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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Tuesday, 21 *June* 2005.

SEANAD ÉIREANN

Dé Máirt, 21 *Meitheamh* 2005.
Tuesday, 21 *June* 2005.

Chuaigh an Cathaoirleach i gceannas ar 1.30 p.m.

Paidir.
Prayer.

Business of Seanad.

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

> The need for the Minister for Communications, Marine and Natural Resources to end the practice of using drift netting for salmon fishing in Irish waters.

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

> The need for the Minister for Health and Children to give an update on funding and staffing for Tuam Cancer Care for the respite unit at Áras Mhuire, Tuam, County Galway, which is not currently in use.

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

> The need for the Minister for Education and Science to make an urgent statement on the plans by her Department to reduce the number of teachers from 16 to 13 at St. Kevin's boys national school, Kilnamanagh, Tallaght, Dublin 24.

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

> The need for the Minister for the Environment, Heritage and Local Government to clarify the situation regarding the intended future usage of Killarney House and the immediate vicinity thereof, particularly the gardens.

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

> The need for the Minister for Health and Children to clarify if it is still the intention of the Health Service Executive to provide an Alzheimer's unit at St. Ita's hospital, Newcastle West, County Limerick, and if so, when construction will commence.

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

Order of Business.

Ms O'Rourke: Lest Senators think my aim in life is to make uncertainty prevalent for them, which it is not, the reason we are sitting at 1.30 p.m. today is that we were to take the Electoral (Amendment) Bill tonight but for some reason it will not now be taken. The time of the sitting had been given in the Chamber and the notices had been sent out prior to our being told the Bill would not be taken.

The Order of Business today is Nos. 1, 2 and 3. No. 1 is a referral motion whereby the subject matter of No. 14 on today's Order Paper is being referred to the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights for consideration. It aims to increase efficiency in the exchange of information concerning terrorist offences between the member states, Europol and Eurojust. It is proposed to take this item without debate; No. 2, the Disability Bill 2004 — Report and Final Stages, to be taken on the conclusion of the Order of Business until 4 p.m.; and No. 3, the Civil Service Regulation (Amendment) Bill 2004 — Second Stage, to be taken at 4 p.m. until 6.30 p.m. with the contributions of spokesperson not to exceed 15 minutes and those of other Senators not to exceed ten minutes. The Minister will be called on to reply not later than ten minutes before the conclusion of Second Stage.

Mr. B. Hayes: The State owes a particular debt of gratitude to one of the finest public servants the country has ever had, Mr. Kevin Murphy, the former Ombudsman. We should reflect on his remarks yesterday. He clearly stated that it is incumbent on Governments and Ministers to take responsibility for areas for which they are responsible. Mr. Murphy also highlighted another issue, namely, parliamentary scrutiny. Many of the inquiries we have had would not have been necessary had there been proper parliamentary scrutiny. Far too often — I say this about all Governments in recent years — we have seen a centralised approach where the chief executive of the Government, the Taoiseach, and his Ministers operate in a way whereby everyone else is excluded. We must take Mr. Murphy's comments on parliamentary scrutiny on board.

Are there too many Oireachtas committees given that Members must spend much time attending committees and plenary sessions with not much effective work being done? Too often the committee system is seen as a method of patronage for chairmen, vice-chairmen and Whips. In that context, we also need to look at a relaxation of the Whip system. There is much talent on both sides of this House but, because the

[Mr. B. Hayes.]

Whip is used by the groups and the parties, too often we do not hold Government to account. Will the Leader make a statement on the current state of the Seanad reform proposals which she, I and others presented to the House last year? What exactly is happening? This House has a considerable role to play in terms of parliamentary scrutiny.

Over the weekend the Secretary of State for Northern Ireland sent Mr. Kelly, one of those responsible for the Shankill bombing, back to prison because in his view, he broke the terms of the licence on which he was freed following the Good Friday Agreement. The prisoner release programme happened in both jurisdictions. As I understand it we do not have the same facility in this jurisdiction to put back into prison those who may be outside the terms of their release whereas in Northern Ireland the Secretary of State holds that power. The Government needs to look at this issue. If persons have been released from prison in this jurisdiction and are doing things outside the terms of their release, we need to have the same protection in this jurisdiction as is the case in Northern Ireland.

Mr. O'Toole: I fully understand the point made by the Leader regarding the change to the schedule and I do not have an objection to it. However, we should stick to a starting time, whatever it be, unless a matter of urgency arises. The reason I make that point is that I cannot remember another time in my 18 years in this House when 15 Seanad Bills were waiting to be dealt with in the other House. I find it difficult to understand why there is anything of urgency coming to us from the Dáil. I do not know how it organises its business and it is not my business to comment on it. We have worked our way through all those Bills. That we should meet early to deal with another Bill does not make sense. I know what the Leader is saying. I know we should be ready to adapt but in terms of having an orderly approach to procedure, we should only do so if it is absolutely necessary.

I carefully read and reread what Kevin Murphy said yesterday. I agree with what Senator Brian Hayes said about the need for a debate on this matter. The problem is I do not see a debate taking place here. I guarantee that if we have a debate on the matter here it will break down immediately along party lines. It will be about what happened when such and such a party was in Government. I thought there was a flaw in what Kevin Murphy said yesterday. He did not distinguish between accountability and responsibility and he used the words as synonyms for each other as he went along. There is a clear distinction. Whereas the Minister should always be responsible it is not clear that he or she should be always accountable. We need to make that distinction. Mr. Murphy's point is well made that if a committee of the Houses of the Oireachtas includes in its report that it does not know what level of responsibility we should seek from a Minister we have a serious problem. There is no doubt about that. We need to make a distinction between what somebody should do if he or she is responsible and what he or she should do when accountable. That will inform our debate.

I do not know whether Members would agree with the element of the Department of Education and Science budget which is sent back each year to the Exchequer because the money is not spent. Every day, including today, issues relating to the education budget, teacher numbers, school buildings, school transport and so on are raised. We cannot afford to put seat belts in school buses, to replace the school bus fleet, to put more teachers in our schools or to look after children with autism. How can that be the case if the Department of Education and Science is not drawing down money each year? It is impossible to explain that to the education community, including parents and teachers. School boards of management cannot understand how that is the case. Irrespective of what side of the House we are on, we know of school communities seeking action in their area whether for a child with special needs, to build a school, to get transport, to get an extra teacher or maintain a teacher. It all boils down to money, yet we are told that in the past eight years hundreds of millions of euro have not been drawn down. It is a nonsense. If it is a flaw in the way in which the books are kept in terms of the cash through-flow, that is an issue we need to deal with. It makes a laugh of the budgeting system that we spend a good deal of time dealing with this each year. Schools and educational establishments need more information and need to be better served by that budget.

Mr. Ryan: I am not wildly happy with No. 1. The phrase, "the efficient exchange of information with a view to dealing with terrorism" could mean many things. This matter has been referred to a committee, which must report back to the House by Wednesday, 29 June. It does not give me great hope that it will be thoroughly discussed anywhere and it seems to have fairly widespread ramifications. While I will not make a big issue of the matter, it should not slip through without comment. I would like to know the outcome of the committee's deliberations. If the committee produces a report, it should be circulated to Members, at least, before 29 June. I do not simply want confirmation that it has considered it, I also wish to know its conclusions.

One of the newspapers yesterday reported that 250 children who had arrived unaccompanied and were classified as asylum seekers are now missing. It is the single most horrendous occurrence I have come across in some time. Whatever about the intricacies and the position taken by the Minister, we all have a moral obligation when a child is in trouble. If a child runs out on the road we do not stand back and claim to have no legal responsibility. It is our moral responsibility to look after children anywhere. It is a scandal for 250 children

who have come to this country to have gone missing and we do not know where they are. I call on the Leader to ask the Minister to come here and explain how it happened, why people forgot and why the children were placed in inappropriate accommodation with adults in many cases. As only 250 people are involved, the entire budget of the Department of Justice, Equality and Law Reform will not be consumed. This is about our human moral obligation to look after children because they come under our ambit. I understood we all accepted this and I hope we will do so in the future.

While I recognise that time during the remainder of the session is becoming scarce, we need to discuss the EU at some stage. The pathetic sight of the poorest countries in Europe offering to cut back on their aspirations in order to resolve a high political squabble or row between Britain and France is not exactly the spirit of the EU those of us who have been involved in it and prospered from it have come to expect. It is in a terrible mess.

I am extremely wary of the objectives of the United Kingdom, which I believe are to knock down many structures that have made the European Union distinctive and particularly its social model. We need a debate preferably on a day when our MEPs can attend. While I am not attempting to break the rules of the House, perhaps a Friday or a Monday would be best. We need a joint debate with our MEPs on this extremely serious matter. I appeal to the Leader to try to find time before we break up for the summer.

Mr. Mooney: I support the views on the EU expressed by Senator Ryan. I am sure the House will agree that the Taoiseach played a very substantial role last week. At a time when everybody is bemoaning the lack of strong leadership in Europe, as a small country we should be justifiably proud of the increasingly statesmanlike stature of the Taoiseach and the manner in which his credibility has soared in recent months on the European stage. I say this as an Irishman proud of the Taoiseach.

I ask the Leader to urgently communicate with the Minister for Communications, the Marine and Natural Resources over concern that has been expressed at an internal RTE decision to cease the broadcast and transmission of sporting events, particularly GAA commentaries and reports, on long wave and medium wave from 1 July and to transfer them exclusively to FM, which even those Members with the slightest knowledge of broadcasting transmission will know will limit access to the service to those within the island of Ireland.

I have just returned from a weekend at the annual congress of the Federation of Irish Societies, which represents more than 100 affiliated community-based activists throughout the UK. These people work among the most vulnerable and elderly of our society who rely on the traditional medium of radio. I do not want to hear a response from RTE that these broadcasts can be picked up on satellite or the Internet, which, is also questionable following this appalling decision. I would like to know who in RTE made this decision. It will create enormous isolation and will send an appalling message to the Irish abroad that the national broadcaster is abandoning them.

In this regard, does the Leader believe that it would be timely to have a follow-up debate on the task force report on emigration? The House debated it 12 to 18 months ago and we can use this debate to acknowledge the increasing revenue being placed before Irish emigrant organisations in the UK and in the US. It would also be an opportunity to report progress on what has been happening. Following her recent visit to America, the Leader will be aware that there are a number of issues to be discussed.

Mr. Finucane: Politicians should be extremely concerned about an article that appeared in one of the Sunday newspapers that claimed that up to 800,000 polling cards were issued which were surplus to requirement. We should all recognise that the present system concerning local government administration and its approach to electoral registers has failed. Any Senator who checks the register in his or her own area will quickly discover that it is out of date. We should contrast it with the situation in the North of Ireland, where the electoral register is independent of the Government and, according to all accounts, seems to be working effectively. The present system in this country will lend itself to widespread fraud. All we need is 8,000 people to vote fraudulently, representing 1% of the surplus polling cards, and politicians' jobs could be lost. It is incumbent on the Minister for the Environment, Heritage and Local Government to look closely at this situation and to outline his intentions to this House. The present system should be changed. There will be a census next year so we will have a chance to make changes in this country in order to change the existing system.

The system used to work effectively in the past, mainly due to the mainstream political parties which had a very vigilant approach to the registers in their area. Changes have taken place in every town around Ireland and we cannot keep up with it. It is time for urgent change.

Ms Feeney: I congratulate all those involved in having Irish recognised as an official EU language. In the past two weeks, my daughter has been sitting her leaving certificate examinations and I read with interest the opinions of people on the examination papers that she sat. I was amazed to read about the Irish paper and the problems that Irish poses for students. We have more students in this country taking higher level French than are taking higher level Irish, even though they have been taught Irish since the beginning of primary school. It is now causing such a problem

[Ms Feeney.]

for students that they are being exempt from it. It is up to the school to deem whether the student should be exempt from Irish.

Can we make time in the autumn to look at the area of teaching Irish? There is obviously a problem with it when more children are taking higher level French than Irish, even though they are only exposed to French from the age of 13. Irish is a requirement to gain entry to universities. If we do not have this debate now, the day will come when Irish language and culture will become as rare and as under used as Greek and Latin.

Dr. Henry: Senator O'Toole speaks of the amazement of those in the education sector at the return of millions of euro to the Department of Finance. Can one imagine, knowing the trouble in the health service, how people felt when they saw that €70 million was returned to the Department of Finance? While no one wants to see money spent unwisely, surely some of the funds could have been redeployed given the great number of important issues to be addressed in the health service.

I ask the Leader again this week to request the attendance of the Minister for Health and Children to discuss MRSA infections in hospitals. I raised last week the sending of a short paper by clinical microbiologists over a year ago to the Department in which they set out recommendations on the combatting of these dreadful infections. They have not had a proper reply. Apparently, the Minister is to bring in a professional group from the United Kingdom to examine the matter, which means it will take another year before we get anywhere. I was fascinated by the comment of a Member of the Dáil who said of a Minister that he was always one report away from a decision. I would not like to think the same was true in the case of MRSA given that approximately 100 people die from these infections in our hospitals every year. It is a dreadful state of affairs. It would be wrong to allow another year to go by before making any further progress on the issue.

An Cathaoirleach: As many Senators are offering, I ask speakers to be as brief as possible.

Dr. Mansergh: No. 3 on today's Order of Business, Second Stage of the Civil Service Regulation (Amendment) Bill 2004, allows the House to discuss one aspect of the responsibility and accountability of Ministers and civil servants, respectively. Members may have noticed that the Taoiseach decided to seek more information yesterday on the revocation of a particular licence. While few people will disagree with the principle involved, it is important to ensure such decisions are adequately grounded and open to some scrutiny. If they were not, the decision would represent a very arbitrary power.

Mr. Coghlan: Killarney House and its environs form an integral part of Killarney National Park and are its nearest aspect to Killarney town being virtually in it. In fact, the house and its environs back onto one of the town's streets. The town council, townspeople and people of Kerry are concerned that Killarney House has been locked up and idle for seven years. It is time for an early announcement of the Government's revised programme for the park. I use the word "revised" because the management plan which was originally launched over ten years ago is out of date and I gather there is a new one which exists in draft form.

Mr. Kitt: I rise to follow up on the failure to draw down funding in the Departments of Health and Children and Education and Science. There is a great deal of concern about smaller schools losing teachers. The INTO published figures in Roscommon recently on 12 schools nationally, each of which lost a teacher because the schools were just one pupil under the retention figure last September. At a time of investment of significant resources in education, it is an especial blow to smaller schools to lose a mainstream teacher.

Mr. B. Hayes: Hear, hear.

Mr. Kitt: I would like the Leader to find out more about underspending and the failure to draw down funds in the Departments in question.

Mr. Bannon: I support the call by Senator Brian Hayes for an update on Seanad reform proposals. When Senator O'Rourke took over as Leader of the House, it was one of her aims, as announced in a fanfare of publicity, to bring forward legislation in this area. We have heard very little since the report was published.

I ask the Leader to invite the Minister for Agriculture and Food to the House to attend a debate on beef premium penalties of over €90 million which are to be imposed on Irish farmers. All the farming organisations were outside the gates of Leinster House and in Buswell's Hotel last week protesting on this issue. As a farmer, I believe we should not be penalised following the changeover to full decoupling. Commitments were given by the former EU Commissioner, Mr. Franz Fischler, and the then Minister for Agriculture and Food, Deputy Walsh, that no penalties would be imposed on Irish farmers if we opted for full decoupling at that time. It was made clear that individual farmers would not lose out from the changeover to full decoupling. There is an onus on the Minister to honour this commitment. As we speak, all agricultural enterprises are in a very depressed state.

2 o'clock

Dr. M. Hayes: The point I was going to raise has been fairly adequately dealt with by Senator Mansergh. Many people think the grounds for revocation were decidedly iffy. I am glad the Taoiseach has asked for the grounds, and if he is

not able to tell us what the grounds were at least he could tell us that there were grounds. One suspects it had more to do with political expediency than with security.

I would like to touch briefly on Senator Ryan's point on the way we deal with European legislation. While nine out of ten directives are quite routine, every now and again there is one which has important implications for human and civil rights which there should be some way of flagging.

While I would support the plea for a revision of the electoral arrangements and the register, as a simple voter in Northern Ireland, the system there appears to be designed to keep people from voting as much as anything else. At a time when the problem is to get young people to vote, the system should be voter friendly while at the same time designed to prevent fraud and so on.

Mr. U. Burke: This week and next week, the school bus fleet will be taken off the roads until next September. It is not long since the Members of this House, the media, parents, school boards of management and so on mourned the tragic loss of the children in Meath. Last week a school bus went on fire but luckily there were no children on board and a child remains in a critical condition after falling through the back window of a school bus yesterday.

What will it take for the Minister who has responsibility for the school bus fleet to accept responsibility and either take some of those buses off the road completely and replace them, or at least bring them to a state of roadworthiness? As Senators Kitt and O'Toole have mentioned, this is particularly important when we see the return of funds to the central Exchequer and when the Minister stated clearly after the Meath tragedy that it would take considerable funding, which was not currently available to the Department. The Leader should ask the Minister to ensure adequate tests for roadworthiness are carried out and, where necessary, that ramshackle buses are taken off the road and replaced so children can travel in safety and parents are not unduly concerned about their safe return home.

On the return of funding, Senator Feeney mentioned the Irish language. It is unacceptable that so much funding will be spent on translating, out of necessity, documents which will become useless, particularly documents of a technical nature. This funding could be used very well in other areas to promote the Irish language, such as in the provision of textbooks in Irish to children in Gaeltacht areas. This is not being done. We must get our priorities right and I ask the Leader to ensure this happens.

Senators: Hear, hear.

Mr. P. Burke: Will the Leader arrange a debate on tourism, which is one of our most important industries? We have recently noted a great drop in the number of visitors to Ireland, particularly to the west. The Minister for Arts, Sport and Tourism said he has carried out one of the most comprehensive surveys every carried out in the United Kingdom on the locations to which UK tourists are going. He has given a few flimsy excuses as to why they are not coming to Ireland, one of which is that they believe they can come to Ireland any time they like. The second excuse is that, to the UK tourist, Ireland represents more of the same or is much the same as the United Kingdom. We should have a debate on tourism and the survey carried out.

