggestions are basic and elementary to any organisation trying to operate to minimum standards, but unfortunately it appears that this was not the case in Donegal.

It is worth examining the lack of leadership and appropriate decision making, as outlined in the first Morris report, which states:

A common theme throughout the tribunal hearings has been the manner in which senior members of An Garda Síochána have tried to avoid accepting responsibility for their own actions or inactions by referring to the duties of others and/or Code regulations. Members have shown the minimum initiative and maximum dependence upon the limitation of their duty by a strict interpretation of either the directions received and/or possible ambiguity in the parameters of their role.

There are serious management deficiencies throughout the public service at all levels. However, that is not to say that there are not many excellent practitioners also. The system, for whatever reason, does not have a mechanism to identify and award the good performers and root out those who are not performing. That needs to be done, particularly in light of the Morris reports. Mr. Justice Morris asserts that what happened in Donegal was not just a statistical blip. His view is that the gardaí in Donegal were recruited from different parts of the country and that, as a consequence, one could reasonably expect to find similar failures elsewhere.

The real question is whether it could ever happen again. According to Mr. Justice Morris, given the lack of proper management at senior level,

corruption at middle level and the absence of reviews throughout the force, it is possible that in similar circumstances, comparable corruption could arise. This inquiry is so serious because it highlights the neglect of the fundamental duty of police management to ask questions and get answers and Mr. Justice Morris finds this shocking.

A number of related issues arise, one of which is the turnover of personnel. I have seen the effects of that in my own home town. Indeed, the current Garda Commissioner spent three or four months in New Ross as superintendent and we had a revolving door for a period of time. That weakens authority and is detrimental to stability within the force.

I agree with many of the initiatives taken by the Minister for Justice, Equality and Law Reform. He responded promptly, as did the Garda Commissioner, in undertaking an initial review of the force. However, because of the seriousness of the failures mentioned, I urge the Minister to engage a policeman of international stature to examine all systems within the Garda Síochána and make recommendations. We should not simply rely on an internal review. There should also be an external review and periodic inspections to ensure that recommendations are being actively and effectively implemented.

Senator Cummins recently referred to the police in Boston. The police commissioner there made a comment recently to the effect that good cops do not necessarily make good managers. She also suggested there is a need to examine the age profile for promotion, so that good police officers with management skills could be identified early and given the scope to apply their abilities in senior positions within the force.

The country should be divided into regions, with an assistant commissioner in charge of each region, as currently applies in Dublin. That would result in a more interactive police response. Each region should be benchmarked and compared on performance and the benchmarking should use international and national best practice as its basis.

Mr. McCarthy: I welcome the opportunity to debate this issue and I welcome the Minister of State to the House. The second instalment from the Morris tribunal is very worrying and for the vast majority of the fine, decent and honourable members of the Garda Síochána, it is demoralising. We must not forget the centrepiece of this whole sorry saga, the McBrearty family and other people who were conspired against in County Donegal.

Senator Higgins and Deputy Howlin deserve immense credit for the manner in which they pursued this case in its early stages. They pursued it with great vigour and determination in order to ensure that the McBrearty family received justice. It has been a long and arduous road and an inherently difficult situation for that family. They have suffered enormously, their reputation has

been damaged and their mental and physical health has suffered. One cannot begin to know the misery inflicted on them. One can read the Morris report, the newspaper reports and listen to interviews, but the real horror of what they went through is unimaginable.

I have relations and close friends who are members of the Garda Síochána. When they embarked on their careers in the police force they were young, idealistic, community-spirited individuals who joined a force that is largely unarmed, the majority of whose members are decent, honourable people who go about their work, often in difficult circumstances. Difficult conditions prevail in Dublin and other areas, where gardaí are set upon by mindless gougers and thugs who think it appropriate to attack them. Such people use the incident of recent days as an excuse to perpetrate such attacks and there have been several unfortunate examples of this in the Munster region recently.

When talking about the Garda Síochána we should bear in mind the good people in the force. However, we should not let those members of the force in County Donegal who bent the rules, broke the law and abused their positions, off the hook. Such people conspired against a family and framed them for a murder that never occurred. That in itself speaks volumes about the levels to which some people were willing to stoop in order to damage the character and good name of others.

The opportunity presented to us by the Garda Síochána Bill is in danger of being wasted. We have an enormous opportunity to enshrine some of the recommendations of the Morris report in the Garda Síochána Bill. The Bill is not good enough and misrepresents the Swedish origin of ombudsman. It is a mistake to set up a three-person ombudsman commission and not afford it the full scope that Chris Patten was afforded with regard to his report into policing in Northern Ireland, which led to the setting up of the PSNI, a police force in which all but one group has participated. The Patten report did great work in terms of shifting focus and a psychological impression of the old RUC and delivered a fairly professional and very committed, apolitical and centre-stage police force that is able to do its work without having the baggage of the RUC.

The same initiative should be taken with regard to the Garda Síochána Bill 2004. An individual of Mr. Patten's standing should be engaged to examine the issue, the current management systems in the Garda Síochána, the failings of the force and the Morris report and work with that information to ensure we have a police force that is beyond reproach. Inevitably, the reputation of the Garda Síochána has been besmirched by the activities of a few rotten apples.

The transfer of five members of the Garda Síochána in Donegal to Dublin is disgraceful. I would not want a member of the force who has been clearly implicated by the Morris report to be serving in a station in my community. It does

[Mr. McCarthy.]

nothing for the morale of the officers serving in that station and it does nothing for the reputation of the Garda Síochána. I do not like the fact that two of these gardaí have been transferred to Garda headquarters in the Phoenix Park. This does not do justice to the vast majority of the force who are appalled by and suffering as a result of this affair. Members of the force in Donegal were associated with the biggest scandals that ever affected the force and it goes right back to Abbeydorney when a family was black-guarded by a number of gardaí. One of these gardaí went on to become involved in the Abbeylara siege and was then involved in the Donegal case. This defies belief. I do not think any other police force in western Europe would stand behind a police officer with that kind of curriculum vitae.

A recent case in a police authority in the UK involved an allegation made against the UK equivalent of a chief superintendent. The officer subsequently resigned because he did not want any scandal or bad publicity for his police force. This is not happening in this country. I am not saying we should rush to judgment and look for resignations. Some people are not fit to tie the boots of law-abiding, decent police officers and have been allowed to continue in the profession. They cast too many aspersions and it does not clear the matter up.

Out of 240 complaints referred to the DPP by the Garda Complaints Board, three gardaí were prosecuted. This statistic is frightening when one considers the amount of cases that the Garda Complaints Board does not send to the DPP. There is a blue wall of silence operating and it does not do justice to the vast majority of good, honourable people who work in our towns and cities upholding and enforcing the law to the standards which they deliver and the standards that are expected of them.

In recent times, one can only be gripped by the media interviews given by Frank McBrearty Jnr. There are outstanding issues that have not been resolved by the Minister regarding this case. Legal representation in this case is a major issue. The McBrearty family, which was the centrepiece of the Morris tribunal, did not receive the same type and scale of legal representation afforded to the Garda Síochána and the Garda Commissioner, which is uncalled for. It is incumbent upon us to ensure that no more damage is done to the McBrearty family and that the justice they strove to attain is delivered to them. That is the least we owe the family.

The Department and the current team of Ministers must ensure this type of mess and scandal never happens again. If it does recur, there should be safeguards in place to ensure those responsible will be expelled from the force so quickly their feet will not touch the ground.

