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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Wednesday, 29 *June* 2005.

SEANAD ÉIREANN

Dé Céadaoin, 29 *Meitheamh* 2005.
Wednesday, 29 *June* 2005.

SEANAD ÉIREANN

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Business of Seanad.

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

> The need for the Minister for Finance to surrender a portion of the surplus lands at Farmleigh for the purpose of providing a cemetery, and if he will enter into discussions with religious leaders in the Dublin 15 area with a view to bringing this about.

I have also received notice from Senator Ulick Burke on the following matter:

> The need for the Minister for Arts, Sport and Tourism to indicate when funding will be made available for the swimming pool in Loughrea, County Galway, and how advanced the plans are for its construction.

I have also received notice from Senator Browne on the following matter:

> The need for the Minister for Health and Children to provide capital funding to St. Luke's Hospital, Kilkenny, in order that the accident and emergency and outpatients departments be upgraded, and that a new canteen be provided for both staff and visitors.

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

> The need for the Minister for Justice, Equality and Law Reform to outline the present position on the application for naturalisation and permission to remain in the State of a person (details supplied).

I have also received notice from Senator O'Meara on the following matter:

> The need for the Minister for Communications, Marine and Natural Resources to announce his decision regarding recommendations made to him for the rehabilitation of the tailings pond and other mine sites at Silvermines, Nenagh, County Tipperary, in light of the fact that the report of the recommendations has been with him for a number of months and is awaited by the community.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment and I have selected the matters raised by Senators Terry, Ulick Burke and Browne and they will be taken at the conclusion of business. Senators Coghlan, Tuffy and O'Meara may give notice on another day of the matters they wish to raise.

Order of Business.

Mr. Dardis: The Order of Business is No. 1, a motion referred to the Joint Committee on Justice, Equality, Defence and Women's Rights which has completed its discussions on it. The motion concerns efficiencies in the exchange of information concerning terrorist offences between the member states, Europol and Eurojust. It is proposed to take this motion without debate; No. 2, Electoral (Amendment) Bill 2005 — Second Stage, to be taken on the conclusion of the Order of Business and to conclude not later than 2.15 p.m., with the contributions of spokespersons not to exceed 12 minutes and those of all other Senators not to exceed eight minutes and Senators may share time. The Minister shall be called upon to reply not later than five minutes before the conclusion of Second Stage; No. 3, Interpretation Bill 2000 — Committee and Remaining Stages, to be taken at 3.15 and to conclude not later than 5 p.m.; No. 4, Garda Síochána Bill 2004 [*Seanad Bill amended by the Dáil*] — Report and Final Stages (Resumed), to be taken on the conclusion of Private Members' Business until 10 p.m.; and No. 23, motion 13 regarding the consumer strategy group, to be taken from 5 p.m. until 7 p.m. There will be a sos from 2.15 p.m. until 3.15 p.m.

Mr. B. Hayes: May I use this opportunity to congratulate all of those involved in brokering a deal in Derry over the past 24 hours between the Orange Order, the Apprentice Boys and the Bogside residents. The deal was largely brokered by the Derry Chamber of Commerce and is a model to which all of the contentious parades in Northern Ireland should accede. We owe our congratulations to the chamber of commerce and the people of Derry who, over many years, have tried to resolve their difficulties by sitting down, meeting people and working out some kind of compromise. Derry is a kind of model city in

[Mr. B. Hayes.]

Northern Ireland where power-sharing has worked for many years, thanks to the influence of the SDLP and others. The kind of deal that was done there in the past 24 hours is helpful.

I welcome what the Taoiseach said in the other House yesterday about the potential of a new IRA statement. It is clear that Senators will not have an opportunity to discuss such a statement in detail if it is issued while the House is in recess. Can the Deputy Leader indicate whether time will be set aside for a debate on Northern Ireland issues when the House meets again in September? It is important that the House should consider all these matters in greater detail. The people of this country are interested in more than statements or mere words — they want concrete action. They would like the entire apparatus of the paramilitary organisations to be wound down. They do not want such organisations to continue to exist as commemorative organisations. The IRA and other organisations have nothing to commemorate, other than horror and destruction on this island. It is important that the House should debate the matter in the autumn.

I welcome Senator Bradford's comments yesterday about the problems which have emerged in Zimbabwe in recent years. I think it is an issue we need to address. The strong-arm tactics of President Mugabe, such as the outrageous attacks on the legitimate opposition in Zimbabwe, were highlighted recently by a British MP, Kate Hoey, who visited the country. RTE also did some great work by taking some television footage from Zimbabwe. The South African authorities, including that country's President, Mr. Thabo Mbeki, need to explain why they have refused to condemn the actions of the Zimbabwean dictator in recent months.

Mr. Norris: Hear, hear.

Mr. B. Hayes: I hope efforts can be made to bring pressure to bear on South Africa, which is the largest and most significant country in the region.

Mr. O'Toole: I support Senator Brian Hayes's comments about Derry. When I was in Belfast yesterday afternoon, however, the divisions in that city were clear. When one drives through Belfast at this time of the year, one sees a great deal of regalia in one part of it, followed by a vacuum in the next district, followed by the regalia once more. One can hear drums, etc. As a society, we should strive for a time when the shamrock, the lambeg, the harp and the sash can coexist happily. It seems that we are a long way from that, however. The example shown in Derry represents the way forward and deserves to be welcomed as such.

Perhaps I am moving from the sublime to the ridiculous by mentioning that I have written this morning to the superintendent of the Houses of the Oireachtas about the condition of the ducks which are living beside the coffee dock in the Leinster House 2000 part of this complex. I understand that three of the ducks have died in recent weeks. It reflects badly on the Oireachtas if its Members do not take responsibility for a matter of this nature. Who is in charge of the issue? Some members of staff have been very helpful and have done their best to deal with the problem in some way. We will be the subject of global headlines if we allow more harmless and innocent ducks to die on our property by failing to look after them. Perhaps the Cathaoirleach can use his good office to examine this matter. Somebody should be take charge of the problem by dealing with it properly. The ISPCA has been informed of the issue, but it does not seem to have taken any action. I think we should take action.

I spoke in the House approximately two weeks ago about the difference between farmgate prices and the prices being paid by consumers in retail outlets. The growth of farmers' markets has offered consumers a useful alternative and given them useful information. I listened to a farmer from Wexford earlier today. He said he can get four times as much revenue by selling at farmers' markets. That is a clear indication of where the money is going, even if one has to take into consideration the cost of slaughter, time and transport, etc. It should be emphasised, in the context of the debate we had last week about the Common Agricultural Policy, that new approaches need to be taken and encouraged. We need to say to the EU that farmers' markets should be encouraged, rather than closed down. Given that lamb prices, for example, are collapsing, we need to promote initiatives of this nature. Ordinary consumers do not know when meat prices collapse. They might read about such collapses in the newspapers, but they do not benefit when they go to butchers' shops, etc., to buy meat. Those involved in both ends of the process — farmers and consumers — lose out. I would like a discussion on the matter.

The Dublin Port tunnel will be up and running, and certain decisions will have to be made, by the time the House meets again in the autumn. It seems to me that we are on the point of making some daft decisions. We were led to believe that traffic going to the port tunnel from the M50 would travel along an approved route. It is all very fine that heavy goods vehicles are not allowed to travel along certain roads, but other roads are becoming rat-runs. It seems that someone has declared "open sesame" in respect of the Oscar Traynor Road in Santry, for example. The transport authorities should make a clear decision to approve an appropriate central route from the M50 to the port tunnel.

Mr. Ryan: We need to prohibit all heavy goods vehicles from passing through our major cities and ensure that deliveries are made by small and appropriate vehicles. It is probably time for us to pursue such a policy, which has been adopted in

many civilised cities throughout Europe. I would like to inform the House of my experience while driving on the motorway between Newbridge and Naas on Tuesday morning. I was travelling behind a truck at 110 km/h in the outside lane of the motorway, which has a speed limit of 120 km/h. Such full-scale heavy goods vehicles are allegedly required to have a governor that prevents them from travelling at above 55 mph. I remind the House that although just 3% of all vehicles in this country are heavy goods vehicles, they are involved in 10% of fatal accidents. That statistic speaks eloquently for itself. We need to assess the manner in which the industry views itself. Certain lorry drivers insist on driving through Drogheda rather than paying the toll on the M1. They are involved in a commercial operation — they cannot be allowed to ride roughshod over good sense and proper traffic management.

In the last 24 hours, the Joint Committee on Foreign Affairs and the other House have debated this country's allocation of overseas development aid, which has become a live topic since the mention of the Taoiseach was given a raucous reception at a U2 concert last weekend. The Government intends to announce its new overseas development aid promise when both Houses have adjourned for the summer. I appeal to the media not to be fooled for a second time and to take the promise that is made by the Government with an appropriate dose of scepticism. The Government's failure to keep its promise in this regard is perhaps its most embarrassing betrayal. The public is increasingly aware of and annoyed about it. I hope the House can debate the Government's new target early in the autumn session, so that Members can begin to assess whether the Government is in earnest about the target.

I understand that the Government intends to publish a new Bill to outline the rights of immigrant workers. I have not seen in media reports on this matter any indication that the Government will ensure that the inspectors who will have to enforce the new legislation will be given the power to investigate, to gather information and to publish reports. The High Court decision that they could not do so left the inspectors in an impossible position. The proposed legislation will not make any difference to the homeless Polish people living in Cork who have been victimised by the Irish welfare system. They are not given any social assistance for two years after their arrival in this country. As a consequence, some of them are living on our streets. We should be ashamed and embarrassed.

Labhrás Ó Murchú: It often seems that the small stories emerging from Northern Ireland are not important, but I think they are a real barometer of changing attitudes there. Such stories often highlight the essence of future conflict resolution. Like other speakers, I refer to the deal brokered regarding the Orange Order march in Derry next month. This could be a catalyst for breaking down barriers of misunderstanding and suspicion. Here we are getting behind the scare headlines and getting down to the community, which is where the foundations will be built and maintained for the peace process in the future. It is important that this opportunity is not lost. There is a chance here for community representatives of both traditions, including the police, media and all those involved in forming opinions, to use this opportunity to create a partnership to ensure we can look to it as a model for future development in other parts of the North in the coming months.

In the past, the marching season has very often had an influential impact of a disruptive nature on the peace process. We could have the opposite happening here, so we should not underestimate the significance of this deal. I hope we will all put a shoulder to the wheel and bring on board all people of goodwill to ensure we get the maximum benefit from the deal.

Mr. Finucane: I support Senator Ryan's statement on work permits. I welcome the fact that legislation has been announced by the Minister because it is timely to introduce changes in this regard. What has happened in Eyre Square in Galway is regrettable, the impact of which has been felt mainly by 30 Polish workers who were not aware that the project was closing down. What will happen to these workers?

The aspect of overruns has been raised on many occasions in this House. I am concerned about the overrun relating to the main drainage scheme in Limerick city. When it was projected in 2001, it was supposed to cost €127 million, but it will now cost €262 million, which is double the original cost predicted. I put it to the professionals in the Department of the Environment, Heritage and Local Government that the contractor was fired from that project on the basis that it appeared he was too slow in carrying out the work. As a result, this contractor's business has been seriously damaged. He had to sell 50% of his company and could not tender for many projects. The worrying aspect is that an arbitrator has decided that the contractor was wrongfully dismissed from the project. The impact of this could mean a payment of almost €50 million to the contractor, together with an overrun which already exists.