Mr. Browne: I agree with Senator Finucane on the article in the newspaper last Sunday. It is time we considered the use of the PPS number when registering people to vote. It would solve many problems and also present opportunities. This is especially the case in respect of presidential elections. If, for example, somebody from Carlow found himself in Donegal at the time of an election, he could legally vote in Donegal. This makes sense. We should update our outdated system and consider having a national holiday to encourage people to vote. Often they cannot vote if they are commuting and travelling great distances. We should examine these issues.

I agree fully with Senator Henry on the MRSA superbug. I recently attended a meeting in Kilkenny involving people who were directly affected by the bug. One lady, who had been in a ward with four others, explained she found out she had MRSA when the contract cleaners came into the ward. One cleaner asked the other what mop he was using around the lady and when the latter asked why he wanted to know, the former said it was because the lady had a serious infection. This is truly shocking. One can imagine the lady's reaction and that of the patient beside her.

Last week we heard a presentation on cystic fibrosis. The representatives said their greatest fear on going to hospital did not pertain to cystic fibrosis but was that they might pick up the MRSA superbug while there. It is time urgent action was taken on this issue.

Ms O'Rourke: Senator Brian Hayes, the Leader of the Opposition, praised one of the finest public servants the country has ever had, Mr. Kevin Murphy. I agree with the Senator in this regard. Mr. Murphy talked about parliamentary scrutiny and said he felt Deputies and Senators were not holding the public system sufficiently accountable because they are rushing around doing constituency business. These words were quoted in the newspaper and I can only presume he said them. I suppose he never had to run for public office. I am not being snide in saying this but I am just making a comment. One of the abiding dilemmas for public representatives concerns the division of time and labour between parliamentary duties, including business in the Houses and committees, and keeping one's seat, getting it back or getting on the ticket. These tasks all eat into one's time. I noted Mr. Murphy's

[Ms O'Rourke.]

remarks on public accountability. He would know about this from experience. He also had some good points to make, born of his vast experience within the parliamentary democracy system.

Senator Brian Hayes also referred to the relaxation of the Whip system in committees. This would be a feature of the ideal world, in which we could vote as we wanted rather than according to the policies of our parties. It would be heaven to be able the vote the way we wanted, rather than according to the party line. However, that is not allowable.

Mr. Bannon: It would entail having to break ranks.

Ms O'Rourke: We await Fine Gael's return to office to do that.

The proposal regarding Seanad reform was raised by Senator Brian Hayes and Senator Bannon. As Senator Brian Hayes is aware, there was a delay regarding two Members being put forward for the committee. The Progressive Democrats, Fianna Fáil and the Independents put forward their Members. There was a long delay following which the Labour Party put forward its Member and after another delay, Fine Gael put forward its Member. All are now in place. I regularly see the Minister for the Environment, Heritage and Local Government, Deputy Roche, about the matter. He has assured me he would have a meeting of the five people on the committee before the end of the session and we will then set about implementation.

Senator Brian Hayes also raised the matter of the Secretary of State for Northern Ireland, Mr. Peter Hain, and the return of Mr. Seán Kelly to prison. The Senator asked whether we have the same facility in this jurisdiction. It appears we do not.

Senator O'Toole raised the matter of the 15 Seanad Bills on the Dáil Order Paper. Earlier in the session, Senator Ryan, offered his services to the Dáil as a consultant in terms of processing Bills. The collective Members of the Seanad could offer themselves as consultants in this regard, however, we do not know what the other House might think of the idea. I cannot understand how there can be 15 Seanad Bills on the Dáil Order Paper, although there has been a rush in the past ten days to get them processed.

Mr. O'Toole: They should be kept working at it.

Ms O'Rourke: That is right.

Senator O'Toole also said a Minister should be responsible even where he or she is not always accountable. The failure by some Departments to draw down allocated moneys is extraordinary. I got caught once on that, in my first year as Minister for Education, but I never got caught again. Every three months I would ask the Secretary General of the Department for an update on expenditure. It was the only way to keep track of it and I never returned another penny to the Department of Finance.

Mr. Ryan: Well done.

Ms O'Rourke: The Department of Education and Science has a great many calls on its resources and should use its money accordingly. The needs are myriad in education and health and the money could well be used. Senator O'Toole said that this was making a laugh of the budgetary system. In one of today's newspapers, Dr. Moore McDowell argued that it was a mark of honour to return money. I believe it is a mark of foolishness, not honour.

Senator Ryan referred to No. 1 on the Order Paper. It is proposed that the work of the committee will be completed by next Wednesday. The Senator asked for a report on the committee's deliberations and I will seek one. I am uneasy about saying there will be no debate on matters of this kind because I do not know what is happening within the committee system. It must be asked if we are in danger of letting matters through which are not fully debated and might need further scrutiny. We do not know.

Senator Ryan also referred to the 250 children who are seeking asylum and who have gone missing. The Senator rightly says we have a moral obligation to look after children.

The Senator also referred to the ignominy over what happened in Europe on Friday and Saturday. The Taoiseach's distress was very clear. I believe it arose because he never dreamt that Prime Minister Blair was going to do what he did, given that they had done such great work together. However, it should be said loud and clear that the British signed up to the CAP decoupling settlement in full knowledge of what it would mean. Now, because of internal politics and because Mr. Blair obviously wants to stay longer in Downing Street, they are playing games with what is a very serious matter. The Senator rightly referred to the embarrassment caused by the poorer countries offering to return some of the funding due to them.

Senator Mooney rightly praised the Taoiseach as a strategist and statesman. He said the Minister for Communications, Marine and Natural Resources should ask RTE why, from 1 July, all sporting events covered by radio will be heard only on the FM bandwidth. I cannot understand the decision about which the Senator seeks a debate, nor was I aware of it. I will ask the Minister whether he is aware of it and if he will raise the matter with RTE. The Senator also called for a debate on the task force on emigration.

Senator Finucane raised the electoral registers. Spread around, 8,000 votes would make a difference in many seats. When politics was more pervasive and attracted more volunteers, a person's name was removed from the register when he or she died and the names of girls and boys were added when they reached 18 years. There was

local scrutiny — we used to be great at it — and people prided themselves on being expert watchers of the electoral registers. This type of occupation or task appears to have died away. Perhaps a body other than the county councils should take responsibility for the registers. When the issue is raised every so often county managers or those with responsibility for the register indicate they are taking action.

At one time, rent collectors visited every house and would ask if anyone had turned 18 years or had left the household. Swatches of people would be removed from the register at each election and everybody would ask who had removed the names. It would be Government parties versus Opposition parties.

Mr. B. Hayes: It was usually an internal battle.

Mr. Ryan: The Labour Party would never get involved in that; we would leave it to Fianna Fáil.

Ms O'Rourke: We should suggest to the Minister for the Environment, Heritage and Local Government that next year's census would offer an opportunity to change the system.

Senator Feeney raised the issue of Irish as a spoken language, which the House discussed last week while she was attending a committee meeting. The Senator is concerned about how the language is taught and the possibility that it will fall into disuse if the current position is allowed to continue.

Senator Henry referred to the €78 million allocated to health which was returned to the Department of Finance. Given all that needs to be done, no one can understand this decision. The Senator also requested that the Minister for Health and Children come before the House to debate MRSA. Marian Finucane's radio programme featured a most riveting discussion on the issue this morning. The descriptions of bathrooms and wash rooms in well-known hospitals — Ms Finucane would not allow speakers to mention the names — were awful. Ireland has the third highest incidence of MRSA in the world. It is terrible that one goes into hospital to be cured and leaves with an incurable disease.

In response to Senator Mansergh's request, we will have an opportunity to discuss ministerial and Civil Service responsibility and accountability during the debate on the Civil Service Regulation (Amendment) Bill 2004. The decision on the revocation of a licence should be open so that people will know the reason a person is returned to prison.

Senator Coghlan noted that Killarney House has been locked up for seven years. Senator Kitt raised concerns about schools losing teachers. I cannot understand the position that has developed. Senators receive circulars which make everything sound wonderful but the letters we receive from schools do not match the fine words in the circulars. The number of teachers in disadvantaged schools appears to have decreased or else the number of disadvantaged schools has decreased. I do not know which is the case but the rhetoric does not match the delivery. We will endeavour to have the Minister come before the House to discuss the matter.

I replied to Senator Bannon's first question. He also requested that the Minister for Agriculture and Food come before the House to discuss the beef overshoot and associated penalties. We will see what we can do in the time left this session. The Minister is at the top of the pile.

Senator Maurice Hayes described the revocation of Mr. Kelly's licence as iffy and stated there should be grounds for such a revocation. He also referred to the manner in which European legislation is dealt with. As other members of the Joint Committee on Foreign Affairs will be aware, we nod our heads in agreement when a list, which means nothing to us, is placed before us. There is a worry that important matters are overlooked.

I could not agree more with Senator Ulick Burke's comments on the school bus fleet. While a new bus fleet should be acquired, it would be helpful if the ramshackle buses were taken out of service and replaced immediately. We have two months to do so before term begins.

The money sent back by the Department of Health and Children would buy an entire fleet of buses.

Senator Ulick Burke also asked about the ramshackle buses and objected to the expense of publishing technical documents in Irish when very few people will read them. When we embraced the Official Languages Act, we embraced it in all its manifestations — that is what the Minister for Community, Rural and Gaeltacht Affairs will say.

I saw the downturn in the tourism figures mentioned by Senator Paddy Burke. The west, midwest and south west suffered a decline in numbers and I will ask the Minister for Arts, Sports and Tourism to come into the House for a debate on tourism.

Mr. P. Burke: The survey should be published.

Ms O'Rourke: Is that what the Senator would like?

Mr. P. Burke: I would like both to happen.

Ms O'Rourke: The Minister could come into the House to discuss it.

An Cathaoirleach: Order please.

Ms O'Rourke: The Cathaoirleach can tell the Leas-Chathaoirleach to behave.

Mr. B. Hayes: We might get a Whip with this.

Ms O'Rourke: Senator Browne asked about PPS numbers being used when people are registering to vote and for polling days to be national holidays. Would that be every time there is an election?

Mr. Browne: When there is a general election.

Mr. B. Hayes: That is what they do in America.

Ms O'Rourke: The Senator also asked about MRSA. I will invite the Tánaiste and Minister for Health and Children into the House to address the issue.

Order of Business agreed to.

Treaty of Amsterdam: Motion.

Ms O'Rourke: I move:

That the proposal that Seanad Eireann approve the exercise by the State of the option or discretion provided by Article 1.11 of the Treaty of Amsterdam to take part in the adoption of the following proposed measure:

proposal for a Council Decision on the exchange of information and co-operation concerning terrorist offences,

copies of which have been laid in draft form before Seanad Eireann on 16 June 2005, be referred to the Joint Committee on Justice, Equality, Defence and Women's Rights, in accordance with paragraph (1)(Seanad) of the orders of reference of that committee, which, not later than 29 June 2005, shall send a message to the Seanad in the manner prescribed in Standing Order 67, and Standing Order 69(2) shall accordingly apply.

Question put and declared carried.

Disability Bill 2004: Report Stage.

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

Amendment No. 1 not moved.

Dr. Henry: I move amendment No. 2:

In page 6, line 17, after "impairment" to insert ", a person who has a physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities".

As the Minister of State is aware, concern has been expressed in some quarters that a condition such as multiple sclerosis or, as the Minister of State himself put it, bipolar disorder, might not be covered by the Bill because, while the condition is enduring, its signs and symptoms may not be.

In the June edition of *Insight*, Ireland's health and social affairs monthly, an article details minor changes pledged to the Bill. It states in this article that when the Disability Legislation Consultation Group met the Taoiseach, he confirmed that episodic conditions are covered in the Bill's definition of disability. Despite what the Minister of State said last week when I asked if a condition had to be enduring, or if it would suffice if there were signs and symptoms with remissions and relapses, Senator Norris felt this amendment was advisable.

I seek the assurance of the Minister of State, Deputy Fahey, that as the Taoiseach said, conditions which are episodic come under the definition of disability. While 50% of multiple sclerosis cases are progressive, the other 50%, thankfully, are only on-and-off cases. This is why Senator Norris and I tabled this amendment.

Ms Terry: I second the amendment.

Ms O'Rourke: Why was amendment No. 1 not moved?

An Cathaoirleach: It was ruled out of order.

Ms O'Rourke: Amendment No. 2 proposes to include in the definition of disability, "a person who has a physical or mental impairment which has a substantial long term adverse effect on his ability to carry out normal day-to-day activity". Is there a list of the impairments or disabilities that are covered by the Bill? The Minister of State is shaking his head, so I take that as a "No". Correspondence from the Multiple Sclerosis Society of Ireland received by all Members, stated emphatically those affected with multiple sclerosis are not included in the terms of the Bill. I would certainly describe a person with multiple sclerosis as impaired. Are they included in the Bill?

Minister of State at the Department of Justice, Equality and Law Reform (Mr. Fahey): The proposed amendment seeks to expand the definition of disability by adding the text to include, "a person with a physical or mental impairment which has substantial or long term effect on his ability to carry out normal day-to-day activities". I appreciate the Senators' intentions are to ensure specific conditions will be covered by the definition, particularly multiple sclerosis. I assure them that people with multiple sclerosis come within the scope of the definition at the point when the illness manifests itself as a disability.

For example, a person with multiple sclerosis may, for many years after diagnosis, be able to work. However, there will come a point when that person is unable to continue working, finds the hours involved strenuous or may require physical aids to continue working. This disability results in a substantial restriction in his or her capacity to carry out a profession, business or occupation.

A person may become wheelchair bound and find there are physical barriers to social participation which did not exist previously. For example, it may not be so easy for such people to visit friends because their homes are not adapted or play some of the games they played with their

children before the onset of disability. A person's disability may go into remission and progress months or years later.

The definition, because it looks at actual participation in economic, cultural and social life, responds flexibly to these changes in a person's condition or the progress of a condition. I am satisfied the definition addresses the issues which prompted this amendment. The episodic nature of these types of conditions is covered by the definition. I am delighted to confirm that multiple sclerosis does come under the definition.

Dr. Henry: That is what I needed to hear to reassure people that episodic conditions are covered. I hope the provisions of this Bill are applied as flexibly as possible. It is important that people with a disability can get back to work when their condition improves. I am pleased to say the Department of Social and Family Affairs has improved in this regard in recent years. If people are allowed to accept an opportunity to work without losing benefits when they are in better health it can result in a significant improvement to their condition. Several patients have contacted me on this point. Just because people are disabled at some point it does not mean they will never get better. People can improve some months later and we need to be mindful of the episodic nature of some conditions because it benefits all of us if they are able to work. It also enhances an individual's quality of life and self-esteem. I hope the Department of Social and Family Affairs will continue to interpret the situation in this way.

Mr. Kett: Does epilepsy come under this?

An Leas-Chathaoirleach: We are on Report Stage. Only Senator Henry can speak on this Stage.

Ms O'Rourke: Can I not speak?

An Leas-Chathaoirleach: The Cathaoirleach indicated that a Senator may speak only once on Report Stage, except the proposer of an amendment who may reply to the discussion of the amendment.

Ms O'Rourke: Senator Kett did not speak.

An Leas-Chathaoirleach: Once the Minister comes in, he may reply.

Mr. Fahey: I forgot to reply to Senator O'Rourke, which would be a major mistake on any man's part.

Ms O'Rourke: Or any woman's.

Mr. Fahey: I do not have a list of disabilities but disability is defined as "a substantial restriction in the capacity of the person to carry on a profession, business or occupation". If the level of epilepsy is such that it causes substantial restriction in that regard then it is covered by the Bill. To repeat an example I gave in the Dáil, where clinical depression is curable it is not within that definition. Bipolar depression or schizophrenia, which are of a continual or recurrent nature even though they may be episodic, are included. Various levels of illness may or may not amount to disability but that will be for the medical practitioners to decide as part of the assessment process.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendments Nos. 3 and 4 are related and may be discussed together by agreement.

Ms Terry: I move amendment No. 3:

In page 7, between lines 9 and 10, to insert the following:

"(*i*) any private body which provides services and products to the public;".

We discussed these amendments at some length last week but I felt it necessary to move them again on Report Stage because I was concerned that they were not accepted. If their provisions were inserted in the legislation, this would send out a strong message to people in the private sector who provide services or products to members of the public. We should do anything we can to strengthen the legislation. I accept that some private businesses might incur heavy costs if they were forced to make their buildings accessible but we should work towards that goal, which would benefit everybody. We should set high standards and strive to achieve accessibility as far as we can. I ask the Minister to reconsider and accept these amendments.

Dr. Henry: I second the amendment. Statements were made to the effect that the requirement for facilities to be provided would depend on how often disabled people would try to get into a given building. If people know they cannot get into a building they are not going to try, so Senator Terry's amendments would encourage private bodies engaged in public business or providing services funded by the public purse to comply. I ask the Minister to accept these amendments.

Ms O'Rourke: When we dealt with these amendments on Committee Stage last week, Senator Terry argued that we should aim for the optimum result which would be that every public building be made accessible. What the Senator is seeking is an aspiration to which we would all incline. If it were put in legislation, however, then by law it would have to be done. Any private body which provides services and products to the public and any body publically appointed, funded by public money or carrying out public functions designated by law would be bound by it. We aim for an optimum result to which everybody would

[Ms O'Rourke.]

strive but there is a difference between an aspiration and a legislative determination.

Mr. Kett: I agree with Senator O'Rourke. If the amendments are adopted they will be part and parcel of the legislation and people must act upon them. To ask private bodies to make their building accessible even though only a minute proportion of their business relates to the disability sector would be unfair. A "one size fits all" approach is not appropriate and there is a danger that these businesses would be affected commercially, which would amount to cutting off one's nose to spite one's face.

Mr. Fahey: A public body is defined in section 2(1) in line with the Bill's focus on the provision of access for specialist and mainstream public services. It covers a broad range of bodies in the public service.