Ms K. Walsh: I welcome the Minister of State to the House and I also extend my sympathy to

the Minister for Justice, Equality and Law Reform, Deputy McDowell, on the untimely death of his mother-in-law today. I welcome the opportunity to contribute to this debate. There is no doubt that the second report of the Morris tribunal has shocked and angered many people across the country. Having been the wife of a member of the Garda Síochána for a good few years and having many relatives in the force, I could say that I am slightly embarrassed by the report.

Other speakers in this debate have congratulated Mr. Justice Morris and his team for the excellent work they carried out. I also express my gratitude to them. They have done us all a great service. The second report of the Morris tribunal revealed many worrying facts. It revealed a culture of behaviour among some, and I emphasise some, gardaí in Donegal that must be denounced by all right-thinking citizens. The McBrearty family and others have been seriously wronged over the years and I welcome the fact that they will receive an apology from the State and that their case will not be contested.

No one must underestimate the trauma endured by this family. However, I would like to use these few minutes to focus on one other aspect. I want to speak for the many gardaí who are just as horrified at these findings as we are. I do this in the knowledge that other speakers, and more importantly Mr. Justice Morris, have set out in great detail the manner in which the McBrearty family and others have been treated. Their plight is everyone's first concern and I do not in any way wish to downplay this fact. We must also remember Mr. Barron, the man who lost his life. His family, friends and community have suffered a great deal. We must not lose sight of this fact.

The most recent official figures put Garda numbers at over 11,500. There are 703 Garda stations throughout the country. The vast majority of gardaí are at garda rank and work on our streets acting as a thin blue line between us and lawlessness and chaos. For these gardaí, the findings of the Morris tribunal and the aftermath are appalling. They must carry on with their duties and pursue their mission to achieve the highest level of personal protection, community commitment and State security. They must carry out their duties despite knowing that confidence in some elements of the force has been badly damaged and shaken. I want to let it be known that these honest, brave, hardworking and honourable members of the Garda Síochána have our confidence, trust and, most of all, respect.

The media coverage and debates in the House and elsewhere will contain charges that are devastating. There are points that must be made. These points do not only apply to a minority of gardaí, they apply only to a minority of gardaí in Donegal, which is a very important point to make. While we must not be afraid to criticise and deal with the unacceptable behaviour among the few, we must not forget the contribution to

our society made by the many. When approximately 25,000 burglaries happen every year, who do we rely on for help? Who do we rely on to protect us and to intervene when we feel helpless and threatened? We should be proud of the daily work of the Garda Síochána. While we take time in this House to condemn the outrageous actions of the few gardaí who abused their powers and the good name of the force, we should acknowledge the vital and courageous work of the many.

Since his appointment as Minister for Justice, Equality and Law Reform, Deputy McDowell has made it a priority to achieve the most comprehensive reform of the Garda Síochána since the foundation of the State. The report of the Morris tribunal underlines the need for this reform and all parties must ensure the necessary legislation is enacted without delay. I have total confidence in the Minister to deliver this reform and I have total confidence in the Garda Síochána to continue to serve our citizens to the highest standards on a daily basis.

Mr. McHugh: I welcome the Minister of State and I welcome the opportunity to speak on this motion tabled by the Labour Party. This is a most complex and difficult subject to speak on tonight both as a politician and as a Donegal man. Before dealing with the detail of the motion and the findings of the Morris tribunal, I wish to mention some of the personal human tragedies that were the outcome of what happened in Donegal.

The members of the Barron family feel they were abominably treated by the State. They feel disgusted and dismayed by the entire procedure. Second, I wish to refer to the McBrearty family and their quest for justice. I agree with Senator McCarthy that without the good offices and the political bravery of Senator Jim Higgins and Deputy Howlin and the voice of Councillor Seán Maloney, who has now retired from politics, the McBrearty family's quest for justice would not have ended in such a positive fashion. However, as far as the McBrearty family is concerned, this is not over. As a family they have their own personal dealings to sort out as well as being part of this overall human tragedy. We should also consider the wives and children of the gardaí who are caught up in this mess. It is a tragedy that these people are caught up in this debacle. I find it difficult to speak on this as a Donegal person.

Many of the findings of the Morris tribunal are based on the unpublished Carty report and some people in the legal fraternity have a difficulty with that. If we are trying to establish an ombudsman and an accountable structure within the Garda, why is the Carty report not yet published? Why have the findings which the Morris tribunal has taken from that report not been published? Why has the Nally report not been published? If we are seeking accountability and transparency, that should be part of the debate.

There is a perception of Donegal gardaí in places such as Kerry, Cork or Dublin. Some Members will have personal connections to the

Garda. I have such a connection in that my brother is a garda based in Dublin. If one mentions that one is a Donegal garda, one is confronted with a simple and dangerous perception — that Donegal gardaí equal corruption. This is an extremely dangerous perception. It is not simply a case of saying that 99.99% of the gardaí are honest and 0.01% are dishonest. We are dealing with the dangerous 100% perception that Donegal gardaí equal corruption.

Let us examine the culture in Donegal. The Morris tribunal is dealing with corruption on the part of some members of the Garda in Donegal. These actions cannot be condoned and for a long time they will do untold damage to the Garda as a force. I do not have time to examine the culture of the gardaí in Donegal but it is true that there was a culture of staying quiet. It was a culture based on fear, the fear of being transferred and of losing out on promotion. It was based on the gardaí thinking of their families. That fear was endemic. However, it is not unique to Donegal but is an institutionalised state of fear in every county because there is an unaccountable Garda authority. We are trying to legislate for a more accountable and transparent authority that will apply from Malin Head to Mizen Head, not from Malin Head to Ballyshannon or Bundoran. There is still no justification for the behaviour of some of the gardaí in Donegal because lives have been ruined, regardless of whether people are vindicated and whether the truth will come out.

The terms of reference of the Morris tribunal must be extended to the role of Ministers, Attorneys General, the Department of Justice, Equality and Law Reform and Garda Commissioners. These were the end point of the institutional system in place so that is where the buck stopped. There must be an extension of the terms of reference of the tribunal. Mechanisms must be put in place to protect the citizen and good gardaí. There are good gardaí who will end up in this mess as a result of an improper system.

I will conclude on that note. I found this a difficult subject on which to speak. I do not feel embarrassed as a Donegal man or that people who have close relationships with gardaí should be embarrassed. However, there is a serious challenge before us as a result of lives being ruined and as a result of a negative, damaging perception that will do untold damage to the force in the long run. Ultimately, the challenge for legislators is to consider two families, the Barron and McBrearty families, whose lives have been ruined and who still have not found closure following the death of Richie Barron.

Ms White: Irish society has been shocked by the treatment of the McBrearty family. I support the comments made about Senator Higgins and Deputy Howlin and on how they stuck their necks out when it was not popular to do so. It appears that police forces throughout the world at times take on the characteristics of those they are investigating. Consider the police force in

[Ms White.]

Britain which put the Guildford Four and the Birmingham Six in prison. Corruption, deviousness and twisting of the truth put Irish people in prison. There was also the failure of the Garda to investigate the Dublin-Monaghan bombings.

There was shock when we heard that four members of the Garda in Donegal were being sent to Dublin. I heard Ms McGlinchey ask on the radio why the communities in Dublin deserved to have these people imposed on them. However, we later discovered that these gardaí will be employed at desk jobs, that a file is being sent to the Director for Public Prosecutions and that they will be investigated. The law will take its course.