The sum of €50 million would represent approximately 80% of the entire city council's budget. Who will pick up the tab for this? Potentially the Department of the Environment, Heritage and Local Government will have to do so because the city council will not. Before the city council made the decision, what professional advice did it get in regard to the decision, because it now appears that the contractor has been vindicated by the arbitrator's decision. There are many questions to be answered in this regard because this is taxpayers' money which will be spent. It is regrettable that these cost overruns appear to be

[Mr. Finucane.]

accepted. Many questions must be asked about this project.

Ms Cox: About two weeks ago, an exciting event happened and none of us knew anything about it. Senator McHugh got married.

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

Ms Cox: I am aware it is inappropriate on the Order of Business, but we should wish him the very best.

An Cathaoirleach: On the Order of Business, Senator.

Ms Cox: As it is such a happy occasion, we should wish him the best.

The chief executive of Ireland West Tourism, Mr. John Concannan, said that selling tourism in the west is now like standing on a burning platform and only fire brigade action can save it. We are in dire need of swift action in order to save livelihoods throughout the whole rural region of the west of Ireland. The livelihoods of families involved in tourism are being eroded on a daily basis. Significant changes are taking place in the way people visit the west. While we welcome the publication today of the report which states that holidays in the west are 20% cheaper than in Dublin, swift action is needed in this regard. While I am not the best person to seek extra sitting days in the Seanad, I suggest to the Acting Leader that he might consider coming back for one day in September and inviting all the relevant Ministers who are preparing the Estimates to listen to the points we want to make in regard to spending for the next year, so that voices of Members of this House may be heard.

Mr. B. Hayes: Hear, hear.

Mr. Norris: I would like to refer to No. 1, a motion on the Treaty of Amsterdam and the exchange of information. The Acting Leader said he wants to take the matter without debate. It was tabled, but each day a list of items are tabled on the back of the Order Paper. Most of these items go through on the nod. I would like to enter a caveat here and I would like the Acting Leader to refer the matter to the appropriate Minister. I am concerned about any exchange of information deriving from the use of torture. This matter has been actively discussed in Britain and some authorities appear to have very little difficulty with the referral of prisoners to third countries so that they can be tortured. It amounts to outsourcing torture. I would be very concerned about allowing such a situation to go through on the nod, therefore, I ask the Acting Leader to raise my concerns with the appropriate Minister.

I support Senator Brian Hayes in seeking a debate or holding a protest against what has been happening in Zimbabwe over many years. Over the years, I have raised the matter on the Adjournment. Independent Senators have a motion down on Zimbabwe. There is an atrocious situation where a dictator, after a completely fraudulent election, is now terrorising his own people. He is creating mass famine. "Operation clear out the rubbish" is how he describes his own citizens. This man is a beast who needs to be confronted. I hope the South African authorities will do something about the issue. I find it very difficult to be optimistic about a man like Thabo Mbeki, who said he thinks AIDS can be cured by eating spinach. His views on Zimbabwe are just as out of touch with reality.

I would like to raise the issue of risk equalisation. It was felt there should be some discussion on this matter. It appears from what has been said that the deferral of risk equalisation is part of the preparation for the possible privatisation of the VHI. We are entitled to a say in this matter because it will be a disaster, just as the privatisation of Telecom Éireann has been a disaster.

Mr. Ryan: Hear, hear.

Mr. Norris: In the past couple of weeks the directors of Eircom, including Tony O'Reilly, took enormous sums of money for running the worst telecom service in Europe. There is no investment in it. I am waiting for six months to get my telephone fixed. I am just one of many people in this situation. There is growing dissatisfaction with the service and it is appalling that fat cats can bleed a company, put no investment into it and give a lousy service, which is one of the worst in Europe. The same applies to Bord Gáis. No one will take any responsibility. They outsource services.

An Cathaoirleach: The Senator's point is well made.

Mr. Norris: We should have a debate not just on this issue but on the whole ideology of privatisation.

Mr. Leyden: I am surprised that Senator Ryan returned to the incident at Croke Park. I wonder if it was a Labour Party inspired escapade——

(Interruptions).

An Cathaoirleach: Has the Senator a question on the Order of Business?

Mr. Leyden: ——to a man who has done more for Croke Park than the Labour Party ever did.

(Interruptions).

An Cathaoirleach: Has the Senator a question on the Order of Business?

Mr. Leyden: I have two questions. However, I had to get that matter off my chest because I am getting tired listening to it.

An Cathaoirleach: The Order of Business is not the proper place for the Senator to get the matter off his chest.

Mr. Leyden: We will do in again in Croke Park when we give——

(Interruptions).

An Cathaoirleach: I will call the next speaker if the Senator does not put the question.

Mr. Leyden: Has the Acting Leader been informed that an emergency Bill has been put forward today in the Lower House relating to the role of registrars of deaths, births and marriages? Will the Bill be taken in this House this week or next week, or will we sit on Saturday or next Monday to deal with the matter?

Will the Acting Leader invite the Tánaiste and Minister for Health and Children to come to this House when we return in the autumn to debate the MRSA crisis? This is a war against what is a serious problem for hospitals. People need to be acutely aware of the dangers to vulnerable patients. I propose bringing back matrons to run hospitals because when they did so hospitals were clean and conscientiously run. There was no MRSA or winter vomiting bug. Visiting rules should be reviewed and everyone who enters a ward should wash their hands and wear protective footwear to minimise the danger of cross-contamination. Visiting should be by invitation only where patients are vulnerable. I commend the Minister again for waging this war against MRSA and I wish her victory.

11 o'clock

Mr. B. Hayes: Like Nelson.

Mr. J. Phelan: Can the Deputy Leader say if the Leader was able to persuade the Minister for Agriculture and Food to attend for an hour on Friday for a discussion on the beet industry and on wider agricultural issues? The Leader also stated yesterday that she would ask the Minister for Health and Children to come before the House to discuss risk equalisation. Can the Deputy Leader inform the House if she was successful in that?

An economic development report by the chambers of commerce in the South East was launched by the Minister for Transport, Deputy Cullen, in Kilkenny last Friday. The report provides a projection for the region in 15 years' time, in 2020. It makes six key recommendations. The Minister was particularly unequivocal on the need for a university for the south east region, and I fully agree with him. Unemployment figures for the south east are worse than for virtually any other part of the country and some of the worst blackspots are in the region, particularly in County Wexford. The figures for third level participation are also the worst in Ireland. The case for a university is very strong and I urge the Government to promote a debate that would ensure a university for the south east becomes a priority in the near future.

Dr. Mansergh: We may need the Cathaoirleach's guidance on whether it is the Committee on Procedure and Privileges or the Houses of the Oireachtas Commission which deals with ducks. We do not want any dead ducks around the Houses of the Oireachtas.

Mr. Norris: We have lame ducks.

Dr. Mansergh: We may need to appoint an officer to look after animal life around the precinct.

I endorse what Senators Hayes and Ó Murchú said about the agreement reached in Derry though we cannot disguise the fact that in other parts of the North where the balance of forces is different there are still serious problems, as we saw in the Ardoyne. Every community has events to commemorate, whether it be Bloody Sunday or the hunger strikes. It is easy to be rigorously moralistic but if we want peace we must leave some space for people to move on.

Dr. Henry: Last night President Bush addressed the American nation regarding the situation in Iraq and said it was essential the war continued to protect civilians in the United States. He has not expressed much concern about civilians in Iraq,——

Mr. Norris: Hear, hear.

Dr. Henry: ——tens of thousands of whom have died, been kidnapped or displaced.

Ms White: It is a hundred thousand.

Dr. Henry: He and Prime Minister Blair consider themselves to be two great Christian leaders. Christians in Iraq have had to flee from Basra in the south, which is controlled by British troops, and from Baghdad where the Chaldean Christians have virtually all had to seek refuge in, of all places, Syria. It is too late to ask for a debate on Iraq between now and the end of the week but I ask the Deputy Leader if our concern for the appalling plight of all civilians in Iraq could be conveyed to the ambassadors of the United Kingdom and the United States of America because I have heard very little expression of concern for them from Prime Minister Blair or President Bush.

Mr. Norris: Hear, hear.

Ms Ormonde: I support the call by Senator Ryan to address the problems on the Naas dual carriageway. I have on several occasions tried without success to pick up the number on a truck as it was passing me. It is very serious. The upgrading of the dual carriageway presents a golden opportunity to debate the issue in the autumn when the speed limits will be reviewed.

[Ms Ormonde.]

People take their lives in their hands on that section of the road.

Mr. Bannon: We need a fresh look at the structures in place to promote our tourism industry. The regional boards we have at present have outlived their usefulness. Last week's ITIC survey showed worrying trends in tourism. There has been a decline in the number of bednights, tourists are spending less time in Ireland and there are fewer UK visitors. Tour operators, agencies involved in tourism and community leaders have been making negative comments about the regional structures in place. People in the midlands seldom have their tourism products promoted by the east coast and midlands board. It is important that the structures are reviewed urgently. Perhaps the boards should be abolished and replaced by new structures giving regional authorities some power to promote tourism.

Ms White: I support what Senator Henry said about Iraq. The American public is finally getting disillusioned with President Bush. Some 1,700 American soldiers have now been killed and 14,000 have been seriously injured. At least 100,000 Iraqi people have been killed. The Government should speak out.

Mr. Norris: Hear, hear.

Ms White: I am sick and tired of the touchy-feely approach to the United States of America while people stand on their dignity to bring the peace process in the North to fruition. It is what may be described as a "no-brainer".

This Friday I am organising a conference for child care.

An Cathaoirleach: That is not on the Order of Business.

Mr. B. Hayes: That is advertising.

Mr. Finucane: Where is the location?

Ms White: Ladies from west Belfast and the Shankill Road will be talking about child care in a divided community on Friday morning in the Burlington Hotel.

Mr. Scanlon: As Senator Finucane's comments show, cost overruns is a hot issue at the moment. My understanding is that local authorities act as agents of the State in arranging contracts. I personally know the man involved in the contract in Limerick. The job was slow because he had to wait for the geological survey reports, which he needed, as does every other contractor, to price it. The company has done a great deal of good work in the State but, because of the attitude of officials of Limerick Corporation, he was prepared to settle for €15 million. The corporation would not discuss the issue with him and the case has gone to arbitration, which could cost the State €50 million. It is deplorable that such a scenario should arise because an attitude was adopted and issues were not discussed. Many problems relating to cost overruns on projects occur because people will not listen.

Ms O'Meara: While it is too late to ask for a debate on the failure of the Government to roll-out the BreastCheck screening programme, particularly in Munster and the west, women from all over Munster will present petitions to representatives of the Tánaiste and Minister for Health and Children at 12 noon seeking an end to delays in the roll-out of this life saving programme.

An Cathaoirleach: That was an announcement, not a question relevant to the Order of Business.

Mr. Dardis: We have plenty of meetings to attend. Perhaps the Cathaoirleach will give permission to those who have other announcements to make.

An Cathaoirleach: We have too many for one day.

Mr. Dardis: Senators Brian Hayes, O'Toole, Ó Murchú and Mansergh raised the agreement in Derry on the Orange Order parade and I echo the sentiments expressed. It was a significant event and the chamber of commerce should be congratulated along with the Orange Order and the residents of the Bogside. It demonstrates what co-operation can do but, even in the most difficult times, Derry reached accommodation on most matters and there are probably lessons there.