As I stated last week, the Bill places significant obligations on those bodies under Part 3 in respect of accessible buildings and services and under Part 5 in respect of employment of people with disabilities. If the obligations were extended to voluntary and private bodies it would, for example, involve cinemas and shops being obliged to retrofit their premises over the next ten years. Sports centres would be obliged to present all their literature in an accessible form, irrespective of the cost and organisations such as the National Women's Council of Ireland, which is in receipt of State support, would be obliged to ensure that any service purchased was disability-accessible.

Part 5 of the Bill establishes a statutory basis for the 3% employment target. This would be broadened to include the whole economy, including employment by contractors in publicly-funded road or building projects. We had a significant discussion in this House on Committee Stage on the need to change attitudes and mindsets, particularly in the public service. I agree and this Bill will be a significant catalyst for such a change. However, it will also help establish our public service providers as models of good practice. Over time, this will be reflected in the services provided by the private sector.

I am satisfied that the definition of "public body" reflects the focus of the Bill and I do not propose to accept these amendments. I accept the spirit and thrust of the argument in favour of extension, but as Members on the Government side have noted, it would provide an onus which could be counterproductive. There is already an onus under the equality legislation on all organisations to provide accessibility to which there has been quite a good response. However, given that we will now place significant obligations on the public sector, it will act as a role model for the private sector and I assure the House that pressure will continue to be placed on the private sector to have the provision of disability accessibility in all respects at the top of its agenda. I re-examined this issue but felt it would be counterproductive to impose this obligation on private sector organisations which may not be able to carry the burden.

Ms Terry: I am disappointed the Minister of State will not examine this issue from a broader perspective or indeed from the future. I do not see why we cannot oblige private companies which offer services to members of the public to make their buildings accessible over a number of years. I am unsure whether the Minister of State mentioned a period of ten years, but I do not see why buildings cannot be made accessible over five years. This is an attempt to make it as easy as possible for people to do so.

I accept that where there may be a disproportionate burden imposed on some buildings, there should be mechanisms developed to facilitate private bodies to overcome their financial difficulties in this regard. By not doing this, we do not make all our citizens equal, which is the purpose of this Bill. We cannot cherry-pick. Someone with a disability either has the same rights as an able-bodied person or has not. If an exception for companies is allowed, as it is here, we do not perform a service to people with disabilities. Therefore, I am disappointed that my amendments will not be accepted.

Amendment, by leave, withdrawn.

Amendment No. 4 not moved.

Government amendment No. 5:

In page 8, lines 36 to 39, to delete "an officer of which is the accounting officer in relation to the appropriation accounts of that body for the purposes of the Comptroller and Auditor General Acts 1866 to 1998" and substitute "which is not the subject of an allocation by a Minister under *subsection (2)*".

Mr. Fahey: On Committee Stage, I indicated that the definition of specified bodies was being reviewed by the Parliamentary Counsel to address technical concerns. Following this review, I now present amendment No. 5 which ensures that the definition of specified bodies is confined to bodies such as the HSE and the courts, which operate with their own financial Votes where the relevant Minister does not allocate funding. The original definition referred to Accounting Officers, which was appropriate for the purposes of bodies such as the HSE. However, I am advised that the definition is not appropriate in the case of other bodies such as Departments where the Accounting Officer is the Secretary General and where the Minister has responsibility for funds allocation. The proposed amendment takes consultation between my Department, other Departments and the Attorney General into account.

Amendment agreed to.

Ms Terry: I move amendment No. 6:

In page 9, to delete the text inserted by Government amendment No. 8 at Committee and substitute the following:

6.—The Minister shall—

(*a*) carry out a review of this Act, in particular the definition of disability, within a maximum period of 2 years of operation or 3 years of enactment, whichever is the soonest,

(*b*) for the purpose of assisting him or her in making such a review under this section, consult any such organisations or representatives as he or she considers appropriate,

(*c*) where a review is carried out under *paragraph (a)* cause a copy of the review to be laid before each House of the Oireachtas and the changes proposed in the review shall not be made until a resolution approving the changes has been passed by each House.".

This amendment proposes that the Minister of State carries out a review of this Bill, particularly the definition of disability, within a maximum period of two years of operation or three years of enactment, whichever is the soonest. It also asks the Minister of State to conduct consultations and to lay the review before the Houses.

Much debate regarding this Bill has focused on the definition of disability and we should review it within two years of operation to ensure we have taken the correct route. It is possible that we have not accepted the correct definition and that people will be excluded. Neither the Minister of State, his officials nor I want anyone to be excluded from this legislation. A two-year timeframe is sufficient to carry out a review and examination of how well the legislation is working. As I stated, it is important that such a review should take place to ensure no one falls through the net despite all the debate. We know that some groups are unhappy and the least we can do is to ensure that all essential groups of people have been catered for under this important legislation.

Dr. Henry: I second the amendment. This amendment would be to the Minister of State's advantage as he would be able to inform those groups which maintain there are inadequacies in the Bill that a review has been planned and that they need not worry. He could tell them the Bill will be reviewed and essential issues will be addressed. If people have been inadvertently excluded from the legislation — I am sure that as far as the Minister of State is concerned, it would be inadvertent — in two or three years' time they will have their opportunity to state they feel they have been short-changed.

Ms Cox: I have had conversations and discussions with the Multiple Sclerosis Society of Ireland and with Senator Dooley, who is not present but has asked me to raise the point on his behalf. Under this amendment pertaining to the definition of disability and to give them a sense of security, can the Minister of State again provide clarification to multiple sclerosis sufferers that they are covered in the Bill's definition? Although he covered this in great depth on Committee Stage, multiple sclerosis sufferers fear the definition is not sufficiently broad to cover them because they regard themselves as having an enduring condition which may go into remission for many years, but which is incurable. I take this opportunity to ask the Minister of State to clarify that point.

Mr. Kett: The Minister of State has covered this issue in the Bill in that he said he will review the legislation within five years, commencing within two years. We will need that amount of time, if not the five years, to see whether this is kicking in. I am sure the Minister of State will look at it on an ongoing basis, not to mention review it after a certain number of years. The review could take place within the two to five year period. The Minister of State has provided sufficient time to review it in a meaningful way.

Ms Tuffy: Amendment No. 23 in my name was disallowed. It proposed something sought by groups within the DLCG, namely, that there should be disability proofing statements and a disability commissioner. A disability commissioner would do the type of work envisaged by Senator Terry's amendment in that there would be consultation with the different parties and continuous assessment. The disability commissioner could carry out the type of review the Minister of State has in mind, whether in three or five years. He or she would be the ideal person to carry out that type of review, to look at all the aspects and to do so in an independent way as opposed to the Minister of State carrying out a review of the legislation in five years. Will the Government consider the proposal of the various groups that a disability commissioner be appointed to monitor the legislation?

Ms O'Rourke: The Bill allows for a review within a five year timespan. Will the review be ongoing? Is there any guarantee that the review would begin after two years and continue on? I understand the Government means business when it says there will be a review after five years. Each day we are assailed by terrible things which are happening, including MRSA, the particular nursing home about which there has been much discussion lately and other matters which are raised as "scandals". If something quite abhorrent happened in the context of the operation of this Bill which demanded an immediate review and assessment of the care provided to a particular group, will the Government say it is only three years since the enactment of the Bill and it has not had time to carry out a full review? Will the Minister of State assure us the review process will be ongoing and that it can be interrupted at any time if there is a need for such an intervention if,

[Ms O'Rourke.]

for example, something happens which affects a group of people and there is an outbreak of much dispute, fear and condemnation?

Mr. Fahey: The amendment I brought forward on Committee Stage in the Dáil to allow for a review of the operation of the Bill's provisions within five years of commission covers the amendments tabled. The five year timeframe links the timing of the review with the end date of the multi-annual investment programme of 2009. The Government amendment was in response to proposals made by the DLCG which sought a review within three years of enactment. On Committee Stage in this House last week, a further amendment was agreed to which placed that section in Part 1 of the Bill.

As I stated last week, the Bill, as amended in the Dáil, would allow the review to take place not later than five years from commencement of the legislation. A review within a shorter time is not ruled out if it becomes necessary. Indeed, I stated that it would be the intention that the review would be completed within five years and I believe this to be a very reasonable approach. I take on board the points made by Senator Terry but when one takes all matters in account, if it is found there are major issues of a negative nature in the first two years of the implementation of the legislation, one could take it that a review would start at that stage. It could be an ongoing review, which could take time, or a review which could take place very quickly if it was found that legislative change was necessary. However, I am confident that will not be necessary. The scope of the Bill is such that much of its implementation will be provided for in the regulations. It will be possible at any time to amend the regulations or to change standards if it is found necessary. We were very flexible in respect of the amendment we tabled in the Dáil and I understand people in the sector are satisfied with it.

3 o'clock

I wish to respond to Senator Cox who spoke on behalf of Senator Dooley. On the last occasion Senator Henry said an enduring disability means that the underlying condition is enduring and not one that must have symptoms or signs of the condition at the time. I confirm that is the case, that is, that people so described by Senator Henry are included in the definition of the Bill and, consequently, multiple sclerosis is so included.

Ms Terry: On the face of it, I accept what the Minister of State said. The legislation states that a review must be carried out within five years but that it too broad. I am disappointed and I hope we will not regret this. I accept the Minister of State's word that if issues or problems arise at an early stage, the review would start immediately but there could be a Minister from another party within, or after, the next two years. We must, therefore, ensure whoever is the Minister of the day will feel the same way. It is not good enough for me to accept the Minister of State's point of view and that he would initiate a review at an early stage. The legislation must ensure we protect those we seek to protect. If we allow this through, it will be a flaw in the legislation.

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

The Seanad divided: Tá, 27; Níl, 18.

Tá

Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Hayes, Maurice.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
MacSharry, Marc.
Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Morrissey, Tom.
Moylan, Pat.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Rourke, Mary.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
Walsh, Kate.
White, Mary M.

Níl

Bannon, James.
Browne, Fergal.
Burke, Paddy.
Burke, Ulick.
Coghlan, Paul.
Cummins, Maurice.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.
Henry, Mary.
McDowell, Derek.
O'Meara, Kathleen.
O'Toole, Joe.
Phelan, John.
Ross, Shane.
Ryan, Brendan.
Terry, Sheila.
Tuffy, Joanna.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators Terry and Tuffy.

Question declared carried.

Amendment declared lost.

An Leas-Chathaoirleach: Amendments Nos. 7 and 21 are related and may be discussed together by agreement.

Government amendment No. 7:

In page 10, to delete lines 24 and 25.

Mr. Fahey: Amendments Nos. 7 and 21 are technical amendments which relate to the reference in the Bill to personal advocates assigned by Comhairle to assist, support and represent persons with a disability to apply for access services under Part 2 in addition to social services generally. As the Comhairle (Amendment) Bill 2004 has yet to be enacted I have been advised by the Parliamentary Counsel that we cannot now refer to that legislation in the Bill. Amendment No. 21 achieves the same effect as the references to the Comhairle legislation. Moreover, the amendment will ensure consistency in language regarding the assignment of personal advocates.

Ms O'Rourke: Is this merely a technical language amendment? Does the advocacy still remain?

Mr. Fahey: Yes.

Dr. Henry: Will it be possible to rectify this at any stage? Some people considered the personal advocate to be a very important provision of the Bill.

Mr. Fahey: It still is. It is not affected by this technical amendment.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 8 and 9 are related and may be discussed together by agreement.

Ms Terry: I move amendment No. 8

In page 12, lines 3 to 8, to delete all words from and including "considered" in line 3 down to and including "provision" in line 8 and substitute "listed in order of importance, which are considered appropriate by the person or persons referred to in *subsection (2)* to meet the needs of the applicant and the period of time required by the person or persons for the provision of each of those services and the order of such provision, giving preference to services which are most needed by the applicant".

This is a very important part of the Bill and my amendments would help to strengthen the legislation. When an assessment report is issued, the subsequent service statement can only come into effect if the necessary funding is available to meet the requirements of the statement. A service statement may be prepared without the services being provided owing to lack of funding. To ensure that at the very least people get some services I am asking that the most important services be listed.

A person may have a requirement for physiotherapy and speech therapy, with the physiotherapy being more important. However, for largely financial reasons the speech therapist might be available and that service might be provided first. We should list the most important services for any individual and within a given period we should try to deliver those services. The period, which should be no more than 12 months, should be reviewed to see how we are doing in fulfilling the requirements of the service statement. If some services are provided and others are not we must list the outstanding needs of the person. We need to continue to review the needs to ensure they are met within a reasonable period. My amendment suggests that the review should be carried out every 12 months. If we do not review an individual's circumstances, requirements could slip through the net, as has happened in recent times. My amendments would help to ensure a link between the assessment report and the delivery of the service statement and to prioritise the needs of an individual leading to the delivery of the most important services. We then need to consider how to deliver the outstanding services within a reasonable timeframe.

Ms Tuffy: I second the amendment. My amendment No. 13, which is very similar in its objective, deals with the same issue regarding the service statement rather than the assessment. It was ruled out of order, as it would impose a potential charge on the Revenue. I do not question those who made the ruling as I realise they must do so. However, there is a thin line between the requirements under Senator Terry's amendment not imposing a charge on the State and mine imposing a charge on the State. In effect both our amendments raise the same issue.

I agree with the points made by Senator Terry. While the Minister of State has said we will have an aggregate statement on unmet needs of people, it will not deal with the individuals' unmet needs. Senator Terry's amendments try to address these unmet needs, as would have my amendment No. 13. In many cases it is speculative as to whether these provisions would impose a charge on the Revenue. Having a general statement, as proposed by the Minister of State, is anonymous and does not have the same impact as considering the unmet needs of an individual, which should be delivered in a certain timeframe. It would be depressing to see a general statement of unmet needs and to know that the needs of some will not be addressed by a statement of that kind.

The purpose of the amendment is also to try to provide a forum for one of the five issues raised by the DLCG, as well as those groups that left the DLCG due to the fact that all five issues were not addressed. The issue is that services identified

[Ms Tuffy.]

in the assessment of need for an individual must be provided within a reasonable and agreed timeframe.

Mr. Kett: I think Senator Terry expressed a doubt that the service statement may not be met, as distinct from the assessment. My understanding is that the service statement is resource led and consequently, the service statement, when initiated, will be met. That might not always be possible, although I agree that the principle is a good thing. It might be a good thing to prioritise. I am thinking of someone sitting in a case conference with a multidisciplinary team with parents. A parent, with the best will in the world, may want something different for their child than the multidisciplinary team. The parent may want, as a priority, that the child walks to the best of his or her ability, whereas a multidisciplinary team may prioritise special seating. The amendment refers to meeting the needs of the applicant and the period of time required by the person or persons for the provision of each of these services. That does not allow for the viewpoint of a parent, as suggested in subsection (2). The parent has a major role to play in this, but is omitted in the scenario that I described above.

Dr. Henry: Senator Kett makes an interesting point. He and I have often taken part in case conferences about patients. The thrust of Senator Terry's amendment is very important because those running the case conferences may not always be the best people to decide the applicant's greatest needs. We also have a worry about resources and these amendments show a great deal of respect for the person who is being assessed. This is why I would like to support both amendments, because respect for the person and for the person's wishes is very important.

As Senator Kett pointed out, the parents of a child may give different priorities than those who are involved in the case conference. However, those of us involved in the case conferences are not living at home with the child. Parents might have a more realistic idea on what would make the child's life better, as well as what would make their life more bearable.

Mr. Fahey: Amendment No. 8 would require assessment reports to contain a priority list of services and the timing for their delivery. The principle already established in the Bill is that the assessment report would set out all required services and indicate the order for their provision, together with the optimal time scales for their delivery. I am not convinced that the amendment proposed would add to that principle or improve arrangements for assessment and service delivery. In addition, those carrying out the assessment will be required to take note of the applicant's views about his or her needs or preferences. This will also inform the consideration of the assessment. I am satisfied that the outcome of the assessment will reflect the approach sought by the Senators and therefore, I do not propose to accept this amendment.

Section 8(7)(*b*)(iv) requires that the report specifies the time frame for the review. Amendment No. 9 would delete this provision and would require that the report outlined unmet service needs and dates for the review of the assessment to be no more than one year apart, or where there is a change in circumstances or available resources. The legislation adequately provides for further assessments. The timing of the reviews would be guided by the assessment report. Section 8(7)(*b*)(iv) specifies that each assessment report will set out the period within which the review of the assessment will take place. The regulations will guide different periods for such reviews, taking account of important factors such as the age of the applicant and his or her disability. The regulations will be subject to consultation before they are finalised, so that there will be ample opportunity for input by the relevant interests, including this House.

Section 9(8) allows the applicant to initiate a further assessment where there is a material change of circumstances or a material mistake of fact, or where further information becomes available relating to personal circumstances or services. The assessment will be independently undertaken without regard to resources in accordance with quality standards and will identify needs. Senator Kett is correct in that regard and it would not be possible for the report to specify which needs may or may not be met at that point in the process. The service statement will contain the services to be made available within the resource restraints which apply at the particular time. Consequently, there will not be any services included in the reports which cannot be delivered. Where circumstances change, the service statement will change to reflect that.

Ms Terry: I will not press the amendment and I hope that it works out in line with what the Minister of State is saying. I do not want people to have to fight their way back into the service when finance is not available. When finance becomes available, the Minister of State stated that the service can be provided again. How difficult will it be for people to ensure that when money does become available, they can get the service provided? It seems to be imposing an unnecessary burden on individuals who care for someone to ensure that the service is delivered.

Mr. Fahey: There will be flexibility with regard to service statements. As further resources become available, a service statement can be added, or if personal circumstances change, a service statement can be added. When it comes to the reality of how this will operate, on the basis of it being a person centred seamless approach from the HSE, then a person can expect to have a continuous relationship with the HSE on the delivery of services as resources become avail-

able. We want a practical, sensible, person centred approach to this whole issue. The HSE is carrying this out in the preparation of the regulation. We do not need to be too prescriptive in the legislation to ensure that the objectives of the Senator are met.

Amendment, by leave, withdrawn.

Amendment No. 9 not moved.