In his speech the Minister of State referred to the ombudsman. In the House one year ago, in the presence of the Minister, Deputy McDowell, I told of how I witnessed the maltreatment by three gardaí of an innocent Irish person on a train from Waterford. I made a complaint to the Garda Complaints Board but it was swept under the carpet. There was nothing I could do as my hands were tied. However, I know the ombudsman commission will work. To qualify that comment, I am totally opposed to a three-person commission, even with a chairman. We have one Director of Public Prosecutions, one Attorney General and one Minister for Justice, Equality and Law Reform.

We talked in the House about culture, leadership and vision. Leadership must come from top; it is identified in one person. When one sees leadership, one sees it in one human being. In Northern Ireland, Ms O'Loan stands out as a person responsible for fair treatment. Even when witnesses were afraid to go to the police in the McCartney case, the McCartney sisters were encouraged to meet Ms O'Loan. I am not convinced by the reasons put forward by the Minister, Deputy McDowell, for justifying the three-person commission or the introduction of a chairman. I would like one person to be appointed.

The Minister, Deputy McDowell, has the fire, passion and driving force to bring about a metamorphosis in the Garda Síochána. While I do not want to say he has many bad points, he has the driving power to achieve that. During the discussions last year, it was said in the House that reform of the Garda Síochána was probably the most significant legislative proposal to have happened in our lifetime or the history of the State.

As my Seanad colleagues know, in the past year I have been working on a new approach to child care. I have also commenced work on a new approach to aging, a matter on which I will let the House know more anon. During my investigations on the ground on the new approach to aging, I encountered community gardaí doing extraordinary work to look after people in their local communities. Two weeks ago gardaí from Kilmainham and Kevin Street stations in Dublin brought 260 older members of the community from Dublin 8 and Dublin 11 to Fatima. Gardaí

from those stations bring older people from that area on trips five times a year. The chief superintendent I spoke to told me that because of the trips one old man told him: "You are keeping me alive. The gardaí are keeping me alive." Many of the old people involved are poor and have little to look forward to except the trips organised by the community gardaí. Just as every priest is not an abuser and every Fianna Fáil member is not a crook or corrupt, every garda is not a liar.

Although I did not hear it first hand or read it for myself, I understand one of my coalition colleagues stated earlier that Fianna Fáil did not have values, or something like that, which is a matter I want to investigate further.

Ms O'Meara: It was the Minister for Justice, Equality and Law Reform.

Ms White: I want to find out who it was. It was not him. He is more careful.

A Senator: It was the Minister.

Mr. Cummins: The Senator would want to do better than the other investigations that have taken place.

An Cathaoirleach: Order, please. It is not appropriate to refer to individuals.

Mr. Norris: Senator White should be encouraged.

Ms White: I am making the point that all gardaí are not the same. I like to see justice being done. I understand why Senator McHugh speaks so emotionally. It must be terrible to think like that of every garda in Donegal but it is a terrible situation. In An Agreed Programme for Government there is an elaborate statement about crime and the wishes of the two Government parties.

Mr. Cummins: There are a lot of statements about a lot of things in the programme for Government.

Ms White: Whatever about reports, I would like to see action.

An Cathaoirleach: The Senator's time is concluded.

Ms White: I want more gardaí out of their offices and on the beat. I lost my mobile telephone some months ago and had to go to the Garda station in Dundrum to report it. Why did I have to waste the time of a garda in Dundrum to make a formal report about losing a mobile telephone? I have never heard such nonsense. Time is being wasted in Templemore teaching trainees how to be gardaí only for them to end up doing desk jobs.

Mr. Coonan: Templemore is doing a good job.

Ms White: The Senator was not present earlier for the contribution of Senator Maurice Hayes, who did tremendous work on the Patten report. He stated that gardaí should not be trained in isolation, which is an interesting concept. He stated they should be integrated with social workers and community workers, and not isolated. Senator Coonan misunderstood what I said.

An Cathaoirleach: The Senator's time is up.

Ms White: All Members of the House are deeply sorry for the McBrearty and Barron families. We look forward to reform of the Garda Síochána. I would like to hear more in regard to what the Minister of State said earlier.

Mr. Norris: I would like to share time with Senator O'Meara and to allow her to speak first.

An Cathaoirleach: Is that agreed? Agreed.

Ms O'Meara: I welcome the opportunity to speak on this important motion. When the second Morris tribunal report was published last week, the public was deeply shocked when it was realised what had been going on in Donegal. We cannot underestimate public concern around the implications for the Garda force of what has been revealed to have happened in Donegal.

As enunciated in the House during this debate, many feel that in some way the case of Donegal was an isolated incident, or that it happened up there but is not happening anywhere else. There is a sense that a small number of gardaí have sullied the whole force, which is the case. The concern and public dissatisfaction with the fact that three gardaí have been transferred to Dublin clearly indicates that what is needed to re-establish public confidence in the Garda is an intense clean-up job.

My major concern is that the activities of a minority in the Garda are creating a situation where public confidence in all gardaí is diminished. As the activities of a small number of politicians diminished us all and impacted on the whole political system, in the same way, the activities of a small number of gardaí have impacted on the whole Garda force.

I add my voice to the many Members who spoke of the fine work done by the majority of gardaí, including community work. However, the fact remains that the whole force is now damaged and sullied. It is our responsibility as Members of the Oireachtas to ensure public confidence is restored because it is too important not to have that happen. If we do not do so, confidence in the Garda will continue to be undermined. Moreover, other incidents also need to be cleared up, such as the Dean Lyons case.

The structures put in place to deal with this question are very important. At their heart must be the establishment of a system of accountability for the Garda Síochána. In the same way we have established accountability for politics and politi-

cal representatives, and in doing so taken steps, I hope, to restore public confidence in politics, we must work to restore public confidence through establishing clear lines of accountability for the Garda.

The power we give the Garda Síochána has up to recently been unquestioned because it has not been abused. However, when that power is abused, the systems of accountability must be there and must kick into place. They are simply not there at present. While attempts have been made in the Garda Síochána Bill to address this issue, they do not go far enough. The question marks that have been raised about the three-person commission need to be addressed by the Minister because there is a question mark in the public mind that the Bill does not go far enough. The Garda Complaints Board must be reformed because there is no public confidence in it. Today's newspapers report that the culture of silence, known internationally as the "blue wall", is very much evident in our police force. This cannot be acceptable to us as public representatives.

We must put measures in place to ensure that this ends. The role of the Minister is critical in this regard because he is the key person involved. He must establish the importance of accountability. It is the responsibility of the Minister for Justice, Equality and Law Reform to ensure that we hear and meet the public demand for the highest standards of ethical conduct by the Garda Síochána to re-establish confidence in the force as a public service first and foremost, and we must support him in that regard. Clearly that is not happening and it will take time. I ask for support for the motion.

Mr. Norris: I am glad to have the opportunity to take part in this debate. I had lunch yesterday with the former Commissioner, Mr. Pat Byrne. He reminded me that I had been invited some years ago to talk at an international convention on policing in Dublin Castle. I was invited in order to stir things up and he told me that I most certainly did. I woke them during the siesta slot because I spoke about the type of problems endemic not just in the Garda.

Part of what I said four or five years ago was fairly prophetic when I look at the report of the Morris tribunal. However, as Senator White said, we should not excoriate ourselves and think that our police force is particularly bad. Senator McHugh said that it was dangerous to suggest this is a Donegal phenomenon. However, the situation can arise if one is not always watchful which is why I support the Labour proposal rather than the Government amendment. I do not know why they could not be run together, because I also agree with most of the Government amendment although perhaps it could do something regarding committees and we would not have this divisive vote.