I agree with Senator Ó Murchú's important comment about the power of community and its significance and I also echo Senator Mansergh's comment that everybody wants to commemorate their people and space is required for that. I accept that Northern Ireland issues should be debated at an early stage when we return because events will have moved on. Hopefully, progress will have been made and the statement we are hoping for will have been issued. Firm indications were given in the run up to the Northern Ireland elections that there was a desire for a statement to be made but it has taken quite a while and I hope it issues shortly.

Events in Zimbabwe were raised by Senators Brian Hayes and Norris. It is an appalling scenario, which is totally unacceptable. It is not right to call it simply a clear-out. There is also concern about the role of South Africa. I propose to indicate to the Minister for Foreign Affairs that a strong representation should be made on this matter, first, through the European Union and, second, on a bilateral basis. However, the situation is not acceptable.

Mr. Norris: Good.

Mr. Dardis: With regard to the ducks, which was raised by Senators O'Toole and Mansergh, and the appalling puns that have circulated as a result, it is a serious issue.

Ms White: It is not funny.

Mr. Dardis: Those of us who have been in the House for a while can recall a period when the ducks were escorted by the Garda across the road from Leinster Lawn to St. Stephen's Green. They are an integral part of the Oireachtas. Yesterday, we received an e-mail which stated we should not feed them bread because it is toxic.

Mr. O'Toole: That was sent by a concerned member of staff.

An Cathaoirleach: The Deputy Leader, without interruption.

Mr. Dardis: However, Dublin Zoo is sending a special supply of feed for the ducks, which is good.

Mr. Norris: Will there be an inquest?

Mr. Dardis: Hopefully, there will not be bodies on which to have an inquest.

An Cathaoirleach: The Deputy Leader to reply, without interruption.

Mr. Dardis: This is a serious issue.

I strongly support Senator O'Toole's comments on the issue of farm gate prices. The corporate food industry has got the EU by the scruff of the neck to ensure people who produce wholesome, natural food on farms and try to sell it in their local communities should be prevented from doing so. That trend has been consistent over a number of years. As a member of the sub-committee on European scrutiny, I was pleased regulations were introduced recently regarding the sale of eggs to permit small producers to sell eggs in their local market. Up to now, unless they had access to a large packhouse, they could not do so and they were excluded from the local market. This issue should gain our attention.

I visited the west last weekend and I hope all the Members who seek a debate on the tourism industry in the west will do the same. However, the strawberries in the Spar supermarket in Moycullen, County Galway, were from Holland. It had no Irish strawberries, which is terrible.

An Cathaoirleach: The Deputy Leader should not mention the specific business.

Mr. Dardis: It deserves to be mentioned.

An Cathaoirleach: Its owners are not present and cannot defend themselves.

Mr. Dardis: The port tunnel and associated issues were raised by Senators O'Toole, Ormonde and Ryan. Heavy goods vehicles present a major issue, which was raised previously, and I accept the figures quoted by Senator Ryan. However, it is extraordinary, no matter how often one travels on the dual carriageway out of Dublin towards Cork and Limerick, the number of vehicles that have no number plates on the back or that have number plates on the back that are different from those on the front. One wonders how enforcement can be conducted in those circumstances, particularly given that these vehicles travel at high speeds.

The issue of overseas development aid was raised. The Minister dealt with this capably on "Morning Ireland" earlier.

Mr. Ryan: The Senator is joking.

Mr. Dardis: Ireland is one of the top nine countries in the provision of such aid. Economic growth domestically has provided for an enormous increase in the ODA spend. While it has not reached the target set, as we had all hoped, progress has been made.

Mr. Ryan: The Government broke its promise.

Mr. Dardis: More than €500 million is provided in ODA with no conditions attaching, unlike many other countries.

Mr. Ryan: We know that but the Government broke its promise. We did not make to the United Nations——

An Cathaoirleach: The Deputy Leader to reply, without interruption.

Mr. Dardis: We will be delighted to debate the issue in the autumn.

The employment permits Bill, which will provide rights to non-nationals who come to Ireland to work, will come before the House. The employee should be the permit holder rather than the employer and the Bill is heading in that direction to ensure the rights of employees are vindicated.

Senators Ryan and Finucane raised the issue of cost overruns but I am not aware of the details of the case in Limerick. Such overruns are unacceptable as a general principle and there should be scrutiny and regulation. Projects must be undertaken within budget. Yesterday the issue of the 20% contribution of local authorities to water and sewerage schemes was raised. If projects such as that raised by the Senators were attended to, the 20% contribution would be available to undertake schemes that are urgently required.

Senators Cox and Bannon raised the issue of tourism in the west. I have visited the west several times this year and I have stayed in a number of guest houses and hotels. I am aware how serious is the situation, given that tourist numbers have fallen dramatically. It was encouraging to hear tourists making positive comments on "Morning

[Mr. Dardis.]

Ireland" earlier when they were interviewed about the matter. The strength of the US dollar is also a factor. I will bring this matter to the attention of the Minister for Arts, Sport and Tourism and I agree he should come to the House at the earliest opportunity to debate it.

Senator Norris referred to No. 1. It is not acceptable that anybody should be referred to another state if there is even the remotest possibility that he or she could be subject to torture. That should not happen.

Mr. Ryan: We are struggling to take action.

Mr. Dardis: Matters relating to this were discussed earlier at a meeting of the Oireachtas Committee on Justice, Equality, Defence and Women's Rights but I had to attend to ensure a quorum. Such issues should be debated at this forum and I hope those responsible will attend to debate them.

The Leader dealt in detail with the matter of risk equalisation yesterday. There is no proposal to privatise the VHI. There is a proposal to make it a commercial semi-State company which is a separate matter. It would also be to the benefit of patients and consumers if there is genuine competition in this market and more than one operator can operate profitably in it. The Tánaiste has spelt that out.

I would not have thought Senator Norris has any need for a telephone. He can broadcast quite capably without one. For that reason I am not surprised it has taken so long for his telephone to be repaired.

Senator Leyden overestimates the organisational powers of the Labour Party to suggest that it would orchestrate booing of the Taoiseach in Croke Park.

Ms White: Senator O'Meara was there.

An Cathaoirleach: The qualities of the Labour Party do not arise on the Order of Business.

Mr. Ryan: It is a question of giving the impression.

Mr. Dardis: I do not know about the situation with regard to the emergency Bill in the Dáil on the registration of births, deaths and marriages but we will look into that.

The Tánaiste and Minister for Health and Children has actively tried to deal with the MRSA bug. Senator Leyden is correct, however, this involves a question of hygiene. I noted in Scotland there was a recommendation that telephones and door knobs be disinfected between patients because that is how infection spreads.

As drugs become more potent they have a capacity to pressurise the system and isolate the resistant bug which thrives in those circumstances. Previously, the other bugs throve along with the resistant one and kept it at bay.

In regard to Senator John Paul Phelan's concern about the sugar industry and related CAP matters, the Minister for Agriculture and Food is away but we hope she may be able to devote an hour or so to these topics on Friday morning. I am not yet certain about that.

I am aware of the surprising fact that Wexford is one of the most depressed areas in the country in terms of wealth and employment. Few people realise that and I am glad these matters are being highlighted.

Senators Henry and White raised the matter of the appalling level of casualties in Iraq. It would be appropriate to convey our concerns and our views on the matter to the ambassadors of the United Kingdom and the United States.

Senator Bannon mentioned tourism in the midlands where the lakeland is a fine resource. I drove across the Slieve Blooms at the weekend on my way home from the west. There was nobody there although it is an outstandingly beautiful part of the country.

Mr. Norris: Hear, hear.

Mr. Dardis: Resources are available that hopefully can be used to market the region. The Senator's point about the regional tourism organisations is correct and it should be examined.

Senators Scanlon and O'Meara raised the question of overruns in public contracts. Senator White also raised the matter of a child care conference on Friday at 10 a.m. in the Berkeley Court Hotel.

An Cathaoirleach: It is not appropriate to announce that on the Order of Business.

Mr. Dardis: Senator O'Meara mentioned BreastCheck. I noted a suggestion last week that a blood test could be far more accurate in terms of diagnosis than the scan so perhaps that should be studied. That could be a cheaper and more efficient way of doing this test.

Ms O'Meara: Let us make it available.

Order of Business agreed to.

Treaty of Amsterdam: Motion.

Mr. Dardis: I move:

That Seanad Éireann approves 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,

a copy of which proposed measure was laid before Seanad Éireann on 16 June 2005.

Question put and agreed to.

Electoral (Amendment) Bill 2005: Second Stage.

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

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. B. O'Keeffe): The main purpose of this Bill is to implement the recommendations in the report of the independent Constituency Commission published in January 2004 on revisions to the Dáil constituencies for the next general election. A copy of the report was given to each Member of both Houses when it was presented to the Ceann Comhairle.

It might be helpful for Seanad Éireann if I outline the principal constitutional and legal requirements relating to the establishment and revision of Dáil constituencies and other relevant background to the Bill. Article 16.2.3° of the Constitution provides that:

> The ratio between the number of members to be elected at any time for each constituency and the population of each constituency, as ascertained at the last preceding census, shall, so far as it is practicable, be the same throughout the country.

This provision was considered by the courts in two landmark cases in 1961, namely, the High Court case of John O'Donovan *v*. the Attorney General, and the Supreme Court reference case relating to the Electoral (Amendment) Bill 1961. In neither of these cases did the courts quantify the precise degree of equality of representation required by the Constitution, although Mr. Justice Budd in the O'Donovan case appeared to suggest that a departure of about 5% from strict mathematical parity would be acceptable.

Dealing with the question of equality of representation in the reference case, the Supreme Court stated that it could not lay down a figure above or below which a variation from the national average population per Deputy is not permitted. The court stressed that the practical considerations which ought to be taken into account, and the weight that should be attached to them in departing from strict equality of representation, are primarily matters for the Oireachtas and should not be reviewed by the courts unless there is a "manifest infringement" of the relevant article of the Constitution.

The court concluded that the test to be applied is whether the failure to maintain the ratio between the number of members for each constituency and the population of each constituency involves such a divergence as to make it clear that the Oireachtas has not carried out the intention of the relevant constitutional provisions.

Each revision of constituencies effected between 1961 and 1974 adhered to the limit of 5%, to which reference was made in the O'Donovan case. However, more substantial departures from mathematical equality of representation were provided for in the revisions carried out since 1974, based on the recommendations of independent commissions. The maximum departure since 1980 was 7.89% below the national average in the constituency of Mayo East in 1983.

The proposed constituencies in the Bill now before the Seanad are within this range. Article 16.2.4° of the Constitution provides that: "The Oireachtas shall revise the constituencies at least once in every twelve years, with due regard to changes in distribution of the population,". This, in effect, requires that the constituencies be revised whenever population changes result in populations per Deputy in individual constituencies that are significantly out of line with national average representation. Thus, section 5 of the Electoral Act 1997 provides that, on publication of Volume 1 of the Central Statistics Office reports on a population census, the Minister for the Environment, Heritage and Local Government must set up a commission to report on Dáil and European constituencies. The membership of the commission is specified in the Act, together with its terms of reference, which are subordinate to the relevant constitutional provisions.

Article 16.2.2° of the Constitution provides that:

> The number of members shall from time to time be fixed by law, but the total number of members of Dáil Éireann shall not be fixed at less than one member for each thirty thousand of the population, or at more than one member for each twenty thousand of the population.