An Leas-Chathaoirleach: Amendments Nos. 10 and 11 are cognate and may be discussed together by agreement.

Government amendment No. 10:

In page 12, line 18, to delete "requirement" and substitute "request".

Mr. Fahey: Amendments Nos. 10 and 11 are technical amendments which recognise that under section 8(8) the applicant will be invited rather than required or obliged by the assessment officer to attend a meeting.

Amendment agreed to.

Government amendment No. 11:

In page 12, line 20, to delete "requirement" and substitute "request".

Amendment agreed to.

Government amendment No. 12:

In page 13, line 27, to delete "him or her" and substitute "the person".

Mr. Fahey: Amendment No. 12 is a technical amendment which seeks to provide clarity in section 9(4) that it is the person with disability who is the subject of an assessment.

Amendment agreed to.

An Leas-Chathaoirleach: Amendment No. 13, in the name of Senator Tuffy, is out of order as it involves a potential charge on the Exchequer.

Amendment No. 13 not moved.

Government amendment No. 14:

In page 16, in line 5 of the text inserted by Government amendment No. 26 at Committee, after "provided" to insert "including the ages and the categories of disabilities of such persons,".

Mr. Fahey: As I promised Senator Terry last week when she noted her concern to identify unmet service needs, I have reviewed the provisions in section 13. Notwithstanding Senator Terry's amendment on the matter, I am pleased to present amendment No. 14 which requires the inclusion of additional data in the HSE report to provide a fuller picture of those with unmet needs. The amendment will ensure the report delivers a profile of the persons who are not receiving all of the services identified in their assessments. The provision will help to identify emerging trends in problem areas and facilitate the development of a strategic response. The amendment will add to a substantial development in the scope of the reporting arrangements envisaged in the Bill. The arrangements will provide a transparent means of future planning for service development and delivery to facilitate a progressive response to real needs. The revised provisions will facilitate greater efficiency in the management of resources which will be reflected in improved service levels on the ground over time.

While I thank Senator Terry for her amendment, the Bill, as amended, not only by amendment No. 14, already captures the principles sought.

Ms Tuffy: While I welcome the statement to be made by the Department each year, it will not be enough for individuals with unmet needs. It will not be of much consolation for people to see themselves included in a category of persons with unmet needs if there is no indication as to when their individual needs will be met. It is this state of affairs that Senator Terry and I have tried to address in amendments Nos. 8, 9, 13 and 15.

Ms Terry: I thank the Minister of State for making this improvement to the Bill. We must ensure that unmet needs arising in each year are reviewed on an annual basis to ensure we keep up with service delivery requirements. We must ensure the staff and facilities required are available to supply the services and products people need. I welcome the improvement of the Government's amendment since last week as any provision in this area is helpful.

Mr. Kett: It will be of help in regional areas to publish a profile of needs. If one needs to know how many people with spina bifida live in the midlands, one will be able to establish the statistics from the information which will now be made available. Going forward, the statistics will be manifestly helpful in establishing funding requirements in various regions. We will have concrete knowledge of the holes in the provision of services across a wide range of disabilities, which can be nothing but helpful.

Ms O'Rourke: The elaboration and extra information for which the amendment provides will not only help to determine needs but inform future strategy. The number, age and category of persons with disability will be supplied concurrently rather than gathered to ensure that when a strategy is prepared for the provision of, for example, speech therapists, it is immediately apparent what is required and when. The inclusion of information on ages of persons with

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disability means it will be possible to identify immediately at what level services will need to be delivered.

Mr. Fahey: Unmet aggregate needs will be identified and the HSE will be required to outline all identified needs to indicate the periods of time ideally required to provide services, the sequence of provision and the estimated costs involved. The amendments will facilitate a detailed analysis of service provision and areas of unmet need. The data will be available to the public in published reports.

The approach in the Bill will provide a clear strategy for informed policy development and effective use of investment to benefit individuals. It ensures a transparent process which, coupled with increased investment, will have long-term benefits for the disability sector.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 15 and 16 are related and may be discussed together by agreement.

Ms Terry: I move amendment No. 15:

In page 16, between lines 42 and 43, to insert the following:

"(*e*) identifying the services which are required but which are currently unavailable, resulting in unmet needs of the persons assessed, with a view to making those services available.".

I seek the inclusion of amendment No. 15 in section 13 but require the Minister of State's advice. Does my amendment comply with the existing provisions of the Bill and is the Minister of State already covering what I am seeking?

Ms O'Rourke: I would have thought so.

Mr. Fahey: Pretty much.

Ms Terry: If so, it would be better to make the provision I have requested in section 13 rather than in section 11, whether through my amendment or that of the Minister of State. It is in section 13 that we demand the HSE should keep records and provide the information we have requested. In that context I am concerned that my amendment would be better placed in section 13; perhaps the Government could facilitate that by providing its amendment under this section.

Ms Tuffy: I second the amendment.

Mr. Fahey: We have reviewed the situation and are satisfied that Government amendment No. 14, which will require that additional data is included in the HSE report, will give a fuller picture of those unmet needs. This will ensure that it will deliver a profile of the persons who are not getting all the services identified in the assessment. Amendment No. 14 will insert a new paragraph (*e*) in section 13(1).

Ms O'Rourke: Is amendment No. 15, in fact, amendment No. 14?

Mr. Fahey: No.

Ms O'Rourke: It is confusing.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendment No. 16 has already been discussed with amendment No. 15. Is the amendment being pressed?

Ms Tuffy: I move amendment No. 16:

In page 17, between lines 15 and 16, to insert the following:

"(*b*) the contents of the assessment;".

I did not realise amendment No. 16 was also being discussed. Can I make a few brief points about it?

An Cathaoirleach: No. The amendment has already been discussed.

Ms Tuffy: I did not realise that.

An Cathaoirleach: It was agreed that both amendments would be discussed together.

Ms Tuffy: I realise that but I thought the discussion on No. 15 was still ongoing.

An Cathaoirleach: It was announced that the amendments would be discussed together.

Ms Tuffy: I did not get an opportunity to discuss it.

An Cathaoirleach: Senator Tuffy had an opportunity. Is she pressing the amendment?

Ms Tuffy: I would like to hear the Minister of State's response because he has not indicated his view on it.

An Cathaoirleach: Is the Minister of State agreeable to respond to the amendment?

Mr. Fahey: Yes. I do not have a problem with that.

Ms Tuffy: It is a fundamental omission from the Bill that one cannot appeal the contents of the assessment. The assessment is the most fundamental right given in the Bill. One can appeal other aspects of the proposed legislation, such as the determination by the assessment officer that a person does not have a disability and so on. The contents of the assessment are key. It is particularly important that one would be able to appeal the contents of the assessment because one

cannot appeal this to the courts, which I believe is wrong also.

Planning permission is a case in point. If one applies to a local authority for planing permission and one is not happy with the decision, it can be appealed to An Bord Pleanála. One cannot appeal further to a court on a substantive issue but one can appeal to An Bord Pleanála about the substantive issue of the planning application, planning permission and so on. The fact that the right of court appeal has been closed off makes it even more important that one would have an opportunity to go to an appeals officer about the contents of an assessment. This, in addition to the lack of appeal on the content of the assessment to a court of law — which I also consider a questionable omission from the Bill — is something that may pose a problem in terms of the constitutionality of the proposed legislation. That is the reason I have tabled the amendment.

The contents of the assessment was an issue that was very important to the three groups that withdrew from the DLCG. One of those groups, NAMHI, contacted me in the course of the Committee Stage debate in this House. It was unhappy with the fact that the Minister of State mentioned that just one or two groups withdrew from the DLCG when in fact it was three groups — the Forum of People with Disabilities, the National Parents and Siblings Alliance and NAMHI. They had substantial concerns about the Bill and withdrew from the process because they were not happy with it. They respect the decision of the groups that remained but the fact is that three out of five groups withdrew from the DLCG. The Minister of State's description made it appear a lot less significant than it, in fact, was.

Ms Terry: I second the amendment.

Mr. Kett: I share some of Senator Tuffy's concerns on this issue. The Minister of State based his Committee Stage argument on the fact that the assessor would be wholly independent, which I accept. However, I am concerned about what would happen in the case of an assessor being incompetent and making a hames of an assessment for one reason or another. This brings me to the issue of the skills of an assessor or assessment team. From where will the assessors be recruited? I would hope they would be drawn from the corps of people that work in this area and that they would not be people from the HSE who have no skills in the disability sector. I hope that when we begin to recruit assessors and liaison officers, especially assessors, they are drawn from the corps of people who work within the system and know the disability sector.

Would it be possible for a liaison officer to be an administrative person? Liaison officers would merely fulfil the terms of the assessment in so far as they could. Would they require competence to make a judgment on an assessment, to draw it down into a service statement or could this be done by a person with administrative skills as there would be a financial implication?

Mr. Fahey: Amendment No. 16 seeks to insert a further ground of complaint in regard to the contents of the assessment. As I stated last week, any person who considers he or she has a disability can apply for an assessment, as outlined in section 9(1). Those who apply for an independent assessment will therefore receive one. Otherwise, there is a ground for complaint under section 14(1)(*a*).

In regard to the content of the assessment report, I am satisfied it will reflect the outcome of an independent assessment process. It would be carried out without regard to the cost of providing the services identified and in accordance with standards devised by the new independent body, HIQA, the health information and quality authority. The HIQA interim board is in place since earlier this year when it was launched by the Tánaiste. I am confident that this new and independent body will play an important role in supporting a quality assessment delivery. If standards are not complied with, there are grounds for complaint by an applicant and the HSE can be instructed to conduct a further assessment.

The standards will relate to the content of the assessment among other things. They will play an important role in ensuring a proper level of quality standards across the spectrum so that everybody can expect to be treated equally. The reassurance for applicants is that all assessment officers will be required to work to the same set of standards so there should be no regional or local variations.

The assessment will be undertaken by persons with relevant expertise and they will be required to note the applicant's views concerning needs and preferences for services. I assure Senator Kett that assessment officers will be appropriately qualified and trained. That is not to say that existing personnel within the HSE sector would not be capable of carrying out this work. Clearly there will be training requirements but, by and large, I am satisfied there will be appropriately qualified people within the HSE to carry out both the assessment and the service statements.

I have considerable sympathy with the views expressed on Committee Stage in regard to this amendment. I share the Senator's concerns that there should be safeguards to ensure the assessment is accurate and objective. However, I must insist that the Bill as constructed already deals with this issue. I reiterate that the whole ethos of the assessment process would be to try to address the needs of individuals to their satisfaction. Consequently, I do not consider there is a need for an amendment of the nature proposed and do not intend to accept the amendment.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendments Nos. 17 to 19, inclusive, are related and may be discussed together by agreement.

Government amendment No. 17:

In page 19, line 40, to delete "pursuant to *section 15*".

Mr. Fahey: The Disability Bill, as published, includes a provision that allows the Health Service Executive or head of the education service provider to refuse to implement the recommendation of a complaints officer. In such cases, the opinion would be set out in writing and could be appealed by the applicant. I was pleased to table an amendment in the Dáil which deleted that provision. Government amendments Nos. 17, 18 and 19 are technical amendments that seek to remove text that refers to the deleted provision and is therefore no longer relevant.

Ms O'Rourke: Will the Minister of State reiterate the genesis of the Dáil amendment and how it is now reflected in the legislation? He spoke quickly and I did not catch his latter points.

Mr. Fahey: When the Bill was published, there was a provision therein that allowed the Health Service Executive or head of the education service provider to refuse to implement the recommendation of a complaints officer.

Ms O'Rourke: Why?

Mr. Fahey: It was included to provide a further requirement such that if the CEO of a health board, for instance, did not feel, for any of a variety of reasons, that he could implement the decision of the complaints officer, he could refuse to do so. We decided to remove this provision completely to make the legislation more transparent and ease the bureaucracy. Consequently, Government amendments Nos. 17, 18 and 19 are simply technical amendments that remove text that refers to the deleted provisions.

Ms O'Rourke: Okay.

Amendment agreed to.

Government amendment No. 18:

In page 19, line 41, to delete "under that section".

Amendment agreed to.

Government amendment No. 19:

In page 20, lines 14 and 15, to delete ", or the opinion of the Executive or the head of the education service provider concerned".

Amendment agreed to.

Ms Tuffy: I move amendment No. 20:

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

"(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.".

I tabled this amendment because the legislation does not allow an appeal to the High Court, except on a point of law. The amendment seeks to allow for an appeal to the District Court from a decision of the appeals officer. Ultimately, people should have recourse to the courts to vindicate their rights. It is as a last resort that most people go to court to do so and they do not take it lightly. The provision, as it stands, should not be in the legislation and therefore I am tabling this amendment. I have made this point previously.

At least one group has written to me questioning the constitutionality of the legislation in that it does not afford people the opportunity to appeal decisions under the legislation to court. I, too, wonder about this.

Ms Feeney: I second the amendment.

Mr. Fahey: The amendment would allow for an appeal to the District Court on the facts established by the appeals officer. Section 20, as it stands, provides that an appeal to the court would arise only on a point of law to the High Court. This approach is consistent with that in other statute-based appeals systems, such as those pertaining to planning and social welfare. It provides the advantages of a system of appeals that is independent and transparent and has strong statutory powers. It allows people to take an appeal with full confidence in due process and a fair hearing and without incurring the cost of a court case. The proposed amendment would undermine the strength of the appeals officer by instituting a third layer of review in addition to the complaints and appeal.

I am aware that the Opposition favours general redress in the courts. I do not hold this view. The Bill allows access to the Circuit Court for enforcement of the appeals officer's determination, a resolution arrived at through mediation or recommendation of the complaints officer. The appeals process in the Bill, as it stands, provides a user-friendly and acceptable form of redress for people with disabilities and their families.

These amendments represent a fundamental difference of approach between me and Opposition Senators and, in these circumstances, I must strongly reject the proposed amendment.

Amendment put.

The Seanad divided: Tá, 16; Níl, 25.

Tá

Bannon, James.
Browne, Fergal.
Burke, Paddy.
Burke, Ulick.
Coghlan, Paul.
Cummins, Maurice.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.
Henry, Mary.
O'Meara, Kathleen.
O'Toole, Joe.
Phelan, John.
Ross, Shane.
Terry, Sheila.
Tuffy, Joanna.

Níl

Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
MacSharry, Marc.
Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Morrissey, Tom.
Moylan, Pat.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Rourke, Mary.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.

Tellers: Tá, Senators Terry and Tuffy; Níl, Senators Minihan and Moylan.

Amendment declared lost.

Debate adjourned.

Civil Service Regulation (Amendment) Bill 2004: Second Stage.

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

Minister of State at the Department of Finance (Mr. Parlon): I am pleased to introduce the Civil Service Regulation (Amendment) Bill 2004 to Seanad Éireann. The main purpose of the Bill is to devolve responsibility for the management of civil servants from the Government to Ministers and heads of office to reflect modern human resource practices.

The Civil Service Regulation Act 1956, which governs personnel management in the Civil Service, is now almost half a century old. The structures it established in the 1950s for managing the Civil Service were framed in a different era and now need to be updated to reflect modern management practices.

At the heart of the Bill lies the principle that it is no longer tenable to require a Government decision to dismiss an established civil servant or to involve Ministers directly in matters relating to the management of most civil servants. Senior managers in the Civil Service should be allowed to have responsibility for the management of their staff. This is the purpose of the Bill.

I will propose only one amendment on Committee Stage in the House. It relates to the Office of the Houses of the Oireachtas and I will elaborate on it when I describe the Bill in detail.

The history of the Bill can be traced to the ambitious programme of human resource management reform envisaged in the strategic management initiative and Delivering Better Government. Significant progress has been made on this agenda, as evidenced by the evaluation by PA Consulting in 2002 which concluded that while the Civil Service is a far more effective organisation than it was a decade ago, accelerated progress in human resource management was required. In particular, it drew attention to the need for legislation to underline the primary role of Departments and offices in managing their people. The Bill enables this issue to be addressed in that it enacts the management framework first identified in Delivering Better Government and set out in the Public Service Management Act in 1997.

I will explain how this is done. The Public Service Management Act 1997 introduced the broad framework for modern management practices in the Civil Service. It established a managerial framework within which staff up to the level of principal officer would be separated from the political system and authority would be given to Secretaries General to manage these staff. It also envisaged that Secretaries General might delegate most personnel functions, other than dismissal, to their senior civil servants. However, such new practices can only come into effect by amending the Civil Service Regulation Act 1956 and the Bill does this.

The main changes the Bill introduces are as follows: to remove the obstacles in the Civil Service Regulation Act 1956 which prevent Secretaries General performing all functions regarding matters pertaining to appointments, performance, discipline and dismissals of civil servants below

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principal officer level; to amend the 1956 Act to provide that grades at and above principal officer level may be dismissed by the Minister on the recommendation of the Secretary General of the Department or the head of office; to provide that civil servants, as office holders, other than those appointed by Government, have access to the Unfair Dismissals Acts and Minimum Notice and Terms of Employment Acts; and to provide that disciplinary measures can be taken in serious cases of under-performance and that the present range of disciplinary sanctions be broadened to include suspension without pay.

The present proposals complement the Public Service Management (Recruitment and Appointments) Act. Taken together, the two Bills provide a basis for the more effective management of the Civil Service. The legislative proposals strengthen the focus on performance and make civil servants more accountable to Ministers and heads of office.

Having outlined the aims and purpose of the Bill, I will now describe its provisions in detail. Section 1 contains provisions requiring that the Act be read as one with the previous Civil Service Regulation Acts. As the Unfair Dismissals Acts and the minimum notice Acts are also amended, similar provisions are made for those Acts.

Section 2 provides for the commencement of the Act. The provisions of the Act, other than Parts 8 and 10, will come into operation on a day appointed by order of the Minister for Finance. Part 8, which relates to the Office of the Director of Public Prosecutions, will come into operation on such day as the Taoiseach appoints by order. Part 10, which relates to pensions provisions, is deemed to have come into operation on 1 April 2004.