We all want to support the institution of the Garda while looking at the neglect of duty and

[Mr. Norris.]

the review of Garda procedures following the crimes and the tragedy that occurred to the McBrearty family. Many people do not understand why they could not have been given some comfort with regard to their fees. Everybody else seems to have had money thrown at them, including the legal profession. These people were forced into a situation where they had to defend themselves against accusations when they were framed by the forces of the State. After €1 million was spent, they could not get the comfort of being told they would be paid. There is something radically wrong in such a situation.

People did know. They must have known. Reports were made. There is ministerial and political responsibility and all parties should share this and look into their own hearts. The McBreartys were framed and ruined and there was no proper investigation of what turned out to be an accident. This man was unfortunately killed in a hit and run. However, no proper procedures were followed. Then came the idiotic and ludicrous planting of explosives which were manufactured in coffee grinders. Vincent Browne made a laugh out of the situation and in one way he was right. However, underneath that is something deeply tragic.

I agree with what Ms White said about Mr. Higgins, MEP, and Deputy Howlin. They should be protected because they were whistleblowers in a real and genuine sense and should not suffer any kind of punishment as a result. The Dean Lyons case was another dreadful situation, but his sister's rights have never been vindicated because there was no prosecution of the person who actually committed the crime. Here is an unresolved situation with no finality.

I am very grateful to be allowed to speak on this matter. People behaved badly and did wrong, but we should not be vicious in going after them. Some say their pensions should be taken away but what will they live on and what will their families do? I do not think this is right. We are always blowing about Christian values, but is it Christian to reduce them and throw them in the gutter?

Mr. Leyden: I might sound like counsel for the defence. I welcome the Minister of State to the House and wish to be associated with the expressions of sympathy to the Minister for Justice, Equality and Law Reform, Deputy McDowell, on the death of his mother-in-law, Professor Brennan's mother.

I must express a vested interest in tonight's motion because I am nominated by the Garda Representative Association, the Association of Garda Sergeants and Inspectors and the Association of Garda Superintendents.

An Cathaoirleach: That is not relevant.

Mr. Leyden: I withdraw my declaration. There are 12,000 gardaí and, percentage-wise, a small

number have caused difficulties and been investigated by the Morris tribunal. We must also recognise those such as Dick Fallon, Garda Hand and Detective Garda Jeremiah McCabe who sacrificed their lives in the protection of the State. Let us put things in perspective because there is more to the matter than meets the eye. I believe that there is a settlement as far as some of the costs are concerned with regard to the McBrearty family's legal fees.

Mr. Cummins: It is rightly so.

Mr. Leyden: I ask the House to please bear in mind the great service that has been provided by the Garda Síochána to this State when discussing the situation in Donegal. Certain actions were taken in regard to the unfortunate death of Richard Barron and its unfair and wrong linking to the McBrearty family, as well as the Frank Shortt case. Donegal has had difficulties, but my second cousin was a sergeant in Dunloe and served loyally and well in the service of the State without a blemish on his character like the majority of gardaí in County Donegal.

Let us get matters in perspective. This is a difficulty but the situation has been sorted out by the Government which has taken very firm action in setting up the Morris tribunal. Mr. Justice Morris is doing an excellent job in unearthing all of the dark corners which have existed over the years in County Donegal. While this undermines the fine force we have in this State, we should recognise that all professions have had difficulties, including the clergy, bishops, and us as politicians. However, a very minute percentage of gardaí have been involved. On behalf of the defence, I rest my case.

Ms Tuffy: I apologise for having given out about the Minister for not being here. I did not realise there was a bereavement in his family and I sympathise with him, his wife and family.

Senator Minihan echoed something that the Minister of State said in that the Government is bringing forward the most radical ever legislative proposals in regard to the Garda Síochána. However, that is not true.

The Labour Party has put more radical legislative proposals before this House. We have tabled amendments to this legislation and for five years have had a policy calling for an independent policing authority or board and an independent, one-person Garda ombudsman. The Bill contains some good reforms brought forward by the Minister. However, the most fundamental and radical reforms are not included, namely the authority and the ombudsman.

In his speech, the Minister of State repeated the fallacy that Northern Ireland is somehow unique and that its society is different from ours. However, it is not. Northern Ireland has adopted what is the norm in the British Isles and becoming more widespread throughout the world. It started with the 1964 UK Police Act when

7 o'clock

policing authorities were established. Other EU countries, such as Holland and Belgium, have brought in these types of reforms as has New South Wales, as I mentioned before. There are decentralised and regionalised systems with oversight in other European countries, such as the Lander in Germany. Many other police forces in other democratic societies throughout the world have had to examine themselves and bring about reform and they are still in the process of doing so.

Reform of the Northern Ireland police force started before the Patten commission. In fact, it was the 1995 report by Senator Maurice Hayes which started the whole process and gave rise to the 1998 Act which brought in the Northern Ireland ombudsman which was subsequently endorsed by the Patten commission. Senator Hayes said that the committee might delay matters but it did not do so in the North because the ombudsman had already been introduced. One can introduce reforms and also have the commission. One can consider the issue of the ombudsman now and then bring in an independent policing authority. The Minister said that a three person commission or board is not unusual, but neither is a one person ombudsman. This is best practice as recommended by Dr. Maurice Hayes and we should listen to him.

The Northern Ireland commission does not use members of the PSNI to carry out its investigations. However, it does use members of other

police forces, such as Hong Kong. In his speech the Minister of State stated that we need proper oversight by the representatives of the people over the Garda. This is not provided for in this legislation. The type of shake-up required, including training with social workers, was also mentioned by me and Professor Dermot Walsh. That should not be delivered by the Minister and the Garda Commissioner. The public will not trust that system. How will we know the reforms are being carried out? How will we have a say? We need an independent authority which would not, as the Minister misrepresented, be an unelected, unrepresentative authority. It will have elected representatives if it is done in the same fashion as the UK and Northern Ireland.

As Senator Norris pointed out, Ireland is not unique in having this difficulty. We know this has happened in Northern Ireland and there has been a crisis of confidence in the police throughout the world, including in what are considered to be democratic, open societies. This happened in Belgium in the aftermath of the Dutroux case, it has happened in New South Wales and in the Los Angeles police force. The test of a democratic society is how it responds to a crisis and I do not think the Minister has the guts to do what is needed. This includes introducing the type of reforms that have been carried out in Northern Ireland and elsewhere.

Mr. Norris: Bravo.

Amendment put.

The Seanad divided: Tá, 29; Níl, 19.

Tá

Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Glynn, Camillus.
Hanafin, John.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
MacSharry, Marc.

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

Níl

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Paddy.
Coghlan, Paul.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.

Henry, Mary.
McCarthy, Michael.
McHugh, Joe.
Norris, David.
O'Meara, Kathleen.
O'Toole, Joe.
Phelan, John.
Ross, Shane.
Tuffy, Joanna.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators O'Meara and Tuffy.

Amendment declared carried.

Motion, as amended, put and declared carried.

An Cathaoirleach: When is it proposed to sit again?

Ms O'Rourke: At 10.30 a.m. tomorrow.

Adjournment Matters.

Brand Name of Dingle.

Mr. Coghlan: I wish to share my time with Senator O'Toole.

An Cathaoirleach: Is that agreed? Agreed.