Based on the population in 2002, this provision would allow for Dáil membership to be fixed within a range of 131 and 196 seats. The statutory terms of reference for constituency commissions in the Electoral Act 1997 provide that the total Dáil membership shall not be fewer than 164 and not more than 168. In accordance with the reports of successive commissions, the total Dáil membership has been fixed at 166 since 1980. Article 16.2.6° provides that no law shall be enacted whereby the number of Members to be returned for any constituency shall be fewer than three. The statutory terms of reference of a commission provide that constituencies must be represented by three, four or five Members.

For over half a century after the founding of the State, changes in constituencies were formulated and advanced by the Government of the day. The first Constituency Commission was established in 1977 to report on constituencies for the first direct elections of the European Parliament in 1979. The first Dáil Constituency Commission was established in 1980 on a non-statutory basis and such commissions continued to report on constituency revisions under the enactment of the Electoral Act 1997. The commission that reported in January 2004 is the second statutory commission established under this Act.

Volume 1 of the 2002 census reports was published in July 2003. This showed an increase in total population of over 291,000 from 1996, giving

[Mr. B. O'Keeffe.]

a total 2002 population of 3,917,203. Each of the 166 Deputies represented an average of 23,598 persons in 2002. The detailed population figures for each constituency showed serious variances from the national average population per Deputy in many constituencies. A total of 21 constituencies had variances from national average representation in excess of 5% and 13 had deviations in excess of 8%. The most under-represented constituencies were Kildare North and Dublin West with variances of plus 20.73% and plus 16.43% respectively. The most over-represented constituencies were Dublin North-West and Sligo-Leitrim with variances of minus 11.89% and minus 11.01% respectively. Clearly, significant changes have become necessary in some areas to secure equality of representation between constituencies based on the 2002 census.

The Constituency Commission established in July 2003 in accordance with section 5 of the 1997 Act was chaired by Mr. Justice Vivian Lavan. The other members of the commission were Mr. Kieran Coughlan, Clerk of the Dáil, Ms Deirdre Lane, Clerk of the Seanad, Mr. Niall Callan, Secretary General of the Department of the Environment, Heritage and Local Government and Ms Emily O'Reilly, the Ombudsman. I would like to take this opportunity to thank the commission members for the conscientious and impartial manner in which they carried out their work.

Section 6 of the 1997 Act provides that a constituency commission shall, in observing the relevant provisions of the Constitution, have regard to the following. The total number of members of the Dáil shall not be fewer than 164 and not more than 168. Each constituency shall return three, four or five Members. The breaching of county boundaries shall be avoided as far as practicable. Each constituency shall be composed of contiguous areas. There shall be regard to geographic considerations, including significant physical features and the extent and density of population in each constituency. Subject to these provisions, the commission shall endeavour to maintain continuity in respect of the arrangement of constituencies.

The main features of the commission's January 2004 report on Dáil constituencies are as follows. There should be no change in the existing level of Dáil membership, a net increase of one in the number of constituencies from 42 to 43, an extra seat in the Kildare North constituency, which is expanding to a four-seater, and in County Meath with two three-seaters being established where there is currently a five-seater. There should be a reduction of one seat in the constituency of Cork North-Central to four seats and across counties Sligo, Leitrim, Roscommon and Longford combined.

There should be a new constituency configuration in the north Connacht-north Leinster area, with new three-seaters named Sligo-North Leitrim and Roscommon-South Leitrim and a new four-seater named Longford-Westmeath. The new formation brings to an end the breach of a provincial boundary inherent in the existing Longford-Roscommon constituency but involves breaching the boundaries of counties Leitrim and Westmeath. In Dublin, the existing profile of 47 seats spread over 12 constituencies is retained but in a new configuration of three five-seat constituencies, five four-seaters and four three-seaters. The new arrangement transfers almost 31,000 people. The major boundary adjustments affect six constituencies and the minor adjustments affect four others.

The main changes recommended in Dublin are as follows. There should be an extra seat in Dublin Mid-West, which is currently a three-seater, with the addition from Dublin West of approximately 12,000 people in the Palmerstown area. There should be a reduction of a seat in Dublin North-Central, which is currently a four-seater, with the transfer of almost 11,000 people in the Edenmore and Beaumont-Whitehall areas to the Dublin North-East and Dublin North-West constituencies respectively. The transfer from Dublin North to Dublin West of almost 4,000 people in the St. Margaret's-Kilsallaghan area west of Dublin Airport is recommended. The transfer from Dublin West to Dublin North-West of approximately 1,100 people in the Dunsink-Cappagh area and the transfer from Dublin Central to Dublin South-Central of almost 1,000 people in Islandbridge is also recommended. Almost 2,000 people in the Firhouse area west of the M50 should be transferred from Dublin South to Dublin South-West.

The commission's terms of reference include the avoidance of breaches of county boundaries as far as practicable and commission recommendations have been criticised for not keeping to county or provincial boundaries. While attachment to such boundaries is understandable, the terms of reference of commissions are subordinate to the relevant constitutional provisions, which do not refer to counties or provinces. In the High Court judgment of Mr. Justice Budd in the O'Donovan case, it was stated:

> Although a system in the main based on counties has in fact been adopted, there is nothing in the Constitution about constituencies being based on counties. The Constitution does not say that in forming the constituencies according to the required ratio, that shall be done so far as is practicable having regard to county boundaries.

The Government has accepted the commission's recommendations as a single package of interlinked measures bringing Dáil constituencies into line with the prevailing population pattern in accordance with constitutional imperatives and the associated legal requirements. We can all recognise that it might have been possible for the commission to suggest other solutions. Some alternatives were put forward by Deputies when the Bill was being considered by the Dáil. As an

interested spectator, I had much to say on certain matters.

One of the main issues arising was the commission's recommendation that there be two new constituencies of Roscommon-South Leitrim and Sligo-North Leitrim. In this context, we have all been aware of the depth of feeling generated in County Leitrim on this issue since the publication of the report. However, it can readily be seen that the commission had no option but to recommend some change to the existing Sligo-Leitrim constituency as the minus 11.01% variance below national average representation of its 2002 population to seats ratio is more than 3% greater than the largest variance recommended by any commission in the history of the State. The commission has brought forward its proposed solution and its recommendations for Leitrim are in line with constitutional requirements, in particular those relating to equality of representation, and with the commission's statutory terms of reference as set out in the Electoral Act 1997. While acknowledging the depth of feeling in Leitrim, the Government does not propose to depart from the package of recommendations that has emerged from its deliberations. It would be a bad day's work if we were to break with the principle of acceptance of commission recommendations in their totality. To facilitate Members of both Houses in familiarising themselves with the changes to individual constituencies, maps of each constituency were produced with assistance from Ordnance Survey Ireland and were recently circulated to Deputies and Senators.

I now wish to outline the main provisions of the Bill. Section 2 provides that, after the next dissolution, the number of Members of Dáil Éireann will be 166. This is the same number as at present and is the number recommended by the commission. Sections 3 and 4 provide that, after the next dissolution, the members of Dáil Éireann will represent the 43 constituencies specified in the Schedule, as recommended by the commission. This represents a net increase of one in the number of constituencies compared to the existing constituency formation, which remains in force for the purpose of any by-elections up to the time of the next dissolution of the Dáil.

Section 5 provides for the repeal of the Electoral (Amendment) (No.2) Act 1998 which specifies the existing Dáil constituencies. The repeal will come into operation on the next dissolution of the Dáil. The Schedule contains the formal definition of the 43 constituencies, the main details of which I have already set out for the House. In summary, it provides for the creation of five new constituencies, the replacement of four existing constituencies, changes to 23 constituencies and the retention of 15 existing constituencies. Overall, 12 five-seat constituencies, 13 four-seat constituencies and 13 three-seat constituencies are proposed.

Section 6 addresses a technical issue that has been raised by the Standards in Public Office Commission in regard to the definition of election expenses for the purposes of the Electoral Act 1997. Paragraph 2 of the Schedule to that Act sets out certain items that are not to be regarded as election expenses for the purposes of the Act. Following the High Court and Supreme Court decisions in 2002 in the Desmond Kelly case, section 33 of the Electoral (Amendment) Act 2004 deleted from paragraph 2 the reference to services, facilities and so on provided out of public funds. The effect of this deletion is that, in accordance with the courts' rulings, such services are now reckonable for the purpose of making statements of election expenses to the Standards in Public Office Commission.

However, the section 33 deletion was inadvertently drafted to also remove a number of other items which were not at issue in the court cases from paragraph 2 of the Schedule. These items include free postage provided for candidates, the litir um thoghchán; a service provided free by an individual or by an employee of a political party; normal media coverage; and the transmission on radio or television of a broadcast on behalf of a candidate or political party.

It was never intended to provide that these items would be regarded as election expenses for the purposes of the 1997 Act. The present Bill redresses the situation by inserting a subparagraph in paragraph 2 of the Schedule to the 1997 Act clarifying that the items at issue are not to be regarded as election expenses at presidential, Dáil or European elections, thereby returning to the position in respect of these items before enactment of the 2004 Act.

Before concluding, I wish to address the suggestion made in the Dáil and elsewhere that because the next census will take place in April 2006, we will require a further review of constituencies before the next general election. This view is based on the assumption that a constituency review can take place using the data in the preliminary census report which is usually published by the CSO within a few months of the census being held. However, it is the CSO publication Volume 1 — Population Classified by Area which contains the necessary final data to enable a constituency commission to undertake a review of constituencies in accordance with the relevant legislative and constitutional requirements.

The CSO states clearly that the initial figures in a preliminary report containing provisional information are subject to revision and are not to be regarded as having statutory force. I hope Senators will agree that it would not be the correct approach to ask the commission to operate and make recommendations on a basis other than the final census results. Still less should the Oireachtas be asked to evaluate a commission report prepared on such a basis. Moreover, the case law in the area supports the approach we are following.

As I mentioned earlier, following the census carried out in April 2002, Volume 1 was published in July 2003. On this basis, the constituencies set out in the Bill will apply at the next general

[Mr. B. O'Keeffe.]

election. In conclusion, this is a short but extremely important Bill for existing and prospective Deputies, the electorates they serve and the democratic process as a whole. I commend it to Seanad Éireann.

Mr. Bannon: I welcome the Minister of State. The Taoiseach said in the Dáil on 27 April that this would be the last Electoral (Amendment) Bill in the life of the Government, which is to say it will be the last before the next general election. While essentially dealing with the implementation of the recommendations of the report of the Constituency Commission, published in January 2004, relating to the revision of the Dáil constituencies for the next general election, the Bill is a blatant attempt by the Minister to shake and finally bury some of the appalling miscalculations of his predecessor, Deputy Cullen.

The main recommendations of the boundary commission have resulted in the creation of five new constituencies and the replacement of four existing ones. The report also changed 23 constituencies and retained 15 existing ones. However, the Bill also allows for the reinstallation of certain electoral expenses which the Minister of State has said were inadvertently deleted from the Electoral (Amendment) Act 2004. It is no secret that strange and incomprehensible events took place during the tenure of the previous Minister, Deputy Cullen, and the inadvertent removal of important details from that Act is just as incredible as the same Minister forking out more than €50 million of taxpayers' money on prehistoric electronic machines.

The inclusion of these provisions in the Bill represents a fudging that should not have happened.

Mr. B. O'Keeffe: That is unacceptable. The machines are not prehistoric.