Sections 3 and 4 define terms which are used in the Bill. Section 5 provides for the appointment of a person as "head" of a scheduled office, who may exercise the human resource functions set out in the Bill where the office does not currently have a designated "principal officer".

Section 6 replaces section 2 of the Civil Service Regulation Act 1956 which sets out the "appropriate authority" for civil servants. The functions exercised by the appropriate authority include the management of performance and disciplinary matters. Currently, the Government is the appropriate authority for all officers appointed by the Government, while for all other officers the appropriate authority is the Minister with the power of appointing a successor to the person concerned.

As I stated, the Public Service Management Act 1997 established a framework within which, subject to the Civil Service Regulation Act 1956, managerial responsibility, including powers of dismissal, for staff below the level of principal officer would be given to Secretaries General. The Bill will remove the constraint on the implementation of the Public Service Management Act framework by making each Secretary General the "appropriate authority" for civil servants below principal officer level. This means that he or she will be responsible for managing all matters relating to the appointment, performance management, discipline and dismissal of the civil servants in question. The Minister in charge of the Department will continue to be the appropriate authority for civil servants at and above principal level.

Two important exceptions to this general rule are set out in the Bill. Officers who are appointed by the Government will continue to have the Government as their appropriate authority. In addition, the personal staff of Ministers, regardless of their grade, will be subject to the authority of the Minister they serve. This is the case because these assistants and advisers are personally appointed by Ministers. This section provides that Ministers of State will also be the appropriate authority for their staff.

Section 7 replaces section 5 of the Civil Service Regulation Act 1956 and sets out the provisions relating to the dismissal of civil servants. The section reflects the fact that all established officers hold office at the will and pleasure of the Government. It also provides that the Government may delegate that authority to the Minister in charge of a Department in the case of a civil servant at or above the rank of principal officer or to the Secretary General of a Department or head of office in the case of a civil servant below the rank of principal officer.

The section also provides that the dismissal of an officer at principal level or above may only be initiated upon receipt by the Minister concerned of a written recommendation to dismiss from the relevant Secretary General or head of office. There are a number of exclusions from this provision. First, heads of scheduled offices and the Revenue Commissioners will be dismissible by Government. A second exception is the chief executive of the Courts Service who will be subject to dismissal by the board of the Courts Service. This approach reflects the separation of Executive and judicial powers by ensuring that the dismissal of the chief executive of the Courts Service is not a matter for decision by either the Minister for Justice, Equality and Law Reform or the Government.

Section 7 also inserts a new subsection into section 5 of the 1956 Act to provide clarification on the position with regard to the initial appointment of persons as civil servants. Currently, when officers such as executive and administrative officers enter the Civil Service they are employed in an unestablished capacity on a probationary contract for the first year of service. Following satisfactory completion of a probationary period, these officers may be appointed on an established basis. It was proposed that this position should be changed so that, instead of being unestablished for a year and then being made established, such officers could be appointed as established while on contract for the probationary period.

The Attorney General's office has advised, however, that under the 1956 Act, it is not possible to employ an established officer on a contractual basis. As they are being appointed on a probationary contract, they can only be appointed in an unestablished capacity which can lead to establishment following satisfactory completion of probation. To clarify the position and reduce the administrative burden associated with this practice, it is necessary to amend section 5 of the 1956 Act. The new section will provide that officers can be appointed as established where they are entering the Civil Service on the basis of a probationary contract.

Section 8 allows for the appointment of persons aged over 65 years to the Civil Service as new entrants. This section is being amended to take account of the removal by the Public Service Superannuation (Miscellaneous Provisions) Act 2004 of age as a ground for compulsory retirement for new entrants appointed to the Civil Service after 1 April 2004, with the exception of staff in the Prison Service who remain subject to a mandatory retirement age of 60 years.

While civil servants who are not new entrants appointed after 1 April 2004 continue to have a mandatory retirement age of 65 years, this provision allows them to re-apply to the Civil Service as new entrants following retirement and commence employment under new terms and conditions, which include having no mandatory retirement age. The exception is that they may not be appointed to positions in the Prison Service, which will remain subject to a mandatory retirement age of 60 years. The section will also allow any other person aged 65 years or over to apply for employment in the Civil Service.

The removal of restrictions on the employment of persons because of their age alone is an important reform which will generate opportunities for people over the age of 65 years and increase the pool of experience at a time of increased labour market pressures.

Section 9 amends section 14 of the 1956 Act to provide that all officers who are suspended for the purposes of conducting an investigation into an alleged disciplinary offence will, in future, be suspended on full pay. This provision improves the current position. whereby officers must be suspended without pay but may make an application to the appropriate authority to receive hardship payments during the period of suspension. Section 10amends section 15 of the 1956 Act to expand the range of disciplinary measures available to management and the circumstances under which disciplinary action can be taken.

Section 15 of the 1956 Act did not allow specifically for the imposition of sanctions for underperformance. In future, disciplinary action may be taken against staff who underperform, provided that coaching, training and other developmental tools have failed to achieve a sufficient improvement in the officer's performance. The intention here is to provide a set of measures which can be used once managers have fully discharged their obligation to support and encourage staff in working to the best of their ability.

At present, disciplinary sanctions under the 1956 Act are limited to the demotion of an officer or a reduction in pay, each of which may be mitigated or terminated at the discretion of the appropriate authority. This amendment to section 15 will allow suspension without pay as a penalty and provide that additional, less serious penalties may be agreed with the Civil Service unions and specified in a revised Civil Service disciplinary code.

The civil servant upon whom it is proposed to impose a penalty will continue to have a statutory right to make representations to the appropriate authority before any penalty is imposed and a revised disciplinary code will continue to offer access to an independent appeals board which may consider and issue opinions on any cases referred to it.

Section 10 provides a new safeguard for civil servants who have been subject to a disciplinary sanction that has financial implications by protecting the superannuation benefits they have accrued before the imposition of the sanction. At present, if a civil servant is demoted or his or her salary is reduced, and he or she is not restored to his or her original rank or rate of pay before resignation or retirement, pension entitlements are based on the lower rank or rate of pay. It is unfair to deprive officers of entitlements they have earned prior to behaviour or performance which has merited sanction. Accordingly, this new subsection will ensure that any benefits and entitlements earned up to the date of the sanction are preserved.

There was some debate around this section on Report Stage of the Bill and it was asked whether a provision should be included in the Bill which states the right of the officer to fair procedures. I have carefully considered this and it is important to emphasise that the procedures which underpin this legislation will be set out in the disciplinary code. These arrangements are agreed with the Civil Service unions under the Civil Service conciliation and arbitration scheme.

The code, which is currently being revised to reflect changes in the legislation, is based on principles of fair procedure and natural justice. This, rather than primary legislation, is the most appropriate mechanism to deal with detailed and practical provisions for managing these issues. Furthermore, any change to the code as a result of the Bill will require agreement with the Civil Service unions.

During the debate on this section there was also some discussion about the inclusion of a provision to protect whistleblowers. I have reflected on this and I am satisfied there are sufficient measures in place in the Civil Service, which include the protections offered by the standards commission and the Civil Service code of standards and behaviours, which applies to all civil servants. Also, the Department of Enterprise, Trade and Employment has examined the pro-

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posal for the introduction of whistleblowers legislation and it became clear during the drafting of that legislation that complex and serious issues were raised. It is not, therefore, appropriate to deal with this issue in the context of this legislation.

Section 11 amends section 16 of the 1956 Act, which currently provides that an officer "shall not be paid remuneration in respect of any period of unauthorised absence from duty". A new subsection will provide that the appropriate authority has discretion to decide whether a refusal by an officer to carry out the duties of the grade shall amount to an unauthorised absence.

The need to amend this section arose following a case involving staff of the Department of Agriculture and Food. The High Court found that a refusal to perform certain duties in the context of an industrial dispute did not constitute an "unauthorised absence from duty" within the terms of section 16 as long as the staff concerned were physically present in the workplace, even though they were not carrying out all their duties.

The court also decided that management could not use the current section 16 of the 1956 Act to remove from the payroll officers who refuse to perform core duties appropriate to their grade. The High Court ruling was upheld following an appeal to the Supreme Court. In light of this, the Act will be amended in order to allow removal from the payroll of officers who refuse to perform the full range of duties of their grade.

There was some debate on this issue in the Dáil and I think it is important to clarify a number of points on this amendment. The amendment does not change the existing provisions for situations where there is a physical absence from the workplace — a civil servant is not paid for a period where there is an unauthorised absence from work. The amendment is designed to deal with a situation where a person is physically present in the workplace but refuses to perform his or her duties as part of a campaign of industrial action.

Some concern was expressed about the penalties which are provided for under the amendment. It provides only for temporary removal from the payroll for the period of the refusal to carry out the duties of the grade. It does not provide for any other penalties. This is important because the High Court judgment in the Department of Agriculture and Food case indicated that action should have been taken under section 15 of the Act. If such a situation were to arise again and section 16 remained as currently drafted, management would be required to impose the penalties provided for under section 15, for example, suspension without pay.

Section 12 replaces the current section 19 of the Civil Service Regulation Act 1956 to confer upon the Attorney General the power of appointing staff to the office of the Attorney General. This power had previously rested with the Taoiseach.

Section 13 is a technical provision that inserts a Schedule into the Civil Service Regulation Act to provide for the operation of the amended Act in the Courts Service and in the Houses of the Oireachtas. The effect of inserting the Schedule is to treat the Houses of the Oireachtas Commission and the board of the Courts Service as Ministers of the Government for the purposes of the Act. They will be the appropriate authority for civil servants at and above principal officer level.

Section 14 currently amends section 20 of the Staff of the Houses of the Oireachtas Act 1959. As drafted, this section provides that the dismissing authority for all officers at principal officer level and above in the Office of the Houses of the Oireachtas will be the Houses of the Oireachtas Commission, and for all officers below principal level it will be the Secretary General of that office. This is in line with the general principles of the Bill.

Currently, section 14 does not amend the provisions in section 20 of the 1959 Act relating to the dismissal of the Clerk of the Dáil, the Clerk Assistant of the Dáil, the Clerk of the Seanad, the Clerk Assistant of the Seanad, the Superintendent or the Captain of the Guard. In these cases the dismissing authority is still the Government following a process of consultation.

This position is not fully in line with the central principles in the Bill. Furthermore, in light of the unique constitutional position of the Houses, which was given legislative expression recently in the Houses of the Oireachtas Commission Act 2003, it is no longer appropriate that the Government would be the dismissing authority for these officers. Following discussions with the Office of the Houses of the Oireachtas, and on the advice of the Office of the Attorney General, I will propose on Committee Stage that there should be a new Part 3 to the Bill which addresses this matter and brings together a number of amendments which relate directly to the Houses of the Oireachtas and to the commission.

The changes will not result in any significant change to the current policy under the Bill but will retain certain protections set out in these Acts relating to the dismissal of the Clerk of the Dáil, the Clerk Assistant of the Dáil, the Clerk of the Seanad, the Clerk Assistant of the Seanad, the Superintendent and the Captain of the Guard.

The effect of the amendment will be to retain the current safeguards set out in the 1959 and 2003 Acts which provide that dismissal of these officers can only take place after a process of consultation, while at the same time linking the principle of devolved authority, which is one of the central provisions of the amendment Bill. In line with the provisions of the Bill, the responsibility for the dismissal will be devolved to the Minister responsible for appointing a successor, who in the case of these officers is the Taoiseach.

The practical effect of the amendment will be that the Government can assign the authority to

dismiss the Clerk and Clerk Assistant of the Seanad and of the Dáil to the Taoiseach, who may act on the recommendation of the Cathaoirleach or the Ceann Comhairle, as the case may be, following consultation by him with the Houses of the Oireachtas Commission. In the cases of the Superintendent and the Captain of the Guard, the dismissing authority will again be the Taoiseach, after consultation with the chairmen of the Dáil and the Seanad, and consultation with the commission.

The rationale for assigning the responsibility to the Taoiseach comes from the fact that the Taoiseach, following a similar process of consultation, is also the appointing authority for each of these officers. This is consistent with the provision in section 7 of the Bill where the Government can assign the dismissing authority to the Minister who has the power of appointing a successor to that civil servant.

There is no change proposed for other officers within the Oireachtas other than that the arrangements for them will reflect the new devolved management structures elsewhere in the Civil Service. This means that officers at principal officer level and above will be dismissible by the Houses of the Oireachtas Commission — the relevant "Minister" for the purposes of the Act — on receipt of a recommendation from the Secretary General of the Office of the Houses of the Oireachtas, while officers below that level will be dismissible by the Secretary General of the Office of the Houses of the Oireachtas.

Sections 15 and 16 delete provisions in the Houses of the Oireachtas Commission Act 2003 which empower the commission to recommend the dismissal of established civil servants and, also, provide that the Secretary General of the office is responsible for staff at and above the grade of principal officer. These provisions in the 2003 Act must be deleted to bring the tenure provisions for the staff in the Office of the Houses of the Oireachtas in line with the standardised management structure in the Public Service Management Act. The amendment which I will propose on Committee Stage in this House will move these sections to a new Part in the Bill which will deal specifically with the Office of the Houses of the Oireachtas Commission.

Section 17 revokes all provisions in other legislation which currently provide for the delegation of the powers exercisable by a Minister under the Civil Service Regulation Acts. Section 18 introduces transitional arrangements to provide for the continuation of any proceedings, procedures or measures already commenced under sections 5 to 9, inclusive, and 13 to 16, inclusive, of the Civil Service Regulation Act 1956. These sections relate to dismissing, reverting, retiring, suspending, disciplining and withholding remuneration from civil servants. This provision will ensure any proceedings in train at the time of commencement will continue, as if the Act had not been commenced.

Section 19 provides for the amendment of the Comptroller and Auditor General Act 1923, which provides that the Minister for Finance appoints the staff of the Office of the Comptroller and Auditor General. In recognition of the treatment of the comptroller as a Minister for the purposes of human resource functions within his or her office under the Public Service Management Act 1997 and under the Bill, this amendment will allow the Comptroller and Auditor General to appoint the staff within his or her office, subject to the consent of the Minister for Finance where changes to either staffing numbers or the terms and conditions of staff are concerned. Similarly, section 20 provides for the amendment of the Ombudsman Act 1980, allowing the Ombudsman to appoint the staff of his or her office, subject to the consent of the Minister for Finance where changes to staffing numbers or the terms and conditions of staff are proposed.

Sections 21 and 22 provide for the extension of the Unfair Dismissals Acts to the majority of civil servants. This will give civil servants the right to appeal a dismissal to a rights commissioner or the Employment Appeals Tribunal, on the same basis as employees in the private sector. The provisions of the unfair dismissals legislation will not, however, apply to civil servants dismissed by Government. They are excluded from the appeals procedures under the Unfair Dismissals Acts because it is inappropriate to subject the decisions of Government to review by a tribunal which is equivalent to a lower court. However, this does not mean that those civil servants dismissed by Government will not have an avenue of appeal. Officers will retain the right to seek a judicial review in the High Court of any administrative decision which affects them. The same is true of civil servants who are dismissed by a Minister, Secretary General or head of office.

Sections 23 to 26, inclusive, apply the Minimum Notice and Terms of Employment Act to civil servants. This means that a civil servant will have to be given between one to eight weeks' notice of dismissal by his or her employer. Conversely, if a civil servant decides to leave his or her post, at least one week's notice must be given to his or her employer.

Section 27 provides for the changing of the title of the "Secretary to the President" to "Secretary General to the President". Sections 28 to 31, inclusive, have been amended to give effect to the recommendations in the Nally report which proposed several changes in the organisation of the Office of the Chief State Solicitor. Section 28 amends section 6 of the Ministers and Secretaries Act 1924 to provide for the transfer of responsibility for local State solicitors from the Attorney General to the Director of Public Prosecutions, to reflect practical managerial responsibility, in that the State solicitors actually work under the aegis of the Director of Public Prosecutions rather than the Attorney General.

Section 29 amends section 3 of the Prosecution of Offences Act 1974 to give effect to the transfer

[Mr. Parlon.]

of responsibility for state Solicitors achieved in section 28. Section 30 provides the Director of Public Prosecutions with the power to direct local State solicitors to perform, on his or her behalf, any particular function of the director in any particular case. Section 31 provides the Director of Public Prosecutions with the power to appoint his or her staff.

Section 32 provides for the amendment of section 15(11) of the Public Service Management (Recruitment and Appointments) Act 2004. This subsection provides that a person found guilty on summary conviction of an offence committed under the Act will be subject to a fine, or to imprisonment for a term not exceeding two years, or to both. However, the High Court recently ruled that the maximum term of imprisonment for an offence on summary conviction should be 12 months. In order to comply with this ruling, the Office of the Attorney General advised that the Bill be amended to provide for a maximum term of imprisonment of six months.

Section 33 is a technical provision to amend the Public Service Superannuation (Miscellaneous Provisions) Act 2004 to clarify the original wording of one of its provisions. The section also inserts Eirgrid into the bodies listed in Schedule 1 to that Act as a body to which the definition of public service body does not apply.

This Bill is important as a key driver of change in human resource management in the Civil Service. It brings into being the management framework envisaged in the Public Service Management Act. Through enabling the full application of the Public Service Management Act 1997, it will help strengthen the levels of accountability, increase the focus on performance and enable the devolution of responsibility to line managers across the Civil Service. I am confident its measures will bring practice in the Civil Service into line with good human resource methods in the private sector. I recommend the Bill as another important public service modernisation measure. I commend it to the House.

Mr. J. Phelan: I welcome the Minister of State at the Department of Finance, Deputy Parlon, to the House. I also welcome the Civil Service Regulation (Amendment) Bill and noted the Minister of State highlighted its importance. However, one wonders why it took eight years since the passing of the Public Service Management Act for the Government to introduce the Bill. I am not blaming the Minister of State personally, as he has only been in office for three years but it is particularly disappointing when in the last eight years several golden opportunities to initiate a process of significant reform of the public service were passed up by the Government. It would have been appropriate if the Bill was in place before those opportunities arose. There could have been real substantive improvement in the different processes of the public service.