Mr. Coghlan: I welcome the Minister to the House. Ar an gcéad dul síos ba mhaith liom labhairt faoin chinneadh chonspóideach an t-ainm “Dingle” a bhaint anuas de na comharthaí bóthair lasmuigh de Ghaeltacht Chorca Dhuibhne.

Tá clú agus cáil ar an bhaile beag seo in iarthar Chiarraí, “Dingle”. Baile agus ceantar mór feirmeoireachta agus iascaigh ab ea é uair. Cé go bhfuil siúd fós i gceist is i dtionscail na turasóireachta is mó go bhfuil cáil bainte amach aige anois.

Níl a fhios agam an dtuigeann an tAire an diabháil a dhéanfaidh sé leis an chinneadh uafásach seo an t-ainm Dingle a chaitheamh anuas. Is fiú €100 milliún euro an turasóireacht don cheantar le os cionn 50% de lucht oibre bainteach leis — ana chuid daoine tagtha abhaile ó Mheiriceá agus Sasana, chun a gclanna a thógáil.

Mar sin ní cheart don Aire a bheith ag chur a lámh isteach i dtionscail nó in ainm áite — go mór mhór an “Dingle” brand name. Mar a deir an seanfhocal, ná dein nós — ná bris nós.

I appeal to the Minister to carry out a consultation on this matter. Everybody is in favour of a bilingual situation on the roads outside the Gaeltacht. We are only causing confusion for tourists, however, by having road signs for Dingle only in Irish. Our roads are twisty and winding enough without having visitors straining to read signs and trying to understand An Daingean when they are more familiar with the placename of Dingle. People's views must count because we live in a democracy. I appeal to the Minister to allow for bilingual road signs. That is what the people of Dingle town want, in addition to those on the Dingle peninsula and in County Kerry generally. That is what the local authorities want also.

Mr. O'Toole: Tá an moladh seo chomh scannalach le rud ar bith atá déanta againn ó thaobh airgead a chur amú, airgead a thig linn a infheistiú ar son muintir na Gaeltachta nó ar son na Gaeilge. Conas mar a tharla nach bhfuil a gcearta daonlathach ar fáil do mhuintir Chorca Dhuibhne agus muintir Dháingean Uí Chúis sa nGaeilge?

An gcuimhin leis an Aire 40 bliain ó shin nuair a rinne an Bhreatain iarracht to change the name of this country to Éire against the wishes of the Irish people? At that stage the Taoiseach of the day, Éamon de Valera made it quite clear that the name of this country in English was Ireland, and in Irish it was Éire agus nach mbeadh aon mheascadh idir an bheirt. Níl ann ach dhá bhliain ó rinne muintir Moyvane gach iarracht logainm na háite a aistriú ó Newtownsand es because it was named after one of the most terrible landlords ever seen in north Kerry. Cuireadh chun vóta é agus bhí tromlach na ndaoine i bhfábh ar an logainm a aistriú ó Newtownsand es go dtí Moyvane but it was not done because not enough people took part in the election. That was democracy at work.

Recently, I saw that the residents of a small street in Dublin wanted to change the street's name. They were required by the council to have a full referendum in order to do that. Cén fáth nach mbeadh an seans céanna ag muintir Chorca Dhuibhne agus muintir na háiteanna eile tríd an tír a aistreoidh an tAire logainm a bhailte? Cén fáth nach bhfuil dátheangachas ar fáil, mar a bhí mar aidhm againn le tacaíocht a thabhairt don Ghaeilinn? Cad é tá cearr leis An Daingean agus Dingle a bheith ar an fhógra céanna? Cén fáth go bhfuil muid ag cur isteach ar mhuintir na háite agus ag cur embarrassment ar mhuintir na Gaeltachta mar seo?

I appeal to the Minister to take another look at this matter and to consult the people of west Kerry on the issue, as well as the people of other parts of the Gaeltachtaí and the breac-Ghaeltachtaí. In a democratic country, they deserve to be heard.

Minister for Community, Rural and Gaeltacht Affairs (Éamon Ó Cuív): Tá sé beagáinín faoi dhá bhliain ó ghlac dhá Theach an Oireachtais leis an Acht Teanga. B'fhéidir go bhfuil dearmad déanta ag na Seanadóirí air sin mar seo ceann d'fhorálacha an Achta. Ní dhearna mé tada ach deimhniú a dhéanamh agus ord a dhéanamh faoin Acht i gcás 2,319 logainm. Na Seanadóirí, áfach, a rinne an cinneadh. Níor chuir éinne atá ag labhairt anocht ina choinne.

Tháinig dréacht-ordú faoi mo bhráid an samhradh seo caite agus aontaím leis an rud atá ráite faoi dhul i gcomhairle. Ní amháin go ndeachaigh mé i gcomhairle go hoifigiúil, ach go mbeadh a fhios ag muintir na Gaeltachta céard a bhí ar bun, shocraigh mé go mbeadh dul i gcomhairle go cuimsitheach. Rinne mé sin agus fuair mé aighneachtaí. Tógadh na haighneachtaí sin san áireamh nuair a rinneadh an t-ordú — 24 acu a fuair muid. Dheimhnigh mé ansin an t-ordú ní i gcás logainm amháin ach i gcás 2,319 ainm ar fad.

Tá muid ag caint ar rogha. Níor chuala mé aon duine ag rá go raibh sé uafásach nach raibh ach ainm oifigiúil amháin ar Dhún Chaoin go dtí Luan Cásca na bliana seo. Sin Dunquin, ní raibh a leithéid is Dún Chaoin ann go hoifigiúil. Ní

raibh Baile an Fhéirtearaigh, An Daingean, an Ceathrú Rua, Carn na Móna nó Ros Muc ann. Ní raibh aon seasamh oifigiúil ag aon cheann de na logainmneacha sin ar fud na Gaeltachta agus bhí an ceart ag an Teach seo sin a cheartú.

Deir an reachtaíocht a d'achtaigh muid, agus bhí muid go léir páirteach ann, gur féidir an leagan Béarla a úsáid ach i gceithre ní — Achtanna an Oireachtais agus Ionstraim Reachtúla, comharthaí sráide agus bóthair agus léarscáileanna a dhéanfaidh mé ordú ina leith — níl i gceist faoi láthair leis na léarscáileanna ach na cinn móra a úsáidtear le clárú talún. Anois, in ionad an masla atá ann do phobal na Gaeltachta go bhfuil muintir an Thrá Bháin agus na Carraige Thiar cláraithe faoi Trabane agus Carrick West, beidh siad anois cláraithe i dteanga an phobail.

Tá seafóid ar bun faoi cheist na gcomharthaí bóthair agus na dturasóirí. Feicim i nuachtáin ailt ag rá go mbeidh turasóirí ag dul amú. Níor athraíodh fiú comhartha bóthair amháin fós. Tá na comharthaí sin ann de réir orduithe a rinne Bobby Molloy 35 bliain ó shin. Má tá turasóirí ag dul amú anois, caithfidh go raibh siad ag dul amú le 35 bliain. B'fhéidir go raibh, ach níor athraigh mé comharthaí bóthair fós.

Rinne Bobby Molloy ordú go mbeadh na comharthaí bóthair i nGaeilge amháin sa nGaeltacht i 1970. Cén fáth a ndearnadh an t-ordú sin? Mar bhí pobal na Gaeltachta ar buille faoina comharthaí dátheangacha. B'fhéidir nach gcuimhin leis na Seanadóirí sin ach is cuimhin liom é. Aon uair a chuirfí comhartha bóthair dátheangach suas sa nGaeltachta, thiocfadh dream le péint san oíche agus scríosfaidís an Béarla. Athraíodh mar gheall air sin na comharthaí bóthair sa nGaeltacht go Gaeilge amháin.