Mr. Bannon: The commission report should have been dealt with separately and deserved the courtesy of being thus highlighted.

Mr. B. O'Keeffe: A further review is taking place. Senator Bannon should deal with the facts.

Mr. Bannon: We are obliged to sort out the major cock-up made by the previous Minister but that should be done independently. His railroading of an e-voting system that was blatantly flawed posed a real threat to our democracy. Its long drawn out storage poses a serious threat to the public purse.

When will the Minister of State publicly admit that the machines purchased by his predecessor are not viable and when will the taxpayer be let off the hook? He should stop expecting our hard-working citizens to pay for the storage of these dinosaurs, for that is what they are. In May 2004, while speaking on the Electoral Bill 2004, I said that e-voting would not be introduced in June 2004 and that a question mark hung over the area of e-voting. What is new? E-voting lost the confidence of the public. The equipment, which the previous Minister tried to foist on us last year, never had nor will have the confidence of the public. It is time to return to the drawing board. The provisions of the Electoral Act 1997 need to be reviewed and public acceptance of e-voting should be sought.

Mr. Kitt: This has nothing to do with the Bill. The Senator is not discussing the Bill.

Mr. Bannon: I welcome the publication of the Dáil Constituency Commission report——

Mr. Brady: Good.

Mr. Minihan: It is about time.

Mr. Bannon: ——and congratulate the commission on honouring historical and geographical constituency boundaries to such an extent, given its difficult task. An exception is the controversial decision on my neighbour, County Leitrim, which raises numerous questions.

Mr. Brady: Pick and choose.

Mr. Bannon: I made representations to the commission by means of a submission calling for the restoration of the old Longford-Westmeath constituency. I was the only one from the midlands to do so.

Mr. B. O'Keeffe: Save County Roscommon and to hell with County Leitrim.

Mr. Bannon: The population is ideal for a Dáil constituency. It is the historical constituency for the area and it was unnecessarily abandoned for the Longford-Roscommon constituency. The old commission erred in its last revision and I am glad it has corrected this. While Longford-Roscommon and Longford-Westmeath do not breach county boundaries, the Longford-Roscommon arrangement was a completely unrealistic constituency because counties Longford and Roscommon are in separate provinces and have separate tourism boards — to which I referred this morning and which should be abolished — and regional authorities. They were in separate health board regions until these were abolished last year.

Mr. Minihan: The constituency should have been abolished.

Mr. Bannon: The River Shannon is the most significant physical feature by far in Ireland, yet the commission failed to show regard for the Shannon, despite its terms of reference. A mere two bridges connect counties Longford and Roscommon, at Lanesboro and Tarmonbarry. There are fewer land connections between counties Longford and Roscommon than between

England and France — the channel tunnel has three.

The population of Longford-Westmeath would be large enough for five seats if the commission had not included part of County Westmeath in the Meath West constituency, a decision which is open to debate and has echoes in the circumstances of County Leitrim. However, the division of County Leitrim into separate Dáil constituencies is totally inexplicable, leaves the door open to constitutional challenge and raises fears that County Leitrim may never have its own Deputy living within its borders.

Bearing in mind the historical precedent of the judgment of Solomon, perhaps the cutting in half of Leitrim is wise in ways unclear to ordinary mortals but is right and fitting to the commission. If this is so, perhaps it could enlighten us and the people of this constituency who are concerned over this decision. The preservation intact of County Leitrim is uppermost in the minds of its population. Fine Gael strongly supports the protection of Leitrim as an electoral entity. With the county split in two for electoral purposes, there will be more than 18,000 voters in one electoral area and more than 10,000 in the other, drastically reducing the chance of County Leitrim having its own Dáil representative. If Leitrim is divided into the two constituencies of Sligo-North Leitrim and Roscommon-South Leitrim, it will be almost impossible for the county, which has the smallest population in the county, to return a Deputy.

Looking at the population of the country as a whole, the 2002 census reports show an increase in the total population from 1996 of over 291,000 to a total current population of 3,917,203 at that time. There will be a census next year but, as the process involved in this will be lengthy, a new Bill will not be introduced before the next general election. If next year's census shows an increase of 500,000, which, given the new freedom of movement within the EU and the proportional increase on foot of the new member states, is not unrealistic, is it constitutional to draw up constituency boundaries for the 2007 general election based on the 2002 census? Could the election itself be ruled unconstitutional and invalid?

The Bill before us today essentially concerns the drift from rural to urban areas and the growth of cities and towns. This has resulted in changes in constituencies and led to extra seats in constituencies on the east rather than the west coast. To sustain rural communities, we need to re-examine the spatial strategy and assess it failures. Population growth is not happening as predicted in the areas designated for growth, including the hubs. In particular, the western seaboard lags far behind optimum growth and infrastructural development.

The east coast, including counties Meath, Louth, Wicklow, Carlow and Kildare are experiencing growth but lack the necessary infrastructure to sustain it. As a Senator and a local authority member, I have often called for the upgrading of the N55, which would reroute a lot of traffic between Northern Ireland and the south from the east coast to the midlands. It would be sensible to properly develop and upgrade this route. Consideration of the spatial strategy in light of direct investment from the east coast and the commuter counties towards the west may have a long-term impact.

With particular reference to the electoral process, I am conscious of the outmoded and non-user friendly nature of the process associated with registering, changing address and applying for postal votes, all of which are deterrents to voting. The procedural difficulties encountered in updating the electoral register, particularly the failure to include eligible voters and those who recently relocated or turned 18 years are also areas of concern.

On behalf of Fine Gael I call on the Minister of State to introduce root and branch reforms of the electoral process to include weekend voting, including the possibility of opening booths at four or five o'clock on Friday and continuing through Saturday. This would accommodate a large number of people and allow no one the excuse of being unable to vote on polling day. Other reforms should include a review of procedures associated with the updating of the electoral register; an assurance of greater accuracy and accessibility for those registering; information campaigns on the roles of local government, the European Parliament, the Oireachtas and the President and highlighting the importance of transfers in the proportional representational system; an expansion of the grounds of application for a postal ballot and an extension of deadlines for applications; a definitive report on electronic voting, particularly on the costly storage of obsolete machines; and the automatic registration of all 18 year olds using the PPS number provided by the Department of Social and Family Affairs.

I would like to address the inadvertent omissions from the last Electoral (Amendment) Bill of certain items concerning election expenses not affected by the ruling in the Kelly case, which led to the deletion of a paragraph in section 33 of the Electoral (Amendment) Act 2004. The Minister of State assures us that the Oireachtas never intended to cover them as part of the 1997 act. They include free postage, services provided for all candidates, services provided free by an individual or by an employee of a political party and normal media coverage or transmission on radio or television of a broadcast on behalf of a candidate or political party.

It is therefore to be welcomed that the Bill seeks to address the anomaly, by inserting a subparagraph in part 2 of the Schedule of the 1997 Act, but I would like the Minister to go past assurances that the omissions were never intended, and explain how they happened. This is important as the public, Members of the Oireachtas and members of local authorities

[Mr. Bannon.]

require more explanation than what the Minister of State has given to us.

I share the concern of my colleague, Deputy O'Dowd, about the position of Members of the Oireachtas when a general election is called. The aforementioned Kelly case was taken because of a perceived advantage legislative changes would give to candidates who were serving Members of the Oireachtas. This Bill is based on the fact that previous changes were incorrect. Will this Bill now see Members of the Oireachtas advantaged or disadvantaged? This question must be answered and I hope the Minister of State will deal with it during the course of today's debate.

Mr. Kitt: I welcome the Minister of State to the House and thank him for the Bill he has brought before us. I welcome the opportunity to speak on this short but extremely important Bill. I join with the Minister of State in complimenting the Constituency Commission, whose recommendations are now the focus of the Bill.

The commission had a difficult task and tried to bring a fair balance to the Bill. One of the issues it dealt with was the breaching of provincial boundaries and the constituency of Longford-Roscommon no longer exists. The Minister of State made the point that breaches of county boundaries still occur. Naturally there will be much disappointment that County Leitrim has been torn down the middle, and also with issues about Westmeath. I know the Minister of State was biting his tongue when he spoke because his county has also suffered from the changes and his old constituency has lost a seat.

The members of the commission are distinguished public officials who have given long service to the country and their integrity is certainly not in question. Perhaps the question of what other people would do can be asked. What would any of us do if we examined the revision of constituencies based on the last census? However regrettable, reviewing constituencies means winners and losers. I do not know why the commission recommended particular lay-outs of constituencies but it did so within its guidelines and constitutional remit. If one rejects a particular issue within the revision, the entire report is rejected. I read a transcript of the recent Dáil debate where the Minister for the Environment, Heritage and Local Government, Deputy Roche, clearly stated the Government intends to accept the commission's reports.

I know from my time in the Dáil, and the Minister of State also referred to it, that governmental revisions of constituencies provoked much controversy. The late Kevin Boland was known for making certain changes when he was Minister with responsibility for local government. I remember when part of south Roscommon shared a three-seat constituency with north Galway and Fianna Fáil succeeded in getting two seats. On the other hand, the party lost a seat in Roscommon in 1973, which led to the election of a coalition Government. The late Jim Tully carried out what was affectionately known as the "Tullymander" for the 1977 election. I recall part of north Clare was put into a constituency with west Galway to create a four-seat constituency. The idea was that Fianna Fáil would get two seats while Fine Gael and the Labour Party would each get one. In fact, Fianna Fáil got three of the four seats, which is difficult to achieve. It shows how issues can rebound on the Government party even with gerrymandering or "Tullymandering".

It was no surprise when we decided a commission should do this work, firstly for the European elections in 1979 and the Dáil elections in 1981. I remember the late Jack Lynch discussing his disappointment at the changes made in County Cork for the 1981 election. I am sure the Minister of State, Deputy Batt O'Keeffe, would express a similar opinion on the present situation in Cork.

We all agreed the commission should examine the constituencies and I am certain that not everybody will be pleased. I know my colleague, Senator Mooney, will have much to say on how these changes have affected Leitrim. Difficult choices were made as Senator Bannon pointed out. We are discussing the manner in which the guidelines are laid down and adherence to the Constitution. The constituencies are based on the figures from the census of 2002. I will briefly discuss the Electoral Act 1997 later.

We must enact this Bill before the next general election. I understand the existing constituencies are used if a by-election is held before that. While the number of constituencies to be increased by one seat did not surprise me, I was surprised by the Department's use of creative language in discussing a new constituency configuration in the north Connacht-north Leinster area. What the Department is really stating is that a seat was lost in the western region while the counties of Meath and Kildare got an extra seat. A seat was also lost in Cork. There is time, as Senator Bannon suggested, to implement the spatial strategy and examine development in the west. For many years we stated that losing Dáil seats in the west of Ireland will lead to difficulties in the future. It would be better to state directly that this is what is happening and not describe it as a new constituency configuration. Dublin will retain its 47 seats over 12 constituencies, but these have changed to three five-seat constituencies, five four-seat constituencies and four three-seat constituencies. I support Senator Bannon in his call to examine our spatial strategy and how we draw up constituencies in the western region in the future. It is hoped that we will not lose further seats.

The Bill clarifies what is allowed on electoral spending and that is welcome. Items such as free postage for candidates, normal media coverage, broadcasts on behalf of a candidate on radio and television and services provided free by an individual or by an employee of a political party are now not an issue in terms of expenses. The Kelly

case, which arose during the last election, affected all candidates from all political parties. Some items were ridiculous, such as use of the car park at Leinster House. I do not understand why that was included. I would even suggest it should be looked at again in addition to the other areas I have mentioned.