The priorities for public service reform are clear to those who observe it in action. Strong performance appraisal systems must be introduced. Performance-related awards for public servants who act above and beyond the call of duty and who are excellent in their spheres are needed. Real targets must be set out and published within the public service. With that in mind, I compliment the Tánaiste and Minister for Health and Children, Deputy Harney, for her proposal to publish a hospital cleanliness table to be drawn up by her Department. Such a scheme could be introduced usefully across several different aspects of the public service. The delegation of responsibility within the public service to local managers, which has not been done, must be ensured.

While the Minister of State referred to the PA Consulting Group report on the Strategic Management Initiative, he did not refer to all matters raised in it. For example, he did not refer to the 65% of respondents, a significant number of people, who believed that underperformance is still left unchallenged within the public service. The report also stated:

> . . . senior managers with whom we spoke consistently expressed most frustration and disappointment around what they perceive to be the slow pace of change in the HRM agenda. Two of the most frequently articulated concerns were managing performance and recruitment. In relation to recruitment, areas of perceived inflexibility included securing sanction for posts and atypical recruitment, particularly in relation to specialist [potential] staff . . .
>
> We observed little evidence of progress on devolving responsibility for HRM to line managers, and indeed little evidence on the part of line managers of an eagerness or capacity to absorb such a role. . . . manpower planning is virtually non-existent as a matter of routine practice.

The Minister of State did not refer to these damning paragraphs in his speech. It is hard to appeal and insist credibly on better value for money from public servants if the Government continues to show glaring examples of where Ministers do not seek it. I am not levelling this charge at the Minister of State but at other Ministers. Examples include the so-called "Bertie bowl" and the Punchestown Equestrian Centre project, in which every known procedure and routine was thrown out the window to ensure it was completed. There was also the case of the marina in County Kerry in which planning permission was not obtained and it had to be removed.

It is difficult for the Government to insist that value for money is a top priority but the Minister of State is in a better position than most of his colleagues to ensure it goes to the top of the agenda. The golden opportunity I referred to earlier is benchmarking. Much hot air has been evident in the Seanad and the Dáil, and in other venues, about this issue.

Dr. Mansergh: Indeed it has.

Mr. J. Phelan: I am convinced that the idea behind benchmarking is good, as is the idea of decentralisation. The Minister of State is involved in that. The implementation of both of these ideas, however, has been an unmitigated disaster. A strong case can be made for a new round of benchmarking or a new mechanism for a real reform agenda for public services. The problem with benchmarking was a lack of initiation of such a reform agenda. That golden opportunity was missed by the Government, but another opportunity may arise in the near future to start this reform agenda. My main charge is that the Government failed to introduce any reform package when benchmarking was implemented.

New thinking needs to come about on how public services are delivered. A more competitive and enterprising drive needs to be included. Innovation must be embraced and those who achieve excellence should be rewarded. That is crucial in my view. Many people believe, rightly or wrongly, that initiative within the public services is not sufficiently rewarded. I hold this view. The Minister of State and the Government must ensure that excellence in practice be significantly rewarded to facilitate delivery of better public services to the consumer. No taxpayer would have any qualms about significantly rewarding people who are doing a good job. That perception did not exist in the case of benchmarking. I would welcome any steps taken by the Government to ensure that people doing a good job in the public services are well paid. A formal structure should be put in place for this.

Dr. Mansergh: I welcome the Minister of State. The legislation under discussion is a significant piece of Civil Service reform.

The existing system of dismissal is cumbersome. I recall seeing bulky memoranda for Government for dismissing a prison officer, for example, or for chronic absenteeism. A memorandum might run to 100 or 200 pages. Are Ministers expected to read through all this documentation before deciding the issue? Whatever about the merits of this system when the Civil Service was small, around the time of the foundation of the State, it is clearly inappropriate today and responsibility should be delegated.

I was in the public service off and on, established and unestablished, for nearly 30 years. In my experience, a few people in every office or Department may underperform, but the vast majority work to the best of their ability. The disciplinary code agreed with the public service unions enables a nuanced approach to problems. Dismissal may then be left for extreme cases or if malpractice is involved.

This Bill essentially institutionalises the regime for advisers. Their contracts have long stated that advisers are there at the will of the relevant Minister or Minister of State. Their contracts terminate with the end of the period of office but can be ended at short notice on either side also.

I query one phrase in the legislation. Section 7(1) states: "Every established civil servant shall hold office at the will and pleasure of the government." This type of phrasing goes back ten years, 50 years, or even longer. This phraseology is not republican, but monarchical — *car tel est notre plaisir*. This section of the legislation should be re-examined. The pleasure of the Government is like the pleasure of the monarch. I appreciate that the phrase comes from previous legislation. However, the term "pleasure of the Government" is inappropriate for established civil servants, who in most cases will spend their employment life in the public service. The drafting is inappropriate. This language has come from centuries ago when totally different systems of government from those under which people now live were evident. I ask the Minister of State to consider this point before Committee Stage.

There is also a point to be made about established civil servants. A practice exists, especially in local government, where civil servants are established at one level and then asked to do work at a higher level, at which they are unestablished. This is either because the post does not exist or because a "temporary" permanent promotion is awarded. However, these workers are paid at the lower level, although they would have an allowance. This is not a desirable practice. It may save money but it imposes on public servants.

In practice, many senior civil servants have performed on a contract basis public service-type functions or missions at the request of the Government. The Minister of State recognised that these people have experience which is of value at a time of increased labour market pressures and I approve of the greater flexibility provided for in this area.

I mostly concur with what the Minister of State said about whistleblowers. It would be dangerous for a senior public servant or a Minister to sanction a genuine whistleblower, a bona fide whistleblower being someone who is not looking to cause trouble and embarrassment without adequate foundation. One can think of horrible examples from the EU Commission of people who missed out because of so-called disloyalty. At a meeting of the Joint Committee on Finance and the Public Service I mentioned the case of an accountant who, at the beginning of the DIRT controversies in AIB, drew attention to the problem and was summarily pensioned off by the people at the top. However, I like to think this type of response, certainly at national level, will be increasingly difficult.

As a member of the Houses of the Oireachtas Commission, I will comment on some sections. I apologise to the Clerk Assistant of the Seanad that we are discussing theoretical systems whereby someone holding her office — not her — might be dismissed. The appropriate system has been adopted, which is that senior office hol-

[Dr. Mansergh.]

ders in this House can only be dismissed by the Taoiseach himself after consultation and on the basis of clear recommendations both from the Chairs of the two Houses and the Houses of the Oireachtas Commission. I cannot imagine that any Taoiseach would wish to take that step unless there was a clear consensus across party lines that it was appropriate.

The Bill leaves senior civil servants, who can be dismissed by the Government, with recourse to the courts. It is unlikely that this would be for absenteeism, fraud or a similar matter, but perhaps for some major misjudgment. In practice — we have seen some examples over the past ten years — it is potentially extremely expensive to get rid of a senior civil servant without the most compelling cause, which is the way it should be. Ministers should not be able to get rid of senior civil servants arbitrarily simply because they do not like them or because they want them to shoulder the blame for something serious that has gone wrong.

I do not propose to use my speaking time to address either benchmarking or decentralisation, which formed part of the debate in the other House, except to note that in 2003, international agencies like the OECD and the IMF commented favourably on the benchmarking exercise. One must always compare it with what went before, which was a system of differentials with a semi-automatic status. That was not a good way of determining public service pay. However, I have no doubt the system is capable of further refinement.

This legislation raises the issue of what, in our modern, complex system of Government, are the appropriate tasks and responsibilities of Ministers and senior civil servants, respectively. Yesterday, I read with interest the comments made by Kevin Murphy at the presentation of the TASC report. I agree with the comments made on the Order of Business. I had some considerable dealings with Kevin Murphy as a public servant and he has my highest regard. Nonetheless, he has now commented as an ex-civil servant and ex-public servant and has contributed to public debate as a citizen with much knowledge and experience. The issues he raises are not simple. Yes, people from the past might turn in their graves. However, 50 or 60 years ago, society was much less complex and far fewer decisions came before the Government. It was tenable to have a system whereby the Minister was responsible for nearly everything that happened in a relatively small office. Members should remember that at the foundation of the State, the public service occupied what is now Government Buildings, minus the college of science at its centre. It all fitted into a premises of limited size.

There are not any terribly simple, immediate, "top of the head" answers to the problem. There are many clear cases in which a civil servant is primarily to blame for a situation that has arisen. It could be a relatively junior civil servant although it could be someone of any level of seniority. Equally, there are fairly clear-cut situations in which political decisions have been made and where the politician is responsible. However, there is a grey area in between and the legal area is a particular minefield. I worked for a Taoiseach who lost office because allegedly he failed to understand and should have understood the implications of some esoteric precedent. On later examination, it was argued that it was not actually a precedent at all. It was made out to be something of tremendous moral gravity. Only someone from the Law Library with typical portentousness could take such an attitude.

Ms White: It happened though.

Dr. Mansergh: The problem with the law — and the law was involved in the case discussed by Mr. Murphy — is that it is possible to argue that practically any position can be questioned legally or constitutionally in a court of law. Is the Government to be reduced to a state of total paralysis by fear that this or that might not be legal or constitutional?

Yes, there was a failure and I do not propose to go over the debate again. It was a relatively technical matter and there was an obligation on civil servants not merely to bring it to the attention of Ministers but to ensure that Ministers took note. This assumes that the civil servants themselves fully understood the implications. The possible €2 billion compensation arises from a decision of the Supreme Court. In my understanding, the view was taken that given the country's healthy financial state, it could afford the arrears. This implies that if the Supreme Court had been obliged to judge the matter in, for example, 1987, it might have taken a different view regarding arrears.

I will conclude with two or three minor points. Performance-related awards have many superficial attractions. The problem is how to guarantee fairness. I am afraid I come from the old school in the Civil Service whereby if one did one's job and did it well, one won the esteem of one's peers and did not look for some reward. I do not really go along with the idea that everything needs incentives.

5 o'clock

Ms White: Hear, hear.

Dr. Mansergh: We talked about underperformance but I suspect there are many instances of overperformance in every Department, that is, people who perform way beyond the strict demands of what they do, particularly in terms of the hours they put in, because they are dedicated to their job and want to do a good job.

On the issue of value for money, I compliment the Minister of State on his performance on "Morning Ireland" this morning. I thought he gave a very credible account. It is easy if one is chairman of an Oireachtas committee to apply a

bit of the populist touch in respect of overruns without thinking about whether the original estimate had any serious foundation to it. In the case of immigration facilities, one must accept Governments face potential crisis situations and must provide for them. However, the crisis may pass, to a certain extent, and the facilities may not be used. These factors must be taken into account.

Mr. McDowell: I have no difficulty with the contents of the Bill which my party endorses. The only surprise is that we need this Bill at all because I was under the impression most of these provisions were long since in place and it came as something of a surprise to find they were not.

Before Senator Mansergh leaves, I should respond to his idle provocation about the Labour Party-Fianna Fáil Government of 13 years ago. I should say something on which we should have long since agreed, namely, that that Government came apart not because of any esoteric, legal pretentiousness but because trust between Senator Mansergh's then party leader and mine had effectively broken down and the parties were no longer working together as a Government.

Dr. Mansergh: On the morning of 16 November, it was the esoteric basis of——

An Leas-Chathaoirleach: Allow Senator McDowell to speak without interruption.

Mr. McDowell: It also came apart because many on the Labour Party backbenches — I was then a Labour Party backbencher in a Fianna Fáil-led Government — had formed the view that language in the mouth of the then Taoiseach no longer meant a great deal because he was quite capable of going into the Dáil day after day and saying whatever was required to keep that Government together. Frankly, the words did not mean what most people with a knowledge of the English language believed they should mean.

Dr. Mansergh: The Senator cannot blame a Taoiseach for trying to keep a good Government——

An Leas-Chathaoirleach: Allow Senator McDowell to speak without interruption. Senator Mansergh is out of order.

Mr. McDowell: If we are to learn any lesson for the future, it must be that it was not only about an esoteric legal case, but that is an aside which keeps us entertained and awake into the evening time.

Before getting into the substance of the Bill, I mention comments the Minister of State made about whistleblowers because I was genuinely disappointed to hear what he had to say in that regard. He said he was satisfied that the current mechanisms in place were sufficient to protect whistleblowers. In a sense, that is to misunderstand what I believe is the problem. It is fair to say people will not be sanctioned if they blow the whistle on fraud, wrongdoing, maladministration or whatever, or it is unlikely they will be. However, more than that is needed. People who come across fraud, maladministration or improper behaviour in their work need to be actively encouraged to blow the whistle. At a very minimum, that requires legislation or a statement of principle from Government.

Neither I, nor anyone on this side, is saying that if someone discovers something on a Tuesday and if it has not been remedied by the Friday, he or she should be entitled to go to the press. However, what I am saying is that if during the course of his or her work, a junior or a senior official comes across maladministration, fraud or wrongdoing and, having used the internal procedures, it is not resolved, he or she should be actively given a mechanism whereby he or she can blow the whistle. Not only should he or she be given protection against sanction in those circumstances, we should actively tell him or she to do so. At a very minimum, that requires the endorsement and protection of legislation.

I was genuinely disappointed by what the Minister of State said. If I understood him correctly, he seemed to suggest the Department of Enterprise, Trade and Employment is still looking at this issue and I hope it will continue to do so. In light of the Morris report and the gardaí in Donegal, we cannot believe it is sufficient to say that if somebody blows the whistle, he or she will not be sacked. That could equally be true of other areas of the Civil Service given its pyramid-type structure. The bond of loyalty can lead to a vow of silence. Things happen, things go wrong and people know about them but if they do not do anything about them immediately, they become fixed with the consequences of their knowledge. In others words, they know about something, they should have done something about it sooner but they did not and, therefore, they all shut up.

I suspect we saw something similar to that happen in the Department of Health and Children where many people must have known there was a lingering issue in the cupboard somewhere but did nothing about it. The current Minister, the Minister of State's party leader, was able to do something about it because, in a sense, she was there only a few weeks and she had a free hand to deal with it. Others might well have chosen to do the same within weeks or months of becoming aware of it had they got the sanction and endorsement of legislative protection and, indeed, encouragement.

The issue before us today is about introducing different levels of disciplinary processes within the Civil Service. It is useful and proper that the range of mechanisms should be available, such as

[Mr. McDowell.]

suspension without pay, suspension with pay, power to terminate that and so on. Senator Mansergh is right in what he said about looking at underperformance and what he calls "overperformance". We must deal with both because, in a sense, those who underperform cause trouble for those who overperform. We need to incentivise those who do a decent job and more than they are asked to do as much as we need to deal with those who underperform because underperforming civil servants lead to a loss in morale and discourage others, directly or indirectly, from doing their job properly. I agree with the mechanism being put in place. It is right people should be given a chance by way of training, development or whatever assistance can be provided to them. However, it is also right that the sanction is available to the head, whether the Secretary General or, ultimately, the Minister.

We need to find some mechanism to encourage people who do a decent job. I have spoken on this issue more times than I can count in this and in the other House and it is deeply frustrating because every time I do so, I go to the Department of Finance's website and look at another myriad of reports produced to deal with the issue. There are many such reports from the high level group, the group of Secretaries General of Departments or outside bodies which have looked at the strategic management initiative and have made various recommendations. It is difficult to avoid the conclusion that most of these reports are gathering dust and that nothing of any serious merit is happening.

Today, I looked at the second sectoral progress report of the Civil Service performance verification group which was basically Mr. Sullivan looking at the benchmarking process and what came out of it. Some of the issues he looked at are ones I indirectly dealt with in the context of this Bill. One issue is about the notion of open recruitment, for example, which was agreed in the context of Sustaining Progress. It was agreed open recruitment would take place in general service posts in the Civil Service to meet specific skills shortages. When this report was done, which is the best part of one year ago, Mr. Sullivan basically said this was in its infancy, talks were still ongoing and that a few advertisements had been put in place.

I would be interested to know how many people have been recruited by open recruitment, that is, by going outside Civil Service normal processes to get people with specific skills. Most of us have been saying for a long time that there is a need for greater involvement of the private sector, that we need to be able to take on people who are not under 24 years of age and who do not have whatever number of points in the leaving certificate, and that we need to be able to fill specific skills needs in the Civil Service quickly, efficiently and on contract, if needs be. That did not seem to be happening when this report was formulated in June of last year.

Mr. Sullivan also reported on the notion of merit-based promotion — another thorny issue which is proving very difficult for some Departments to deal with. This has been around for ten years since SMI became an issue. He points out, for example, that the scheme to replace, on the basis of merit, people who had retired from the Civil Service had in the previous year successfully managed to promote three people, two assistant principals and one higher executive officer. This document is a year old and could have been improved in the meantime. If we are serious about basing some positions on merit we need to be talking about an awful lot more than a few people every year. I hope this is outdated information and, if so, I would be delighted to hear it.

There is a need for more open recruitment and more promotion based on merit. This will not destroy the way the system works. Nobody thinks the way the system works will be totally replaced by all these newfangled notions but they are essential if some modern way of dealing with the Civil Service is to be introduced.

I was in favour of the benchmarking process but over time its purpose has become distorted. At the time I saw it as a way of dealing with leakage from the Civil Service of skilled personnel, in particular, who had to be retained within the Civil Service and, therefore, had to be remunerated in a way that was comparable with the private sector. I saw it also as a way of breaking the relativity scheme system, getting away from the position where if the prison officers got an increase the Garda, nurses and so on had to get it. As regards the latter, I am not sure whether we have successfully done that and, certainly, the recent indications that there will be another bout of benchmarking suggests we have not. I thought we had broken the relativity system once and for all so that we could deal with individual grades within the public service of people who had specialist skills. For example, I thought we could deal with prison officers, as prison officers, without dealing with them as a grade within the Civil Service linked to everybody else. I do not have faith that has happened. I get the sense that the Department sees a further bout of benchmarking as being another way of updating everybody in a way that will bite away at the relativity system.

One issue on which I agreed with the former Minister for Finance, Mr. McCreevy, was that benchmarking should be once off. Frankly, I am nervous of the precedent that will be set by having another bout of benchmarking if that is what we are going to do.