Tá rudaí i láthair na huaire áiféiseach. Má éiríonn duine ó eitleán sa bhFearann Fuar anois agus téann sé chuig an gcrosbhóthar ansin, feicfidh sé comhartha don Daingean. Faoi láthair deir an comhartha bóthair sin Dingle agus An Daingean. Ar an léarscáil deir sé Dingle amháin. Ní bhreathnaíonn sé ar an leagan Gaeilge, feiceann sé Dingle, feiceann sé ar an léarscáil é agus téann sé an treo sin. Ní thuigeann an turasóir teorannacha Gaeltachta, téann sé isteach go dtí An Daingean agus tá comhartha ansin a deir rud amháin. Níl aon Dingle le feiceáil níos mó, níl an logainm ach ar an léarscáil. Go tobann tá An Daingean roimhe. Rinne sé dearmad go raibh An Daingean thíos faoi Dingle ar an gcomhartha nuair a bhí sé sa bhFearann Fuar. Go tobann tá sé amú — bíonn daoine mar seo ag teacht isteach i mBaile an Fhéirtearaigh ar lorg Dingle fós.

Céard a tharlódh anois? Tiocfaidh an duine céanna go dtí an Fearann Fuar san eitleán agus rachaidh sé isteach sa gcarr. Féachfaidh sé ar an léarscáil agus feicfidh sé, mar tá socrú déanta le Collins, an AA agus an Ordnance Survey, Dingle agus An Daingean. Feicfidh sé an comhartha agus déarfadh sé “Nach ionann Dingle agus An Daingean mar tá sé ar an léarscáil?” Mar a thuigimid féin gurb ionann Florence agus Firenze.

Nuair a thiocfaidh sé chomh fada leis An Daingean, tuigfidh sé go bhfuil léarscáil dátheangach aige, gurb ionann Dingle agus An Daingean agus stopfaidh sé ansin. In ionad bheith ag dul amú, beidh a fhios aige nuair a bheidh a cheann scríbe bainte amach aige agus ní bheidh aon fhadhb ann.

Tá mistéir ann. Cén fáth gur thug 35 bliain ar na comhlachtaí léarscáileanna seo a cheartú? An fhadhb go dtí seo ná go raibh na léarscáileanna ag taispeáint rud amháin taobh istigh den nGaeltacht agus na comharthaí ag taispeáint rud eile. Shíl mé gur cheart sin a cheartú agus ní thuigim cén fáth go mbeadh an comhartha difriúil taobh istigh nó taobh amuigh den nGaeltacht don áit céanna. An rud ciallmhar le déanamh ná an rud a rinne an Teach seo.

Mura bhfuil seo sásúil, tig le Seanadóirí dhul isteach agus reachtaíocht nua a chur i bhfeidhm mar baineann seo le gach logainm Gaeltachta go bhfuil ordú déanta leis — 2,319 acu — agus ní bhfuair mé ceist fiú ach faoi cheann amháin — An Daingean. Is léir ansin ón voxpóp, agus cinnte is léir ón méid a dúirt muintir na Dúnaibh —

Mr. O'Toole: Bhí 3,000 ceist eile le cur os comhair an Aire.

An Cathaoirleach: The Minister must conclude. There are two other matters on the Adjournment and there is a time limit.

Éamon Ó Cuív: Molaim an Seanadóir mar má tá sin ar intinn aige, tig leis leasú a thabhairt isteach ar Acht na dTeangacha Oifigiúla agus pléifimid an cheist ansin mar ní féidir liom rud ar bith a dhéanamh faoi seo gan leasú Achta. Ní bheidh mise ag moladh leasaithe ar an Acht ach is Parlaimint daonlathach seo agus is féidir leis an Seana-dóir leasú a mholadh agus pléifear é.

Mr. O'Toole: Tá an tAire ag dul i gciotal, níl sé ag baint leis an argóint ar chor ar bith. An loighic atá ráite aige, má tá sé le rá ag muintir Dún Chaoin gur sin ainm na háite, sin mar is fearr leo é. An deacracht anseo ná má tá muid sásta dul sa dtreo sin, cén fáth nach mbeidh an rogha ag muintir na háite i ngach áit, the 3,515 of them, an logainm céanna a bheith acu agus ansin a chur suas ar na fógraí go dátheangach?

Sin a bhí againn i gcónaí. Tá an loighic don argóint cosúil le caora leis an ngalar cromtha, ag dul timpeall agus timpeall gan bheith ag dul i ngleic leis an cheist.

Éamon Ó Cuív: Nach bhfuil soláthar san Acht a d'achtaigh muid uilig gan aon chur ina choinne ar chuile thaobh den Teach seo a dhéanamh? An t-aon bhealach leis sin a chur i gceart má tá fonn ar an Seanadóir ná an reachtaíocht a leasú. Tá an ceart sin aige. Níl mise i bhfabhar ach thiocfadh leis.

Mr. Coghlan: I thank the Minister. Nobody is arguing against the enhanced status of the langu-

[Mr. Coghlan.]
age. All we are asking is that the signs should be bilingual.

Éamon Ó Cuív: Both Houses, brought in this legislation. If the Senator wants to do this——

Mr. O'Toole: And we argued about it for weeks.

Éamon Ó Cuív: During the debate on the Bill, which involved no guillotine, we went through every line. Most of the time the argument was to do more, not less. The only way we can change it now is by amending the legislation. I do not intend introducing amending legislation. The Senator has that prerogative if he wishes.

Asylum Applications.

Mr. Bannon: I thank the Minister for taking this matter on the Adjournment. The situation with regard to Ms Odunsi and Ms Nwanze and their families is well documented and, I am sure, well known to the Minister. Elizabeth Odunsi and her four children, aged 17, 14, 11 and five years have been living in Athlone, County Westmeath, since 2001, having fled their own country of Nigeria. Their applications for refugee status were rejected as were their applications for leave to remain on humanitarian grounds. They were served with deportation orders.

Iyabo Nwanze and her two sons Emmanuel and Israel, aged eight and five years, respectively, have also been living in Athlone since 2001 and are also from Nigeria. They too were refused refugee status and leave to remain on humanitarian grounds and were served with deportation orders. The bottom line is that this is the sad story of families being split up and children being separated from their mothers. As a result a small boy of eight years of age is on the run in County Westmeath.

This boy, Emmanuel, the son of a Nigerian mother, Lyabo Nwanze, is essentially a fugitive. This small child has been left terrified, without family and forced into hiding. His mother and younger brother have been deported to Nigeria where they are living in a two-roomed house with six others. Emmanuel's brother Israel has contracted malaria.

People on the run seems like history repeating itself. However, far from this being the case of a patriot fighting for the freedom of his country who is forced into hiding, we are talking of a virtual baby on the run. It would be stretching the case to say that Emmanuel is a fugitive from justice. Perhaps it is more apt to say that he is a fugitive from injustice. I urge the Minister to consider from what this little boy is running or where he is running. No matter how he plays it, he is in a no-win situation. If he gives himself up, he will most likely be deported and will be reunited with his mother and brother. If he keeps

running, he will not get to see his mother, but will avoid deportation and keep alive the hope of a secure life in a safe environment.