On the west of Ireland issue, according to our Constitution we will now have three, four or five-seat constituencies. There has been a strong campaign by smaller parties for more five seat constituencies but I question the practicality of that in rural Ireland. The five-seat constituencies in counties Mayo and Galway, for example, are huge areas to cover and from the point of view of effective representation, it is clear that smaller constituencies are better in rural Ireland. I may not get the support of everybody on that view but certain problems exist in those areas and an argument could be made for three, three seat constituencies in Galway, for example. There appears to be some status attached to having a five-seat constituency in the west, with Galway city as the major city in that region, but I am aware from talking to the Deputies who represent that area, and those who used to represent Mayo when it was a five seater, it is difficult for them to serve that large area.

The issues on voting which Senator Bannon referred to are important and we hope to have a debate on that soon in terms of the register. Fine Gael has referred to using the PPS number as a good basis for the register. I suggested also that something similar to a census form could be given to a household to ensure people are included on that register.

I am happy to support what the commission has said. I do not agree with everything the commission does. We would all do things a little differently but as I said in the past, we let political parties do it and it has not worked out very well. Even though the political parties might have got it wrong on occasions and it might have rebounded in their faces, since the 1979 European elections the commission has examined the constituencies and despite the serious situation in Leitrim, I cannot see how we can make any changes now. The Minister has set out what the Government is doing and I hope the Minister of State will respond to the suggestions made by Senators.

Mr. McDowell: My party, the Labour Party, is party to the general consensus in welcoming the Bill. Senator Kitt mentioned that the late James Tully was party to the creative reorganisation of the constituencies in the 1970s and if anybody in the Labour Party needed persuading that that was not the way to do it, the end result of the 1977 election, the outcome of which was not exactly as the then Minister Tully had intended, was sufficient persuasion. We are all now committed to the idea that it is an essential part of our democracy that an independent commission should draw up the constituencies. It does not necessarily follow from that that we should remain wed forever to the terms of reference, which I understand are set out in the 1997 Act. I will deal with some of those terms of reference shortly but I hope the Chair will forgive me for starting my contribution on a parochial basis.

It is interesting to note, although I am not sure anybody has done so, that the area of the country where most seats have been lost is the north side of Dublin city. Over a period of approximately ten or 15 years we have gone from having four, four-seat constituencies to three, three-seat constituencies and one, four seater. We have actually lost three seats on the north side of Dublin city in that period. I am not in any sense criticising the commission for that. It simply reflects the changing demographics of the city and the county.

Many of the houses in the estates in the constituency I used to represent in places like Beaumont, Artane and parts of Coolock, which were built in the 1970s and which until recently had four, five or six voters in them, now have just two. In their late 20s or even early 30s in some cases, the children managed to find homes in the constituency represented by the Minister and other formerly green pastures of rural Ireland and are no longer part of Dublin. That is more of a social commentary than anything else. I am not suggesting we should continue to represent people who are now living in Kildare and Meath but it is a debate for another day, which has as much to do with housing policy as with anything else. I accept that we now have three seats in Dublin North-Central. There is a clear left-wing quota in that constituency, even based on the result of the last general election, and it is my business and that of my party to ensure we win that seat.

There is an issue about three-seat constituencies. Traditionally, three seaters were based in rural Ireland for the good solid reasons of geography that Senator Kitt mentioned and they are still largely based in the south west of the country. However, there is a specific issue about urban three seaters, which is a relatively new phenomenon. It is not just true in Ireland but in many other countries that there is a greater diversity of political views in urban areas than in rural areas. We can talk at length as to the reason that should be the case but it is a clearly established fact and therefore a greater variety of parties are looking to contest. There is also a variety of Independents looking to contest in urban areas as well, although that is less obvious.

It is also practically more appropriate to have five-seat constituencies in urban areas because the geography is much simpler. In the constituency Senator Kitt represents, I suspect one could travel for 40, 50 or 60 km. and remain within the constituency whereas in the constituency I used to represent one could not travel more than five or ten minutes on a bus without going outside the constituency. There is no comparison, therefore, in terms of the practicalities of looking to rep-

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resent a constituency like that and there is no serious reason to have urban three seaters.

In urban areas in Dublin, Cork, Galway, Limerick and so on, five seaters should be the norm and in principle there should not be any objection to six or seven-seat constituencies if that were considered appropriate. As I understand it, this is not a provision in the Constitution. It is a provision in the 1997 Act and there is no reason we cannot change the terms of reference to make that provision.

The integrity of county boundaries has been spoken about and I am as sympathetic as everybody else to the position in Leitrim but there is also an issue in the Dublin area about the integrity of the city boundary in terms of the practicality of representing an area covered by more than one local authority. The constituency of Dublin North-East, for example, covers both Fingal County Council and Dublin City Council and I am aware it causes difficulty for the three Members who represent that Dáil constituency. In looking at the terms of reference when we next come to do that exercise, we should give some thought to including the integrity of city boundaries also as something that should be considered by the commission when it examines those issues.

One aspect that struck me in the Minister's contribution today and his contribution in the other House was the emphasis we have always put on the ratio as between the population and the Deputy. In the past, that has been reflected typically in the ratio of voters to Deputies but in the future that is less likely to be the case because immigrants are entitled to register but may not necessarily vote. One way or another they are included in the census. As long as they are living in a particular house on a particular night, they are part of the census and are therefore considered to be part of the population of the country.

Regarding the constitutional provision, therefore, they are counted in terms of deciding the ratio and the number of seats in a particular constituency but the overwhelming likelihood is that many of them are here temporarily and they will not vote. In some constituencies, therefore, where there is a significant immigrant community we are likely to find a significant divergence in future years in the ratio of population to Deputy and in the ratio of voters to Deputies. That is something to which we must give some consideration. I appreciate that this is a constitutional provision which poses a difficulty but it is something we must be aware of in years to come because there will be constituencies in which perhaps many thousands of immigrants live, some of whom will have the right to vote but many of whom may not exercise that vote. We have to be conscious of the possible distorting effect that may have in years to come.

Other speakers mentioned the state of the register, which is becoming an increasing problem for all of us, but it can be resolved. Whether we use the PPS number, a passport or another form of ID, it must be possible to, for example, ensure voters are only registered once. If a person provided a PPS number as a means of registration, there should be a central register to tell that the person was already registered in a different constituency, so that person's details could be deleted from the other constituency.

This is where the major problem arises. Those who move house might be anxious to register in their new constituency but, more often than not, I suspect, they do not de-register in their old constituency. Depending on how efficient the local authority is, it can be some time before they are removed from the register in the old constituency. We have a position where some hundreds of thousands of voters are illegally registered in two constituencies, although one would hope they are not actually using two votes.

Surely it is not beyond our wit to organise a solution. I am open to the idea of ID cards for multiple uses in the future. I accept issues arise as to how that would be organised, how they are used and for what purpose. However, if an ID card is not for discussion, let us use some means we already have, be it the PPS number, passport or otherwise, so we can at least ensure double registration does not happen, or we are aware of it if it does.

The Minister of State referred to the 2006 census. There is a real issue in this regard. It is probably fair to say that if there is only a slight or manageable increase in population, there will not be a serious constitutional issue at the next election. However, it is possible or even likely there will be a significant increase in population indicated by the preliminary figures in next year's census, which may provoke serious constitutional issues about the representative nature of the constituencies. I urge the Government not to close this book just yet. If we are talking about relatively minor deviations, I do not think anybody will get particularly upset. However, there is a real possibility of serious deviations. If that happens, the Government must be open to the possibility of setting up a commission, if only to consider those areas of the country where deviations arise. If that is not done, a serious constitutional issue could result, one that we should not ignore.

Others, including Senator Bannon, referred to the issue of voting at weekends. I was going to say the jury is out on this issue but it has probably come back in. If memory serves, we experimented with weekend voting in one of the Tipperary South by-elections. On that occasion, the turnout was significantly higher than it had been at the previous election, which was held on a weekday. It is beyond doubt that weekends are more convenient for a significant number of people. We should not wait for the turnout to fall close to 50% or below, which it will do in 20 years if we do not proactively take measures to make it easier to vote.

The easiest measure we can take has to be to change the voting day to a weekend day, or per-

haps one and a half or two days. Such a change should be made immediately. We should also look to use technology to ensure that while people should have to turn up to a polling station, they do not necessarily have to turn up at the polling station where they are registered. The register should be available electronically so a voter can use his or her card to vote at any polling station on election day, provided his or her identity can be verified. We must consider such measures now rather than doing it in a panicky way in ten years, as we look in a semi-puzzled way at why turnout figures have reduced.

On the other hand, I am not sympathetic to the idea of extending postal voting, which has been used in the United States and most recently in the UK. While Ireland is particularly restrictive in this area and perhaps we need to consider some sort of liberalisation, the least we can expect in terms of democratic commitment from citizens who want to have their voice heard is that they will turn up at a particular location on a given day to register their vote. I do not like the idea of there being three or four postal voting cards on a kitchen table, all to be filled out by the same person, although they may belong to other members of the same family. However, while we should require the people to present in person, we should also consider the good case that has been made for postal voting, for example, for people with disabilities.

Much has been made — I will not add more to it — of the e-voting fiasco. I was one of those who instinctively supported the idea because it struck me as being a modern and efficient way of voting. However, having listened to the debate last year, I changed my mind. We should not easily remove one of those elements of politics which seems to be of some interest to the population, namely, the count on the day after polling. As some of the worst days of my life have been spent in count stations, I take no particular pleasure in the memory of counts. Nonetheless, it is clear that it is a day on which, and a way in which citizens interact with the political system. That is not unimportant and we should be slow to change it.

An issue that has not been touched upon is that of the correction of the Schedule to the Electoral Act 1997 following the Kelly case. I accept the principle that Members of the Houses should not be allowed to use that position in a way that gives them advantages over candidates who are not Members. However, one aspect we need to seriously consider is the major advantage Ministers have. I accept in principle that Ministers are entitled to constituency offices as they will probably have a greater volume of constituency business than those Members who are not Ministers. However, they should not be allowed to have five or in some cases many more civil servants dealing with constituency business during election time. It is not a matter of not reckoning for this; it should not be allowed in the first place.

My party supports the Bill. We accept the general principle of the commission, whatever about the individual details, which many of us might be nervous about. The principle is a good one, and one we support.

Mr. Minihan: I welcome the Minister of State to the House. The setting of electoral boundaries and seat numbers has in the past been a process that has led to some of the most extraordinary political machinations in many countries. The names Elbridge Gerry and Ireland's own James Tully have become forever associated with the more intriguing side of boundary setting. Some would claim that politics has now been so removed from the process of setting seat numbers and constituency boundaries as to make discussion of it almost obsolete, and that the process is now a mechanical, mathematical and statistical one. To an extent, they have a point. Article 16 of the Constitution dictates that the ratio of seats for each constituency be consistent nationwide based on the preceding census. It states that the Oireachtas shall revise the constituencies at least once in every 12 years, with due regard to changes in distribution of the population, and the total number of Members of Dáil Éireann shall not be fixed at less than one Member for each 30,000 of the population, or at more than one Member for each 20,000 of the population.