I read with some interest the debate in the other House in which the Minister referred to the statements of strategy and the mission statements of various Departments. I am one of the sad

people who occasionally reads these statements. If the Minister seriously believes these are a guidance to Ministers he is making a serious mistake. These statements were introduced in 1997 and are meant to be updated every few years after a change of Government or Minister. For the sake of argument let us take his own Department. As the statements of strategy and the mission statements have been updated over the years there is very little difference between them. The number of civil servants or Ministers who have the remotest of idea of what is contained in these mission statements or statements of strategy is low.

Dr. Mansergh: They are a public relations exercise.

Mr. McDowell: If they did know what was contained in them I am not sure it would help very much. The strategic priorities of the Department of Finance, for example, are price stability, debt reduction, management and effectiveness of public expenditure and tax reform. How does that help? The Minister says poe-faced, reading from a script that has been written for him, that these statements of strategy are a guideline, they inform what the Department does on a day to day basis, help it in setting priorities and in allocating resources and staff to various areas. They do nothing of the sort. They are words on paper, with which nobody could possibly agree, which do not change in any significant measure from Government to Government. Either these statements are made meaningful, which means a Minister must take control and put some political priority of meaning into them or we can forget about them. I appreciate they are meant to be proposed by the Secretary General. We should not maintain the pretence that they are a meaningful statement of mission or of the strategic priorities of a particular Department because, regrettably, they are far from that.

I wish to refer briefly to the issue of cost controls because we are all exercised about the issue of value for money within the Civil Service. It is fair to say that in recent years the Department of Finance has introduced a series of regulations and guidelines which it pushes out to other Departments. It is true also that Secretaries General have produced a lengthy and detailed report on their responsibilities as Accounting Officers and so on. Yet, I have no sense that anything real is happening. Maybe the guidelines are being adhered to and maybe they are not. It is clear in those instances where they are not and there are plenty of them — Senator Phelan referred to some — that there is no sanction and that nothing happens. It is clear that in the event that cost controls are not properly implemented, there is no sanction and no comeback and nothing happens on foot of this.

We do not seem to learn the lessons. I know there are guidelines in place but we must take them seriously. In essence, the whole SMI process is a fascinating one but it is ivory tower material. I have no real sense, and this view is shared by many civil servants, that it is making a real difference in terms of improving the quality of service provided to customers or improving the way people work within what is still an extremely hierarchical Civil Service.

Ms White: I spent 19 years in the public sector so I can speak with some authority. This legislation is bringing into line the industrial relations procedures of the Civil Service and private companies. However, I do not believe it will happen in the way it would in a private company. I sense fear in this building. I sense the fear of dealing with industrial relations matters. It is not part of the management systems. It is difficult to reprimand and demote people. In a private company one cannot afford to do this because one would go out of business. I admire those in the Civil Service and their integrity and patriotism. We do not want a Civil Service that operates like the dead hand of bureaucracy. The reason I stand here today is to say that I never again want to see a personnel problem in the Civil Service being investigated by a former public servant. I will not mention the case in question. An outside consultant has no allegiance to any group. If or when the Minister of State, Deputy Parlon, becomes Minister, I ask him to ensure it never happens again that a public servant adjudicates on a colleague. The matter should be investigated by an outside independent consultant.

Mr. O'Toole: I also welcome the legislation although I appreciate reservations have been expressed by colleagues in different places. I have always felt that the cumbersome method of dealing with dismissals of civil servants might have been acceptable in an emerging state in the 1920s and 1930s but it has no place in modern work practices. It is a tidying up exercise that will eventually allow the system to work better. I agree with Senator McDowell in that I do not see it making any major change to the way the system will work.

One of the difficulties is the level of authority and discretion allowed to civil servants. The main problem is that decisions taken 25 years ago at assistant principal level are now being taken at Secretary General level. I could give many examples. Some 25 years ago assistant principals in consultation with a principal officer decided on the entitlement of schools for teachers or the appointment of teachers to schools. Now such matters are probably decided in the Minister's office with four telephone calls to Deputies before making an announcement, which will not help matters or make things more efficient. We

[Mr. O'Toole.]

should give people responsibility and discretion as would happen in other parts of the economy. As with anybody who deals with them at senior level, I have seen the absolute frustration of civil servants at not being allowed to get on with the work they are well able to do. They are being constrained at all levels.

On the Order of Business, I asked about the failure in recent years to spend the total budget allocations in the Departments of Education and Science, and Health and Children, as outlined in the newspapers. This is a management problem. Money that was available was not drawn down. I would like to be able to track the decisions as this problem goes back to the decision-making process. Decisions that take twice as long are not twice as good.

Another matter, covered on the Order of Business today, is not addressed in the Bill. Earlier today I attended a committee meeting and missed Senator Mansergh's contribution on the Bill. I do not know how the Ministers and Secretaries Act 1924 relates to the modern world. The Minister is the head of the Department and takes responsibility while the Secretary General is the Accounting Officer. Tomes have been written on the importance of the provisions of the Act over the decades but I still do not understand how the decision making process works. I do not know who takes responsibility and who gives accountability in all situations. Without getting into the current row about the nursing homes involving the former Minister for Health and Children, Deputy Martin, and his then Secretary General other than to use it as an illustration, how is such a matter decided? If we had all the information and agreed on that information, is there a point at which without bias and on that basis we can determine that the Accounting Officer must be accountable and pay with his head or that the person with political responsibility for the Department must pay with his head? We have not done this, which is an issue in how we move forward with the strategic management initiative.

I do not know the answer and I do not know how we will find the answer. It is extraordinary that all these years into the life of the State a joint committee of these Houses should recommend allocating more time to understand what level of accountability and responsibility is required from people at senior levels in the Departments. Every time we have a row, the Opposition will point out that the Minister is blaming the civil servants, the Government parties will back the Minister and those of us who are disinterested would be unable to take a position. I see Senator Brian Hayes smiling. By "disinterested" I mean without having a party political interest. I am not suggesting we would be disinterested in any other way. Leaving the people out of it, how can we come to a conclusion?

We are concerned here with the process of dismissal. One of today's newspapers referred to an "honourable resignation". I would like to see that term defined. What does it mean? Does it mean that if the person in the back office is found to be doing something nasty on the watch of a particular Minister, that Minister is both responsible and accountable and must pay the ultimate price? While I am sure it does not mean that, why not? How do we make the judgment call? What are the ethics involved? What is the morality, with a small "m"? How do we come to that conclusion?

The SMI will never really work until we understand the processes involved. As an illustration, last week Senator Brian Hayes and I differed on the issue of the gardaí in Donegal, who are public servants. No doubt for the best of reasons, he said that those gardaí should have been suspended. That I took a different view does not mean that I am right and he is wrong or *vice versa*. I would like to know how we reach a judgment on such matters. Due process will need to take its course and codes of discipline will need to be worked through, which are never easy.

These are issues we have not addressed. The Minister of State stated that a person on suspension continues to draw a salary. The point I was making last week was that in his judgment the Commissioner did not want people on suspension drawing salary, going on holidays and doing the gardening and felt that something different was required while the matter was worked through the disciplinary code and the various other procedures, including the involvement of the Director of Public Prosecutions. We need a clear understanding on these issues and should not depend on political intervention.

What is the relationship at issue here? It boils down to this. If the political head of a Department has a different view to his or her Accounting Officer, at what stage do they part company? If a Minister wants money spent in a particular area and the Accounting Officer says he or she cannot agree, in the ultimate how is it determined? For instance, in the ultimate can the Government overrule an Accounting Officer? It could take the decision to give the Accounting Officer the required money, which would address the matter. However, at what point is the Accounting Officer supreme? At what level does he or she have the discretion to make a decision? None of these matters is clear and this lack of clarity filters down through the system. People down the line will not take a decision that will cause a problem up the line and in their career. A number of Departments have given individual sections a budget to work to and take control of. However, how is that done?

The Minister of State said he tabled some amendments to address the issue of superannuation. He should read a book prepared for the public service pensions commission, in which the

Department of Finance outlined the different arrangements for superannuation in the Civil Service and public service. The number of different combinations is mind-boggling. Officials at the Department of Finance often talk about creating precedent. They have used every pension arrangement that can be imagined in some form, way or shape at some time. The Minister of State knows how the Department of Finance works. If the officials want a new post they just give it a new title. They have titles that do not exist in any other Department. Unlike any other Department, the Department of Finance has three Secretaries General. The Minister of State knows the way officials there do things. I do not say this in criticism. It works very effectively and efficiently, and we want that kind of creativity from our public and civil servants. On many occasions I have suggested such solutions to problems.

Most people in these Houses do not realise that the Department of Finance has a Secretary General with responsibility for public service management and development. While some people on the Government side believe we eliminated the Department of the Public Service 18 years ago, it is still alive and well and functioning with a Secretary General in Merion Street. How do those kinds of arrangements take place? Who is in charge in those cases? Is there an Accounting Officer for the area administered by a Secretary General with responsibility for public service management and development and, if so, how does that Accounting Officer relate to the Secretary General in the Department of Finance? I believe I know the answer in that he is referred to as second secretary or some similar title. However, is the Secretary General in the Department of Finance with responsibility for public service management and development an Accounting Officer? Is he an Accounting Officer in a form different from that in other Departments? As I mentioned on the Order of Business, we need to differentiate between responsibility and accountability. We need to indicate where they overlap and when the responsible person is also the accounting person, the person who must pay the account for matters that go wrong.

It is useful for Secretaries General to have the authority given to them in the Bill. I am certain they will have to be advised and I do not have any worries about that at all. I know that the Civil Service unions would ensure that the code of discipline and the process are worked through pretty well. They will have the protections of legislation, which they did not have previously. Many people were excluded in the Industrial Relations Act 1946, when distinctions were made between servants and masters, civil servants and public servants and other such Jesuitical changes, many of which have been improved. There are more improvements here today.

The Bill is a worthwhile movement forward, but where will it all end? It is significant that one of those involved in this at an early stage was Mr. Kevin Murphy, who later became the Ombudsman and, incidentally, made a fine speech yesterday. I have known him for many years and I hold him in high regard. I was one of the few who welcomed his appointment. At the time, many Senators wondered how we could trust a civil servant to take on the Government and be critical of it. In light of his single mindlessness over the years, such concerns were unfounded. I never heard him discuss the issue of accountability and responsibility. In his speech yesterday, he spoke about how easy it is to blame the civil servant and he is right. That should not be easy to do, but neither should it be out of bounds. If that is what needs to done, then so be it. However, if it only happens that way and the political leadership never takes responsibility, something is completely wrong. How do we get it right?

Senator Hayes asked for a debate on this today and that could be very useful. Can we develop a clear code in order to reach a conclusion on such issues? I do not know the answer but I do not see this happening any time soon.

Mr. Hanafin: When discussing this Bill, it would be no harm to remind ourselves of the highest standards that prevail within the Civil Service. We must give credit to those civil servants for the great growth in our economy and the developments that have taken place here. The Civil Service has played a major role in ensuring that Ireland has become a fairer, more equitable and better place in which to live. It is important to introduce Bills that bring the current best practice up to date. The highest standards in the country prevail among the civil servants who work in this House. I cannot imagine that a better standard exists in other parliaments.

When the then Minister for Finance, Mr. McCreevy, published the Civil Service Regulation (Amendment) Bill 2004, he described it as a further significant step in the reform and modernisation of the Civil Service. He stated that the Bill was the third recent initiative, following the introduction of the Civil Service code of standards and behaviour and further reforms in the area of public service pensions. These initiatives all serve to modernise the Civil Service. The Bill, which will amend the Civil Service Regulation Act 1956, will facilitate a more flexible management structure, in which decisions relating to staff are taken at the appropriate administrative level in a modern civil service. As a consequence, heads of Departments and offices will have the management powers, including the power to dismiss staff below principal officer level, as originally envisaged in the Public Service Management Act 1997.

[Mr. Hanafin.]

The Bill is a delivery of a commitment made in paragraph 22.6 of Sustaining Progress. The Civil Service unions, which agreed to the Bill during the benchmarking discussions, will be consulted about the detailed implementation of its provisions. The Bill's main provisions are as follows: Officers at and above principal officer level may be dismissed by the Minister in charge of the Department or scheduled office on the written recommendation of the Secretary General of the Department or the head of the scheduled office. Civil servants, as office holders other than those who fail to be dismissed by the Government, such as Secretaries General, will have access to the Unfair Dismissals Act 1997, which is being provided in order to assure civil servants that fair procedure will be observed and to provide a means of redress if they are dismissed unfairly. The sanctions of reduction in pay, reduction in rank and suspension without pay will be available to managers of those who underperform after attempts have failed to address the problem through training or coaching. Superannuation benefits accrued before a reduction in salary or rank will be protected. The present range of disciplinary sanctions will be broadened to include suspension without pay and hardship payments made to civil servants who are suspended without pay may be varied or halted.

Established civil servants may be engaged in temporary or fixed term contracts of employment, so that managers will have the flexibility to hire people for a finite term project. People aged over 65 years of age may be engaged as new entrants so that management will have the flexibility to engage people regardless of their age. I welcome this in light of the current debate in the Department of Social and Family Affairs and I commend the Minister, Deputy Brennan, on his work in this regard. I welcome the transfer of responsibility for local State solicitors from the Attorney General to the Director of Public Prosecutions, as well as the delegation of functions from the DPP to the local State solicitors. This Bill is timely and necessary.

Mr. B. Hayes: I enjoyed listening to the historical dispute between Fianna Fáil and the Labour Party while I was in my office. There was a certain rewriting of history and I understand some doors were closed late at night one time.

Dr. Mansergh: That was three months earlier.

Mr. B. Hayes: That kind of thing does not bode well for the future. I will leave that to the experts here in the Chamber.

I welcome the opportunity to discuss this issue with the Minister of State. On the Order of Business this morning, I raised the remarks made yesterday by Mr. Kevin Murphy. He put his head on the block with his views on political responsibility. This arose from the publication of the Travers report and the decision to move Mr. Kelly from the Department of Health and Children to the Higher Education Authority. That decision has profound implications for the entire public service. The idea that one civil servant can be made a scapegoat will reverberate around senior management within our entire public service. In a sense, it has politicised the historic role of the Civil Service in Ireland. That one decision taken by the Government to scapegoat Mr. Kelly for the collective problems in the Department of Health and Children will have far-reaching and dangerous consequences for the Civil Service.

Senator O'Toole asked what the difference was between political responsibility and political accountability. I think there is a difference. The Government, under the Constitution, is collectively responsible for the administration of the various Departments and each Minister is responsible to the other House. Ministers are not responsible for the individual decisions taken by civil servants, but they are collectively responsible in the same way that Enron was responsible for the way in which financial impropriety took root in that corporation. Decisions had to be taken at board level on who was responsible as it was not the individual employees of the company. Under our Constitution, the Government is like the board of directors in this case. That why the decision on Mr. Kelly has such wide-ranging consequences. There is much sourness in the relationship between senior civil servants and this Government because of that scapegoating. In time, it will mark a very sad chapter in the failure by the Government to take political responsibility. The Public Service Management Act 1997 is quite clear on the issue of political responsibility to the Houses of the Oireachtas. The Cabinet is responsible and that certainly did not happen in this case.

It was the great achievement of WT Cosgrave and the first two Governments in the first decade of the State's existence to establish a Civil Service following the bitterness and division of the Civil War, which was not only for those who were victorious. One of the abiding, far-reaching and fundamental successes of the service has been the Civil Service Commission, which has ensured there has been no politicisation of appointments. When one looks at the impact of very senior civil servants like Dr. TK Whitaker, especially since the 1970s in the context of Europe, one realises that dramatic change in Ireland did not just occur because of political support for, among other things, the EU project, but also due to the kind of management existing at a high level within the Civil Service. We must remind ourselves that since the establishment of the State, there has been virtually no politicisation of the service due to an independent recruitment network and the

overperformance to which Senator Mansergh referred by various people who have had a significant influence on the transformation of Ireland over time.

While I had the privilege to be appointed Vice-Chairman of the Joint Committee on the Strategic Management Initiative, I have as much knowledge of SMI now as I had ten years ago. People within the political community do not know what benefits have accrued from the initiative, largely because of the rather worthless, meaningless reports which have been produced. Senator McDowell referred earlier, for example, to the annual strategic plans from each Department. Unless we begin to translate the strategic management initiative process into tangible and real benefits for ordinary citizens and the Civil Service, we will not make the improvements envisaged when it was first established.

Previous speakers have referred to the need for much greater flexibility within the Civil Service. I cannot for the life of me understand why we cannot recruit people well into their 30s and 40s who have expert knowledge and the skill sets required in the service at given times. While the recruitment of people at a certain age during a certain part of their life cycles, while investing in their training and education, is very useful, we must allow people to move from the Civil Service to the private sector for a number of years and *vice versa*. It is not impossible to so provide and it is done in other jurisdictions. We should be conscious that the service itself would gain significantly from an open recruitment process.

My party is not against the benchmarking process but objects to the way in which it has been delivered. I take up the point made earlier by Senator McDowell who quoted former Minister, Mr. Charlie McCreevy, who said the process would not be recreated every three years or so. It was a valid point as the original objective of benchmarking was to deliver tangible benefits to customers and those who use services to make visible the added value at the end of the chain. I asked in my local authority area of South Dublin County Council what was being delivered in return for benchmarking and the manager was able to tell me about a new customer service unit which is open one hour per day, five days per week. It is a tangible benefit to which one can refer to explain to people what they have paid for. I am not as certain of the benefits which have accrued from the process in other Departments and agencies. If we are to have another round of benchmarking, it must be open, accountable and transparent, which was not the case the last time when there was no public perusal of the negotiations and agreements between the review group and Departments.

While I welcome the technical changes in the Bill, I point out that politicians cannot scapegoat civil servants but must take responsibility. In the rainbow Administration, three separate Ministers resigned, two over very minor matters and the other, clearly, for not such a minor reason. The culture has not been imbued in the current Government which blames others for its problems rather than itself.

Dr. Mansergh: There was an incident involving the appointment of a judge and a warrant in which there was some attempt to blame a senior civil servant.