It is inconceivable that in this day and age a little boy is forced to run and hide, spending just a day at a time in any one house. Is this what we expect in a country such as ours? The enforced separation of mothers and children is something which has no place in our society. The subsequent forcing of an eight year old child to run and hide from authority is reprehensible.

Imagine the horror and desperation of these two mothers who attended Athlone Garda station on Monday, 14 March, as requested for what they thought was a routine procedure. They were deprived of their mobile phones, brought to their homes to pack and were only able to take their younger children, who had finished school for the day, with them. Admittedly, they were brought to two secondary schools where their children were pupils, but failed to find them. No attempt was made to go to the national school attended by two of the other children. Imagine how these mothers felt being driven to the airport, not knowing where their other children were, hysterical in the knowledge that they were leaving Ireland without them. Basic humanity and regard for human rights seem sadly missing in this scenario.

Far from what has been said subsequently, Elizabeth and Lyabo did not abandon their children. On the contrary, they were forced to leave without them. Where was there any regard or adherence to the United Nations convention on the rights of the child, which states in Article 9.1: "State Parties shall ensure that a child shall not be separated from his or her parents against their will... ", in this appalling inhumane act?

The Minister for Justice, Equality and Law Reform, Deputy McDowell, said in the Dáil that he recognised the "moral force" of granting residency to a family who had been attending school here for several years and were integrated into the community. These families were certainly well integrated into their community and it was their desire that their children should be involved in education and attend school that led to their separation.

An Cathaoirleach: The Senator should conclude.

Mr. Bannon: Having fled unimaginable circumstances to bring their children to a secure home with safe access to educational facilities, Ms Odunsi and Ms Nwanze now find themselves with their homes torn apart——

An Cathaoirleach: The Senator has exceeded his time. He should conclude.

Mr. Bannon: —— and their children in hiding because of the actions of the State. It is now up to the State, and to the Minister to allow these

women to return to Ireland and be reunited with their families. He must let Emmanuel return to a normal home life.

Éamon Ó Cuív: I am here on behalf of the Minister for Justice, Equality and Law Reform. The persons named in this matter were asylum seekers and, in accordance with the policy of successive Ministers for Justice, Equality and Law Reform not to reveal the personal details of the cases of individual applicants for asylum, I will not repeat their names in the course of this response.

I point out that the matter raised uses two terms, “anomaly” and “forced separation”, which are intended to connote impropriety or even illegality with regard to the deportation of the two persons named in this matter. For the reasons I will outline hereafter, no illegality or impropriety whatever applies in this case.

The Minister has said this many times previously, in response to various parliamentary questions or Adjournment motions, that the need continues to record what the legal and policy background is to the deportation of persons who arrive in the State claiming international protection, if only to ensure that the actions which took place here are seen in a proper context.

Asylum seekers are persons who come here seeking refugee status. Their asylum claims are thoroughly investigated and if they are found not to be in need of protection under the Geneva Convention, they are no longer asylum seekers. Furthermore, before any deportation takes place, they are given an opportunity to voluntarily go home or to give reasons why they should not be deported.

There are two fundamental underlying principles with regard to the asylum process and the treatment of individuals who are not be found to be refugees at the end of that process, namely, that when asylum seekers come here and seek our protection their cases are fairly and independently examined and that a deportation process, after a person's case has been dealt with fairly, is central to the proper running of any immigration and asylum system.

The definition of a refugee is set out in section 2 of the Refugee Act 1996. Subject to certain exceptions, that definition is:

A person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, unwilling to return to it.

The task, therefore, in the case of each individual asylum seeker, is to determine whether, following

investigation, he or she is deemed to come within the terms of that definition on the basis of all of the information gleaned.

Under the Refugee Act 1996, two independent statutory offices were established to consider applications and appeals in respect of refugee status and to make recommendations to the Minister for Justice, Equality and Law Reform on whether such status should be granted. These offices are the Refugee Applications Commissioner and the Refugee Appeals Tribunal.

Every asylum applicant is guaranteed an investigation and determination of his or her claim by the Office of the Refugee Applications Commissioner in the first instance. Every applicant is also guaranteed a right of appeal to the Office of the Refugee Appeals Tribunal, which is a statutorily independent and statutory body. Every applicant is also guaranteed access to legal assistance provided by the Refugee Legal Service.

Under the provisions of section 17(1) of the Refugee Act 1996, the final decision on an asylum application is a matter for the Minister for Justice, Equality and Law Reform based on the recommendation of the commissioner or the decision of the tribunal. The Minister is obliged under legislation to accept such a recommendation, other than in very exceptional circumstances. When the Minister decides, under section 17(1) of the 1996 Act, to refuse to give a declaration of refugee status to an individual, notification is sent to the individual. He or she is then informed that three options are open to him or her. He or she may voluntarily leave the State; he or she may consent to a deportation order being issued in respect of him or her, in which case arrangements are made for his or her removal from the State; or he or she may make written representations within 15 working days setting out the reasons he or she should be allowed to remain temporarily in the State.

The safety of returning a person is fully considered when decisions are being made on whether to make a deportation order. Such consideration takes place under section 5 of the Refugee Act 1996. A person cannot be expelled from the State or returned in any manner to a State where, in the opinion of the Minister, the life or freedom of the person is threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion. Section 3(6) of the Immigration Act 1999, as amended, provides that the Minister must consider 11 factors when considering whether to deport a person. The factors include considerations relating to the common good, the person's family and domestic circumstances and humanitarian considerations. If the Department becomes aware that an individual is attending an educational institution and has examinations pending, such information is to be taken into account.

I propose to speak about the circumstances of the case raised by Senator Bannon. The two Nig-

[Éamon Ó Cuív.]

erian women referred to by the Senator were deported from the State on a charter flight to Lagos on the night of 14 March 2005. One of the women was accompanied in the State by four of her children and the other was accompanied by two children. The asylum applications of both women and their children were refused following negative determinations by the Office of the Refugee Applications Commissioner and the Office of the Refugee Appeals Tribunal. The cases were further considered under section 3(6) of the Immigration Act 1999, as amended, and section 5 of the Refugee Act 1996. Representations were made on their behalf for leave to remain in the State before deportation orders were signed.

The Minister has been informed that despite the best efforts of the Garda National Immigration Bureau to maintain the unity of the families on the day of the removals, the women refused to co-operate with the Garda in locating all their children. The women were deported in the company of just one child each. It is understood that the remaining four children, who were hidden from the Garda, were passed into the care of other local Nigerian nationals by their mothers. The Garda National Immigration Bureau informed the local HSE authorities of the circumstances as they related to the children.

The Garda is tasked with the execution of deportation orders. All persons subject to such orders are required to present at Garda stations for the purpose of their removal from the State. It is a priority, as far as it is operationally possible, to ensure that family units which are the subject of such orders are not broken up in the process of enforcing the orders. The Minister has been informed by the Garda Commissioner that in the circumstances which gave rise to the Deputy's questions, gardaí had to call to school properties to enforce deportation orders as a consequence of the failure by the parents to comply with a lawful request to present the family unit to the Garda. That a complaint has been made to the Garda Complaints Board about the matter precludes me from commenting further at this time. No decision has been reached by the board to date.