Since 1977 we have had a constituency commission to independently assess and set out boundaries and seat allocations. The point made is that, given the constitutional provisions, the employment of the most recent census data and the establishment of an independent commission, politics has been removed totally from the issue of constituency make-up. That view goes too far. There is still some politics in this debate, and the reason for that is simple. There is, and always will be, a difference between the statistical and political, on one hand, and the reality on the ground.

To take my own part of Cork city as an example, is Cork University Hospital on the north side of the city, in the eyes of politicians? Are Nemo Rangers north side or south side Cork county champions? On what side of the city does Father Matthew's statue reside? Where is UCC located? From a political perspective all are located on the north side but from the perspective of Cork people the opposite is true.

We have had many north side lobbies for hospitals, universities and football teams. Sadly they are all on the south side. We have an independent commission, which I welcome, and it bases its recommendations on census data but constituency borders must reflect the affinities that exist in communities. In the case of Cork, I would refer the House to the terms of reference of the Constituency Commission, which states "there shall be regard to geographical considerations including significant physical features and the extent of and the density of population in each constituency".

I am not breaking news to the House when I say that the River Lee is a physical feature of great significance to Cork people, and has been

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so for many generations. Cork people, despite their modest and retiring nature, have even been known to mention it in song on occasion. The River Lee is a natural boundary for Cork people and I want to specifically welcome the reinstating through this Bill of the river as the natural and correct constituency boundary between Cork North-Central and Cork South-Central. When the legislation before us is enacted, nearly 26,000 citizens will be correctly redesignated as south side residents and voters. For future reference I suggest that should adjustment to boundaries be deemed necessary on the basis of population shifts in the future, the extremities of the constituency, rather than the areas around the natural boundary, should be altered. I would hope that where a similar situation exists in other areas of the country this type of approach would also be followed.

When I was elected to Cork City Council in 1999, my ward area straddled two Dáil constituencies. This type of geographical break-up leads to problems on the ground for both the electorate and candidates at later elections, and these problems are not of their making. If one is changing Dáil constituencies, if necessary, changes should also be made to local authority areas to ensure they are consistent with Dáil constituencies. In my case the boundary ran down the middle of my ward, within 20 yards of my home. Was I representing Cork North-Central or Cork South-Central? This matter must be considered in more detail when revising boundaries.

In accordance with section 5 of the 1997 Electoral Act, the Constituency Commission was set up in July 2003, chaired by Mr. Justice Lavan. A debt of gratitude is owed to him and his excellent team. I referred at the outset to Elbridge Gerry and James Tully and it is imperative the public have total confidence in the system that leads to changes in constituency configuration. Where there exists a possibility of political gain from adjustment, suspicion also exists. I am satisfied that the necessary procedures are in place to ensure all suspicion can be ruled out. This does not mean that this Bill is without contention. The Bill proposes changes in 23 constituencies, leaves 15 unchanged, creates five new constituencies, and replaces four existing constituencies.

My earlier point illustrated that any change will make for debate at the least and possibly bald anger among the electorate and, in some cases, elected representatives. The issue of representation is at the heart of this matter. We operate a system of representative democracy in this State, where we ask citizens to select people to give voice to their views in the Houses of the Oireachtas. That link between citizen and representative is central to how Irish politics works, and has shaped our political culture. Our system encourages the strongest link between the representative, the citizens and the locality, sometimes to the detriment of the wider political process. We must not underestimate the strength of county loyalty in this country. As a Corkman, a phrase involving the words "snowballs" and "hell" would spring to mind if I were to consider standing for election in Kerry.

Section 6 of the 1997 Act provides that the breaching of county boundaries shall be avoided as far as practicable. However, the Bill before us provides for a new constituency configuration in the north Connacht-north Leinster area. It creates new three-seaters, Sligo-North Leitrim and Roscommon-South Leitrim, and a new four-seater, Longford-Westmeath. While this brings to an end the breach of a provincial boundary in the current configuration, it means breaching the boundary of County Leitrim. I do not underestimate the concern this creates for citizens of Leitrim.

I state my belief that the political process as a whole would be better served if we could move away from the intense localisation of politics. While this is a separate issue from the one facing the citizens of Leitrim, the availability of national legislators to deal with very local concerns can have negative repercussions for the wider process.

Weekend media reports suggest there could be a constitutional challenge to proposed constituency boundaries after next April's census results. The Minister covered this in his address. If amendments are necessary to this Bill or the Electoral Act 1997 to deal with this possibility, I would like to see the issue addressed quickly, effectively and efficiently.

Another issue raised recently is the accuracy of the electoral register. Given that many important decisions are to be taken on the basis of figures such as census data, it is unacceptable that something as important as the register of electors would be so out of sync with reality. I would like serious and committed action by local authorities to rectify this inaccuracy.

I endorse the comments made by Senator McDowell on this matter. There is healthy loyalty both within and to Irish counties — just consider the Cork norrie versus the southsider, or the people of Leitrim. Although the combination of Bunreacht na hÉireann, the Electoral Act, census data and the independent Constituency Commission have successfully removed suspicion of political shenanigans from the issue of constituency configuration, they have not, and probably never will, remove politics from the designation of territory. It is part of the essence of Cork people, Leitrim people and Irish people. I welcome this Bill in the House today.

Mr. McHugh: I ask for the agreement of the House to share time with Senator Brian Hayes.

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

Mr. McHugh: I welcome this independent commission's report on the redrawing of constituency boundaries. I listened to Senator Minihan's com-

ments on county loyalties and recalled that in the 1930s west Donegal was in the same constituency as Leitrim. This is something people in Donegal would not understand today. We do not have a problem with county loyalty in Donegal as we have both Donegal North-East and Donegal South-West. County loyalty is as important in politics as in other domains. When we mention county loyalties, people generally think of sport such as hurling, football, soccer, etc. County loyalty should transcend sport and other areas into politics.

On the redrawing of the constituency boundaries in Donegal, Letterkenny is expanding at an alarming rate. That is progress and we must move with the times. As a consequence of the population rising in Letterkenny, the geographical spread in Donegal North-East has decreased. Consequently, Donegal South-West which has a smaller population base is expanding in terms of territory. An issue arising from this — I do not know whether it should fit in with this Bill or should be an issue for the local authority — is that the Letterkenny electoral area now straddles two constituencies. Forgive my ignorance, but I do not know whether this happens in other constituencies. This straddling is a bit of an anomaly for much of the politics within both constituencies because, while it is a distinct electoral area, there is a straddling of both divides. There should be an onus on the electoral commission to give some acknowledgment that electoral area boundaries should fit succinctly into constituencies. That debate should be advanced at some stage. I welcome the report drawn up by the independent commission. It is important that it is passed by the Oireachtas as quickly as possible.

The other issue of concern to me relates to voting. I intend introducing amendments on Committee Stage with respect to voting, accountability and transparency during elections. Two weeks ago *The Sunday Tribune* front page story and editorial concerned almost 800,000 people who are on the register but who are not eligible to vote. We have a serious problem with regard to the electoral register and it is urgent that we as legislators tackle it head on, not as a party but as a political issue. On the day of the 2004 local elections people phoned me in Letterkenny to ask whether they should use their vote in Milford or Letterkenny, because they were on the electoral register twice. One person phoned to say he had five voting cards as a consequence of migrating from Donegal South-West to Letterkenny and of moving house. This is something we must address.

I hope this House will consider the amendments I will propose in this regard. All we want is transparency and some accountability. As matters stand, anybody's name can be put on the register. Osama bin Laden could be on the register in Leitrim without any check being made providing we made up an address for him. There is no detection of irregularities because while the matter is left to the local authority, it does not have the proper resources available to it to deal with the upkeep of the register. The matter is urgent and should be tackled head on. This may be an aside from the Bill before us, but it is an important issue. Some 800,000 people who are not entitled to a vote are on the electoral registers, from Malin Head to Mizen Head. We must raise serious questions in this regard.

Mr. B. Hayes: I thank Senator McHugh for sharing his time. We should deal with the issues he has raised on Committee and Report Stages.

I welcome the Bill and welcome the Minister of State to the House. It is wrong for politicians to start play acting with the independence of a commission which makes these difficult choices every five years or so. We do not want to return to the past when this kind of nonsense occurred. The commission is now on a statutory basis, but it should not just be initiated when the census report is issued. It should operate on a long-term basis and should be removed from the Department of the Environment, Heritage and Local Government. It is wrong that an electoral commission that determines constituency boundaries should be based in any Department. It should be a separate body or agency and be independent of any Department.

When it comes to appointing the commission, all of the usual suspects are rounded up, the Clerk of the Dáil, the Clerk of the Seanad, a High Court judge, etc. Often these people have other responsibilities, not least in this House. Some of them are also members of the electoral offices commission. We should be more imaginative and put independent people onto this commission.

I suggest to the Minister of State that when submissions are being made to the commission, we should consider allowing them to be made in public. I expect, for example, that a substantial lobby from County Leitrim will, rightly, make submissions to the next commission. The commission should meet in public session to take on board the public submissions. Currently, submissions are made in writing, but the commission is not entitled to meet in public the people making them. Public sessions would be a useful addition to the work of the commission and would put it on an independent basis. The commission should not just operate when a census report has been issued, it should operate on a 24/7 basis. It should be a standalone agency with a remit to deal with the issues our colleagues have raised about the integrity of the electoral register, etc.

Dublin is still substantially underrepresented and should have two extra Deputies. We have been aware of this problem for the past 15 years. The population is growing so why do we set the bar so rigorously in terms of 166 Deputies? So what if another three to six Deputies are elected to the other House. We must reflect the increasing population structure. Based on the figures available to me, Dublin has two Deputies fewer

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than it should have and this is an issue the next commission must address.

I welcome the report of the commission which does us a significant service. However, we should be more imaginative about who we ask to do the work. We should not just round up the usual suspects. There are many other independently-minded public servants who would fit the bill in terms of trying to produce a fair and equitable boundary system. We need to be more imaginative and put the commission on a full-time statutory basis to do other work on a constant basis, rather than just asking it to work when the census report comes out.

Mr. Mooney: I thank the Minister of State for outlining the background and context to this legislation. It may be a small Bill, but as far as the people of County Leitrim are concerned, it is probably one of the most significant pieces of legislation to come through the Houses to have a direct impact on the future representation of the county, so long as the proposals contained in the constituency revision prevail.

I have come to the conclusion that it is really the fault of the GAA and not the fault of the Government or the commission. When the English conceived the concept of counties — under the policy of divide and conquer — it was to split up the traditional fiefdoms. In my part of the country, and I am sure other Members have similar experiences of folk memories in theirs, the traditional lands of Breffni O'Rahilly and Breffni O'Rourke, which extended from Donegal to Meath, were split. As a former Senator from the county, Patrick O'Reilly, said during a debate in this House, County Leitrim as it is currently constituted is a monstrosity because, like other counties, it was carved out with political reasons in mind.

Political considerations continued to dominate the debates on constituency revisions after this country achieved self-government. The 1961 revision split County Leitrim for the first time. The 1969 Boland revisions, quite bizarrely, created three new constituencies from the entrails of County Leitrim. The figures from that time are interesting. Some 11,000 people in County Leitrim were allocated to the Roscommon-Leitrim constituency, a further 11,000 people were allocated to the Sligo-Leitrim constituency and 8,000 people were allocated to County Donegal. I do not doubt that a direct political gerrymander was carried out in 1969 by the then Minister for Local Government, Kevin Boland. That decision was compounded some years later by the famous gerrymander that was carried out by the then Minister for Local Government, James Tully. It became known as the "Tullymander".