An Cathaoirleach: Senator Mansergh spoke earlier and has made his contribution.

Minister of State at the Department of Finance (Mr. Parlon): I thank the House for the Second Stage debate on the Civil Service Regulation (Amendment) Bill 2004. The legislation represents a significant step forward in the process of completing the comprehensive and ambitious reform programme envisaged in Delivering Better Government and the strategic management initiative, with which some have minor difficulties. The Bill also completes another element of Sustaining Progress.

Delivering Better Government envisages a public service which makes a substantial contribution to national development and is effective and efficient in delivering high-quality services to the public. To fulfil this role effectively requires the putting in place of modern management practices. Improvements in service delivery are to be underpinned within Departments by organisational improvements in a number of areas including financial and human resources management. Delivering Better Government recognised the need to give Secretaries General the authority to exercise responsibility in critical areas of human resources management, especially the appointment, performance, discipline and dismissal of staff.

The framework for the better management of staff was set out in the Public Service Management Act 1997. As the Bill gives effect to the framework, it is an important element in the continuing improvement and modernisation of the Civil Service. The Bill will help to strengthen the levels of accountability within the Civil Service, increase its focus on performance and facilitate the important devolution of responsibility to line managers across the service by giving effect to the 1997 Act. The House has had a useful debate on matters arising in the Bill and I will certainly consider the points made by Senators O'Toole, McDowell and Brian Hayes.

Dr. Mansergh: And Senator Mansergh.

(Interruptions).

An Cathaoirleach: The Minister of State without interruption.

Mr. Parlon: I thank Senators Mansergh and Hanafin for their supportive comments and Senator White who broadly welcomed the Bill. We will bring forward an amendment to the Bill on Committee Stage on the Houses of the Oireachtas. I look forward to our continued discussion of the issues which have arisen.

Question put and agreed to.

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

Dr. Mansergh: Tomorrow.

Committee Stage ordered for Wednesday, 22 June 2005.

An Cathaoirleach: When is it proposed to sit again?

Dr. Mansergh: At 10.30 a.m. tomorrow.

Adjournment Matters.

Fisheries Protection.

Mr. Ross: I wish to raise a matter which is becoming close to a national scandal, namely, drift netting off Irish waters. I have come across an extraordinary number of people who are concerned about this although I represent a constituency which is not near the sea, the sea fishing community or any vested interest group. However, I have been lobbied by many people; anglers, hoteliers and others in the tourism industry who say that what the Government is doing in allowing excessive drift netting of wild salmon is killing the tourism industry in certain areas and is also building up serious trouble for future generations.

What I cannot understand is that the Government has apparently yielded to certain small but strong vested interests and is allowing drift netting to continue on a scale which is completely unacceptable and is way above European norms. It is unfortunate that the Government has not taken the initiative and yielded to pressure from ordinary people to stop this habit which will shortly ruin our salmon industry and damage our tourism industry.

I have been told of many ugly incidents in which those who practise drift netting have behaved in an illegal and threatening fashion towards those who accidentally disturb their activities. I came across someone at lunchtime today who told me he had been sailing off the coast of Donegal when he was unexpectedly caught in drift netting and that he was pursued by some fishermen who were guarding the drift nets to protect their salmon catch. The industry as it is practised is somewhat murky and it must be tackled, not only in its legal activities but in its ancillary activities.

Salmon stocks are in steep decline, not only in Ireland but in Europe. We are all aware that if drift netting is allowed to continue, we will have very few wild salmon left in our rivers in the near future. Successive studies have shown this is the case. One of the extraordinary and stark revelations of recent years has been that the Government has commissioned successive studies to look at what can be done and has continuously ignored the scientific data and the conclusions of its own consultants. It did not like the conclusions so it simply ignored them. It also ignored our European partners who have taken action to curtail the salmon catches from drift netting. Within Europe we are undoubtedly, once again, the black sheep. We have behaved appallingly in allowing this to continue. It is vested interests which allow it to happen.

As the Minister of State is aware, the drift nets intercept salmon approaching our rivers. Statistics now show that 86% of freshwater salmon in Ireland are at risk. The latest information appears to indicate that if the Government does not take action, the Liffey will be devoid of salmon in a very few years, the Slaney probably has about ten years to go and the Boyne has about six years. This is a totally unacceptable situation which is only taken by the Government for short-term electoral reasons in order to defend one or two seats, not too distant from the constituency in Donegal of the Minister of State with responsibility for the marine. That is not the way to plan the long-term prosperity of the fishing and tourism industries on which we depend for prosperity and the spreading of money outside the areas we are discussing.

The Welsh and the British are already complaining that 10% to 12% of salmon stocks returning to British rivers have been caught in the drift nets. I suggest to the Minister of State that if he does not do something about it, he will face protests from our European colleagues who will eventually force him to take action.

In the short term, there may be some political gain for the Government in taking this appalling attitude to drift netting but in the long term the economy cannot afford such an injection into the pockets of one or two at the expense of so many.

Minister of State at the Department of Health and Children (Mr. S. Power): I thank Senator Ross for raising this issue. I will reply on behalf of the Minister for Communications, Marine and Natural Resources.

Salmon habitats and stocks throughout the north Atlantic regions are under threat from a variety of adverse pressures. Some of these pressures are environmental and some relate to water quality. Other pressures include drift netting,

seals, poaching in rivers and estuaries, and pollution. With this in mind, the Government has accepted the National Salmon Commission's advice that continues to maintain that reductions in the overall fishing effort are required in order to sustain and rebuild salmon stocks nationwide. For this reason, current Government policy has been designed to bring spawning escapement up to the level of the scientifically-advised conservation limits and to fully align the wild salmon catch on the scientific advice so that we can have increased confidence that a sustainable management regime is in place.

My colleague, the Minister of State with responsibility for the marine, Deputy Gallagher, has indicated that the Government is committed to limiting the salmon catch to that advised by the scientific advice by 2007. He is not convinced however that operating a managed fishery in accordance with the scientific advice will necessarily mean the cessation of the drift net fishery. He will consult with the new National Salmon Commission on the best method of achieving an alignment on the scientific advice by 2007.

The Minister of State assures me that he is fully aware of the widespread concerns being expressed that drift netting for wild salmon in the Irish fishery is having a damaging impact on wild Atlantic salmon stocks. It should be noted however that despite these claims, the Government does not accept that there is any sound or agreed scientific basis for the allegations made that the Irish salmon drift net fishery has an unacceptable impact on salmon stocks, either in Ireland or in other European countries.

In this regard, the Government would argue strongly that, together with its commitment to align on the scientific advice in two years, its management of the Irish home water commercial salmon fisheries, which limits the commercial salmon fishing season, confines it to within the six-mile limit and restricts the number of fish being caught, clearly demonstrates a commitment to the conservation of the wild salmon stock which is in keeping with the spirit and principles of our obligations, both as a member of the North Atlantic Salmon Conservation Organisation, NASCO, and under relevant European Union and other international legislation.

Since 2002, the Government has promoted the application of quotas on commercial fishing and bag limits on angling to achieve catch reductions as the best instrument available to achieve the restoration of salmon stocks. A quality and value strategy is also in place within the commercial salmon fishery aimed at improving how fish are handled, post-catching, to ensure the maximum price per fish is obtained. This approach maintains or increases the overall income derived from the fishery even when the total catch is reduced.

In these circumstances, the Minister has no plans to introduce proposals to purchase commercial drift net salmon fishing licences. The Government has consistently ruled out buy-out as an effective means of achieving the restoration of salmon stocks. Moreover, no convincing case has been advanced as to the public good that would be acquired by the State in the context of a publicly-funded buy-out of commercial salmon licences nor why stakeholders benefiting from increased numbers of salmon entering the rivers should not contribute in whole or in part towards achieving that increase.

As he has previously indicated to the Houses of the Oireachtas, the Minister of State with responsibility for the marine is prepared to keep the matter under review. In this regard, he advises me he would be open to any relevant proposals presented to him whereby stakeholders benefiting from any reduction in commercial catch would engage in the first instance with licence holders and indicate a willingness to address any compensation issues that might arise.

6 o'clock

In the wider context, the EU Commission has recently begun work to examine the management of the wild Atlantic salmon in Community waters and, in particular, to examine the position on interceptory fisheries of mixed stocks of salmon inside the 12 mile limits. The Government has noted the EU Commission's concerns in this regard and has already indicated its intention to work with the Commission to achieve proper regulation of these fisheries.

I understand the European Commission expects to complete its report on these fishing activities later this year. As this study is expected to provide an accurate analysis of the impact of interceptory fisheries on mixed stocks of wild salmon in Community waters, the Government believes we should await the outcome before any further conclusions are drawn in the matter.

Mr. Ross: In light of the Minister of State's reply, am I correct in believing he intends to do absolutely nothing about this problem?

Mr. S. Power: The Senator focused on drift netting as the only problem but, as I indicated, there are a number of pressures affecting salmon habitats and stocks throughout the north Atlantic region. Naturally, we are very conscious of the impact a reduction in the salmon catch would have on our tourism industry. We will monitor this but no changes are envisaged in the short term.

Mr. Ross: Plenty of monitoring. I thank the Minister of State.

Hospital Services.

Mr. Kitt: I thank the Cathaoirleach for allowing me to raise this issue and thank the Minister of State, Deputy Seán Power, for coming to the

[Mr. Kitt.]

House. As Minister of State at the Department of Health and Children, he will have a particular interest in this issue.

There is in Tuam a very efficient committee called the Tuam cancer care committee. For many years it has raised funds in many ways for cancer care beds in the town, particularly for the Áras Mhuire building. I certainly admire the committee's efforts. Its members made the point to me that there are now two respite beds in place in Áras Mhuire but that staff are needed urgently. The HSE, western region, has funding for some staff. Only two or three staff are required. Funding should be made available to open the beds. All the other raw materials, including furniture, are in place.

It is very interesting that an anonymous donation of €100,000 has been made. It will not be on the table for too long if the conditions are not met. I hope the Department will match the donation. Money is available from the anonymous donor, a building exists and beds are available. Everything is in place but the staff. I hope the Minister of State can respond favourably in this regard.

The issue that has arisen in Tuam is associated with an ongoing campaign to have a Tuam health campus. If we get basic provisions such as an ambulance base, an Alzheimer's disease unit, a child care training centre and a community hospital to replace the one that was run by the Bon Secours order for many years, they will comprise part of the health programme that has been planned for many years by the former Western Health Board and now by the HSE, western area. The proposal of the former health board is with the Department of Health and Children. It ties in with what I am saying. It is tremendous that a person is prepared to donate €100,000 towards the cancer care respite centre. I ask the Minster of State to consider this matter. He should note that there is funding available for some staff but not enough. Until the extra staff are provided, we will not be in a position to say the unit can open.

Mr. S. Power: I thank Senator Kitt for raising this matter on the Adjournment to which I am happy to reply.

The report of the national advisory committee on palliative care was launched on 4 October 2001. It describes a comprehensive palliative care service and acts as a blueprint for its development. It is planned that the report's recommendations will be implemented over a five to seven year period.

The Department of Health and Children, the Health Service Executive and the voluntary sector are actively involved in planning for the development of palliative care services in line with the recommendations in the report of the national advisory committee. Funding is being provided for the development of such services on an incremental basis nationally in line with the recommendations in the report.

Since October 2001, an additional €16.384 million has been invested in palliative care services, including €2 million in additional funding that has been made available specifically for palliative care in 2005. This funding has been used to improve palliative care services in line with the recommendations in the report.

As the Senator will be aware, the provision of health services in County Galway is, in the first instance, the responsibility of the HSE, western area. It has advised my Department that an addendum to its service plan for 2005 was submitted to the acting chief executive officer of the HSE in December 2004 in respect of the palliative care suite at Áras Mhuire. The addendum set out the additional resources in terms of whole-time equivalents and funding required to open the unit. The additional resources required are 5.5 whole-time equivalent staff nurse posts and physiotherapy services. Their provision will require the allocation of €260,000.

The HSE, western area, has further advised that the structural work on this unit is complete, it is ready to be occupied and will provide accommodation for two persons with additional facilities to enable family members to remain overnight, if required.

For the service to operate, additional resources involving whole-time equivalents and revenue funding are required. It is understood that this is under consideration by the HSE. The HSE, western area, has stated it is aware of an anonymous offer of €100,000, being made available, on a once-off basis, subject to the proviso that a similar sum be made available to the unit by the HSE, western area. Senator Kitt mentioned this donation. I compliment the anonymous donor on such a lovely gesture. At a time when those who avoid paying their taxes are the subject of many of the headlines, it is nice to see there are still people who donate their own money anonymously for such wonderful causes. I hope the kindness of the person in question will be matched by the HSE.

Management of the HSE, western area, met members of the Tuam cancer care committeeto discuss this donation in recent weeks. While the offer of additional funding is generous, the HSE advised the organisation that it is not possible for it to open the unit on the basis of an offer of once-off funding. However, it is not too often that we receive such offers. I will contact the HSE over the coming days to ascertain how best we can avail of the donor's generosity and try to provide a very necessary service. I will communicate with the Senator in the near future.

Mr. Kitt: I also look forward to generosity on the part of the Minister.

School Staffing.

Mr. B. Hayes: I thank the Cathaoirleach for selecting this matter on the Adjournment and I welcome the Minster of State to the House. St. Kevin's boys' national school in Kilnamanagh, Tallaght, is one of two local national schools in the Kilnamanagh area. I wish to highlight to the Minister for Education and Science the very genuine concerns of this school community in connection with the teaching allocation from September of this year. This matter has been brought to my attention by the parents of children in the school who urgently want the Department to reverse its decision to effectively reduce the total number of teachers in the school from 16 to 13 from September 2005.

If this decision is pushed through by the Department, the school will lose 20% of its staff from September of this year, despite the fact that the actual number of pupils in the school will have increased from 238 in September 2004 to at least 244 in September 2005. The effect of recent announcements concerning special needs education will mean there will be more children to teach in this school and fewer teachers to teach them.

The effect of recent announcements concerning special needs education will mean there are more children to teach in this school and fewer teachers to teach them. It will also mean that in at least one of the junior classes which will be enrolled this September, 34 junior infants will be in a classroom with just one teacher. This is an example of the Government's continued failure to honour its commitment at the last election to improve the pupil teacher ratios in our national schools.

The reason we see such a radical reduction in the number of teachers in this school is due, of course, to the introduction of the weighted model in respect of special education. The school in this case readily accepts that its pupils have gained from the additional special education resource in recent years. However, the transition from the old to the new system will cause havoc in schools like this throughout the country.

The Minister for Education and Science, Deputy Hanafin, has been upfront in accepting that new hardship cases will result from the new rules in respect of allocating teaching resources to special needs students. The Minister is on the record as favouring some flexibility where hardship cases, such as the one we are discussing this evening, are presented. I understand that on 30 May, the principal wrote to the Department of Education and Science — a copy has gone to the Minister — outlining the very severe difficulties that will result from September in this school, if a serious appeal is not considered by the Department. I plead with the Minister to show flexibility even at this late hour and to accede to the request on behalf of this school in advance of the next school year.

To lose three teachers from this school in one year would have a very serious impact, not just on the school but on the wider community. This is a school that showed remarkable resilience when faced some years ago with the possibility of an amalgamation. Parents have raised significant sums of money to help their children's educational experience, and this should be recognised by the Department of Education and Science. No one doubts the significant new resources that have been put into special education in recent years, but the current "one size fits all" approach by the Department, when it comes to making resources available in this area, needs to be urgently addressed.

Mr. S. Power: I thank Senator Brian Hayes for affording me the opportunity to outline to the House the position of the Department of Education and Science concerning the staffing of St. Kevin's boys' national school, Tallaght, Dublin 24.

The mainstream staffing of a primary school is determined by applying the enrolment of the school on 30 September of the previous school year to a staffing schedule, agreed between the Department of Education and Science and the education partners. In the current school year the staffing of the school referred to by the Senator comprises a principal and ten mainstream class teachers based on an enrolment of 273 pupils at 30 September 2003. In addition, the school has two learning support posts and three resource teaching posts.

In accordance with the staffing schedule which issued recently to boards of management, the mainstream staffing of the school for the 2005-06 school year will be a principal and nine mainstream class teachers based on an enrolment of 238 pupils at 30 September 2004. To ensure openness and transparency in the system an independent appeals board is now in place. The criteria under which an appeal can be made are set out in the Department of Education and Science's primary circular 19/02 which is also available on its website. The appeals board met on 14 June and will meet again in July and October to consider appeals on the mainstream teaching allocation to schools for the 2005-06 school year.

The closing dates for appeals for the forthcoming July and October meetings are 24 June and 7 October 2005, respectively. Appeals must be submitted to the primary payments section, Department of Education and Science, Athlone, on the standard application form, clearly stating the criteria under which they being made. The application form is available from the primary payments section or on the Department's website.

I am sure the Senator will appreciate that it would not be appropriate for the Minister for Education and Science to intervene in the oper-

[Mr. S. Power.]

ation of the independent appeals board. The Minister recently announced the introduction of a general allocation model to provide for teaching supports for pupils with high-incidence disabilities and those with learning support requirements. Two posts have been allocated to St. Kevin's in respect of this cohort of pupils.

I would like to advise the Senator that individual allocations of resource teaching support for pupils with low incidence disabilities will continue to be provided on the basis of an individual application for each child. Such applications are processed by the local special educational needs organiser. The Department's records indicate that St. Kevin's is eligible to retain one post in respect of pupils with low-incidence special educational needs for the forthcoming school year. The net effect is that St. Kevin's is retaining three of its special education posts to cater for the needs of pupils with learning difficulties and special educational needs for the forthcoming school year. The levels are appropriate in the context of reducing enrolments and the current number of pupils with special educational needs requiring a service.

The Department of Education and Science is satisfied that the resources available to the school are sufficient to provide for the ongoing needs of these pupils. I thank the Senator, once again, for raising this matter.

The Seanad adjourned at 6.15 p.m. until 10.30 a.m. on Wednesday, 22 June 2005.