Notwithstanding the outcome of the complaint that has been made to the Garda Complaints Board about the manner of the removals, it cannot be denied that this problem arose as a consequence of a deliberate choice made by those who are now separated from their children. There was no forced separation and no anomaly arises. The behaviour of the parents in question cannot form a basis for revoking the deportation orders and the Minister does not intend to do so. Those who are caring for the children in this case should make themselves known to the authorities. In such circumstances, every facility will be made

available to enable the children to be returned to Nigeria to be reunited with their families. Such a successful family reunification was recently effected in Romania in respect of a Romanian child who had been deliberately left behind by his parents in the course of a charter removal operation from Ireland to Romania which took place on 2 June 2005.

Mr. Bannon: I appeal to the Government to adhere to the terms of the UN Convention on the Rights of the Child. That a child is on the run as a fugitive in Athlone, County Westmeath, gives a bad impression of this country. Every possible effort needs to be made to ensure that the child can be reunited with his mother.

Éamon Ó Cuív: I wish to make clear that the child is not on the run.

Mr. Bannon: Does the Minister know where he is?

Éamon Ó Cuív: No, I am not saying that. The child is not on the run. If the family co-operates with the Garda authorities, they will ensure that the child is reunited with his parents. This problem arose because the parents did not co-operate with the Garda in the first instance. It is not the Garda's fault that it became impossible to keep the family together — that happened as a consequence of a decision that was taken by the child's parents. I emphasise that there is no reason for the child to run away from the Garda, which is seeking merely to reunite the family in question.

Airport Development Projects.

Ms Tuffy: I initially tabled this Adjournment matter to the Minister of Defence, but I was informed that it was a more appropriate matter for the Minister for Transport. I would like representatives of the Departments of Defence and Transport, south Dublin and Kildare county councils and the Irish Aviation Authority to meet to discuss issues relating to the current and future use of Weston Aerodrome, which is a matter of concern for many interested bodies. I understand that problems are being caused by the failure to give responsibility for the aerodrome to any single authority. An official from the Department of Defence recently wrote to the aerodrome, on behalf of the Minister, to ask whether a proposed development at the aerodrome constitutes a runway and to express concerns about its potential impact. The Department is concerned that if it agrees to allow the aerodrome to be used in the proposed manner, it will be deemed to have sanctioned unauthorised planning. It would be concerned about the development even if it were authorised.

This is an issue of concern for local residents. Baldonnel Aerodrome is quite close to Weston Aerodrome. Many of the matters of concern relate to safety. I do not wish to prejudge the outcome of the meeting between the various interested parties. We need to ensure that future development is considered by such groups. They should come together to form a co-ordinated opinion as a single entity. I hope the meeting I have suggested will help to initiate such a process. I have raised this matter for that reason. I do not know what the Minister of State's response will be, but I hope it is positive. I do not want the current and future development of Weston Aerodrome to be hindered by a lack of co-operation between the various bodies which are interested in its future use and development.

Minister of State at the Department of Transport (Mr. Callely): I thank Senator Tuffy for raising this matter. I understand her concerns clearly. I will outline the current set of circumstances at Weston Aerodrome, which is privately owned, as the Senator is aware. The aerodrome, which has operated since 1938, is licensed by the Irish Aviation Authority in accordance with the Irish Aviation Authority (Aerodromes and Visual Ground Aids) Order 2000. The remit of the authority in issuing the licence extends to aviation safety standards. The local authorities are responsible for the planning of land use at and in the vicinity of Weston Aerodrome, in accordance with the Planning and Development Act 2000. In addition, the Irish Aviation Authority is a notice party under the planning and development regulations, SI 600 of 2001, so that any development with the potential to endanger or interfere with the safety or safe and efficient navigation of aircraft is sent to the Irish Aviation Authority.

Weston has been a landmark on the Kildare-Dublin border. The people who have flown there have witnessed enormous changes in aviation from the era of piston engined propeller planes through to the modern jet age and the explosion of commercial air transport. Over this long period, Weston has played a key role in the development of private flying in Ireland, training large numbers of pilots to fly both light aircraft and helicopters. In addition, it numbers among its achievements being the home base for flying sequences in a number of international films made in Ireland and it has provided a very valuable amenity for leisure and corporate aviation and for flying training for almost 70 years. Ireland has played an important part in the history of aviation generally.

With the huge growth in the amount of commercial aviation at Dublin Airport, the opportunities for leisure flying there are now extremely limited. Weston's role in regard to light aviation will be even more important in the years to come. I understand that the new owner has been

investing in the development of facilities at Weston. I am sure this will enhance greatly the amenity value of the aerodrome for light aviation in Ireland. It is essential for all of this development to comply fully with the safety requirements of the Irish Aviation Authority and the local authority planning requirements.

In recent years, the development of surrounding areas such as Lucan has resulted in large residential areas being built up close to Weston Aerodrome. I appreciate that new residents have some concerns. The issues of flight paths, minimum flying heights and safety regulation are matters which fall within the remit of the Irish Aviation Authority which is responsible for the day-to-day oversight of aviation safety. The authority is satisfied with the safety levels at Weston aerodrome. Senator Tuffy and the House will appreciate the developments at Dublin Airport where an amount of commercial aviation takes place. It is in the best interests of leisure flying and other matters relating to training in light aircraft and helicopters that it should be separated from the huge volume of commercial aviation in and out of Dublin Airport. Mixing both could cause complications. There is a beneficial impact in separating Weston from this activity.

I understand that some issues have arisen in connection with the possibility of larger aircraft using Weston encroaching on the airspace of Baldonnel Aerodrome, which is the home of the Air Corps and subject to military regulation. Senator Tuffy referred to Department of Defence developments at Weston. I have been informed by the Irish Aviation Authority that it indicated to Weston Aerodrome that it must reach a suitable agreement with the Department of Defence and the Air Corps before such flying activities can be authorised at Weston.

With regard to the substantive issue raised by Senator Tuffy, the regulation of safety at civilian aerodromes is a matter for the Irish Aviation Authority, for which I have responsibility, and the local authorities responsible for planning matters, which are the responsibility of my colleague, the Minister for the Environment, Heritage and Local Government, Deputy Roche. My Department has no direct role in either area. Consequently, a meeting of the kind proposed by Senator Tuffy requires clarity and an agenda set in regard to what she wishes to achieve. I do not want to say "No" to a meeting which might be beneficial. On the other hand, one must know exactly what the meeting would seek to achieve and on what basis it should be called. It may be unnecessary to have the meeting proposed by the Senator but she may have an input into the authorities which are already meeting, which would achieve what she desires.

The Irish Aviation Authority has met with South Dublin County Council and Kildare County Council regarding Weston aerodrome. In

[Mr. Callely.]

the normal routine of business, these meetings are likely to continue to take place in the future, particularly in light of any proposed developments the new owner of Weston may wish to carry out. There is a process in place which must be adhered to in regard to any such meetings with the statutory authorities, depending on the application. I would like to be as helpful as possible to Senator Tuffy and the House. Perhaps she could contact South Dublin County Council and Kildare County Council in regard to the progress of the meetings they have had. The authority for which I have responsibility will be happy to assist the Senator. Perhaps she could make direct contact with the new owners of Weston, who might

be able to advise her of their proposals for the current and future use of the aerodrome. After exploring that avenue, if I can be of any further assistance, the Senator is more than welcome to contact me.

Ms Tuffy: I appreciate that the Minister of State indicated he might consider a meeting in the future. I might come back to him on that. The Department of Defence believes the local authority should not grant certain planning permissions. Perhaps the Department should discuss the issue with the county councils. I may come back to the Minister of State on the matter.

The Seanad adjourned at 8 p.m. until 10.30 a.m. on Thursday, 16 June 2005.