The people of County Leitrim had bitter experiences when boundaries were revised in the 1960s and 1970s. Most people welcomed the Government's decision in the late 1970s to establish an independent commission as an attempt to address an injustice that had been done. The commission, which operated within its terms of reference, restored County Leitrim as a political unit, for the first time in 20 years, in 1981. The county has been served almost exclusively by Deputy Ellis, of Fianna Fáil, since then. It has also been served intermittently by the former Deputy and Senator, Mr. Gerry Reynolds, who is now a member of Leitrim County Council. I congratulate my friend, Councillor Reynolds, on his recent election as cathaoirleach of Comhairle Contae Liatroma. I wish him well in his term of office.

In the short amount of time available to me, I examined quickly the speech of the Minister of State, Deputy Batt O'Keeffe, in which he pointed out that the existing Sligo-Leitrim constituency has a variation of 11.01% from the national average. It is rather interesting that the other constituency that is so highly over-represented is not a rural constituency. I refer to the existing Dublin North-West constituency, which is in the heart of Dublin city. It has an even greater variation of 11.89% from the national average. The Minister of State also referred to the terms of reference of the Constituency Commission. He mentioned that section 6 of the 1997 Act provides that "the breaching of county boundaries shall be avoided as far as practicable" and that "each constituency shall be composed of contiguous areas".

The impact of the proposed changes on County Leitrim is not just a matter of political representation. I said earlier that the foundation of the GAA is to blame for the consolidation of county identity, based on the boundaries which had been introduced by the English, in the hearts and the minds of Irish people in the last 100 years. A strong form of county identity, which was not as evident before 1884, is now implacably and permanently located deep in the psyche of the Irish people. The natural boundaries found in the north west mean that the boundary of County Leitrim is a geographical nonsense. One has to pass through County Cavan or County Roscommon to travel from north Leitrim to south Leitrim. One also needs to avoid Lough Allen, which is a natural geographical boundary that divides County Leitrim.

The factors I have mentioned have combined over generations to create a sense of isolation among those in either half of the county. People in the northern half of County Leitrim refer proudly to themselves as being from "north Leitrim", rather than County Leitrim. As a person who lives in Drumshanbo, in the centre of the county, I have to say that I do not have great empathy with such a description. I am not alone in railing against it. One will never hear people from the southern part of the county referring to themselves as being from "south Leitrim". One must consider the historical aspects of this matter. Farming and sporting organisations, such as the GAA, have attempted over a long period of time to rebuild the natural division in the hearts and

minds of the people of County Leitrim, who should see themselves as being from a unitary administrative entity.

An interesting decision was taken by the Government some years after this country achieved its independence. The constituency of Sligo-Leitrim, which existed in the immediate post-colonial period, was abolished in 1937 when the Government decided that County Leitrim should stand alone as a constituency. Three Members were returned for the constituency of Leitrim in each of the 1937, 1938 and 1943 general elections. The constituency of Sligo-Leitrim, which exists to this day, was not reintroduced until the general election of 1948.

It is gratifying that the Minister of State's speech contained more references to the revisions being made to the Sligo-Leitrim constituency under this Bill than to the changes being made elsewhere in the country. I am grateful for his decision to devote a significant portion of his contribution to the impact of the proposal on County Leitrim. I am aware that there is a great deal of concern about this matter at all levels, from the Taoiseach down. I am glad that there has been a due acknowledgement of the depth of feeling in my native county about this matter.

I have to say I would vote against this Bill if I were not a member of the Fianna Fáil parliamentary party and if I were not taking the Whip. That is how strongly I feel about the proposal to divide County Leitrim for electoral purposes, which is an abomination. As some of my predecessors as a representative of the county in this House and the other House have said during previous debates on electoral matters, it is essentially a political rape of my own county.

I cannot act like King Canute by imagining that I can stand on the strand and try to roll back the waves. This country's entire political establishment is in favour of the proposals contained in the Bill. In their submissions to the electoral commission, Fianna Fáil and Fine Gael proposed that the recommendation that County Leitrim be split in two, which is now contained in the Bill, should be accepted as a means of addressing the imbalance in the national average. I know the battle lines have long since been drawn. Not only would I find myself on the losing side if I were to try to reverse the decision that has been taken, but I would suffer a crushing defeat. I hope the Leitrim football team does not suffer such a defeat when it plays Meath next Sunday.

I would like to repeat, in as strong and unobjective a manner as I can, that I am bringing emotion and passion to this debate. Such emotion and passion have blinded many people to the statistical reality that the population of County Leitrim did not and does not allow the continuation of the *status quo* in the form of the Sligo-Leitrim constituency. I believe that a better way of making the necessary changes could have been found, but it was not explored. I welcome the comments of other Senators, who have said that the terms of reference of the electoral commission should be seriously examined before the next constituency commission is undertaken.

I will end on a positive note. Statistical evidence that has been given to the members of Leitrim County Council over the last two weeks indicates that the population of County Leitrim is increasing inexorably. It appears that the current population of the county is 28,000, which is 3,000 more than the figure in the last census. We await the results of next year's census with great interest. I hope I will still be a Member of the House when it considers the next constituency revision Bill. I am convinced that such a Bill will be introduced within a short period of time. At that time, we will be in a position to restore Leitrim to its natural status as a single entity and thereby guarantee that it can return a Member to the Dáil.

Mr. Bradford: I welcome the Minister of State, Deputy Michael Ahern, to the House. I am sure he is interested in this debate. I support the remarks of Senator Mooney. The recommendations of the members of the political establishment, in their submissions to the electoral commission, were along the lines of the proposals which have been made by the commission. It seems that County Leitrim will be split in two for electoral purposes. Sadly, there is every prospect that there will be no Deputy from the county in the next Dáil, which would be very regrettable. When we establish the terms of reference for the next commission, we should try to ensure that the smallest areas and the smallest counties such as Leitrim are protected politically to ensure they will have representation in the Houses of the Oireachtas.

I appreciate that while the Bill may be short in terms of pages it is substantial from a political perspective. The commission must work with a small degree of discretion. Given that there are a set number of seats to be allocated and a fairly tight population statistic from which to work, the commission probably does not have room to manoeuvre to any great degree. I appreciate that its work was difficult, therefore, it is difficult to object to the recommendations made. However, we should consider other issues which greatly impact on the political system.

1 o'clock

We need to concentrate on voter registration. I was pleasantly surprised during last summer's local election that, for the first time in a generation, there was a percentage increase in the number of the electorate voting, which I welcome. However, we should not take it for granted that such an improvement will continue. Unfortunately, the trend over the past 25 or 30 years is that fewer and fewer people vote in national and local elections. One of the reasons for this is difficulty with mistakes in the register of electors. A report in a recent Sunday newspaper highlighted the possibility of serious errors in the register of electors. We must put in place a more watertight system of voter registration which will ensure

[Mr. Bradford.]

that, once a citizen of the State reaches 18 years of age, he or she will be automatically registered. Given the various systems that are in place, including the tax system and the social welfare system and the fact that every citizen has a PPS number, it should be possible to ensure that, on reaching the age of 18, every citizen will be registered.

I would also like to hear the Minister of State's views on setting a firm week and day for all elections, whether referenda, council elections or general elections. Weekends would offer people who live and work away from home a much greater prospect of voting. I support what Senator Bannon said earlier. I made the same suggestion previously in this House and elsewhere, which is that there should be a two day voting window. Perhaps voting could take place from 5 p.m. to 10 p.m. on Friday and from 9 a.m. to 10 p.m. on Saturday. This would give everyone an opportunity to vote. We must try to ensure that citizens exercise their entitlement to use their franchise to vote. At the very least, Saturday should be set down as a voting day but we should also consider a half day on Friday. In other words, we should give the electorate a day and a half to use their franchise and cast their ballot. This would help to encourage more people to vote. I would be hesitant about Sunday voting, not from a religious point of view, but I would not like to encourage the voters of Cork or Tipperary to vote on a Sunday like last Sunday when the Munster hurling final was on. Friday and Saturday would be preferable in that regard.

Electronic voting was referred to by some of my colleagues. I was one of the people who welcomed the concept but, sadly, the system now appears to be very devalued. There was too much controversy and doubt about it. The Minister was unwilling to address the reasonable issues raised by the Opposition and others, including some of his party colleagues, during the course of the debate. There is now a degree of cynicism and doubt about electronic voting, which we will not be able to overcome in the short-term. We must make it clear to the electorate that, for the next decade or so, voting will be done in the traditional fashion.

In a recent Supreme Court judgment in the United States, there was a strong ruling that there would have to be a paper trail for all electronic voting in the states that brought the matter forward for submission. In other words, they were not happy with just electronic voting and the result being produced on screen; they wanted a paper trail. This was one of the issues which was very much to the fore in the argument in this country. If we ever revisit the issue of electronic voting, the paper trail will have to be guaranteed.

As part of the whole package of voting, democracy and encouraging people to participate in the democratic process, I hope we will be sufficiently mature in the coming years to consider seriously our electoral system. The former Minister, Deputy Noel Dempsey, who landed himself and all of us in trouble in regard to electronic voting, has been brave in his pronouncements about our need to examine our electoral system. Dr. Garrett FitzGerald and others have suggested alternative systems which would be just as proportional as our present system but would produce better politics and policies. We are now supposed to be at a stage where, as a result of the ending of the dual mandate, local politics is to be separate from national politics. We need to reflect this in a new form of electoral system which in the future will be necessary if this country is to take the political decisions a modern economy and a modern society will need to take.

I hope my final point will be the subject of an amendment to be tabled by my party spokesperson, Senator Bannon. It relates to the Schedule. The constituency of the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Michael Ahern, my former Dáil constituency of Cork East, was for half a century known as Cork North-East. It is made up of two distinct electoral areas and two divisions, Avondhu and Imokilly, and two council areas. Half of the constituency is part of the administrative area of north Cork and the other half is part of the administrative area of south Cork. I will be requesting that the constituency of Cork East is retermed Cork North-East, as it was called for two generations. I am not seeking a change in the boundaries, just that the constituency is retitled Cork North-East.

I thank you, a Leas-Chathaoirligh, for allowing me to make these observations, some of which may refer to matters beyond the scope of the current Bill. However, democracy is always an interesting topic to debate. Perhaps we take it for granted, but we must try to ensure that the public will engage more fully in the practice and theory of politics. We must use every opportunity to try to encourage people to exercise their vote. We must try to make registration and voting easier so that when we vote again to elect governments, councils or whatever, the public will engage to the maximum extent.

Mr. Brady: I welcome the Minister of State, Deputy Brendan Smith, to the House and the opportunity to speak on the Electoral (Amendment) Bill 2005. The electoral system is extremely important to every citizen. We also know that the country has changed drastically over the past ten years. Not only has the population increased from 3,917,203 in the 2002 census to approximately 4 million currently, but the demographic profile has altered, in some cases beyond recognition. This was brought home to me during the recent Meath by-election when we spent a lot of time in the county. We visited large housing estates, which were less than ten years old, but which housed thousands of people. The majority were not registered, which was of huge concern to us. A sizeable number were from Dublin or its surrounds, but not exclusively from

Dublin. We visited small towns such as Mornington, Bettystown and Laytown and the bigger towns of Dunboyne, Dunshaughlin, Navan and Kells. I was amazed at the increase in residential development in these areas. It was clear that something had to be done. I am glad that many of these areas are included in the commission's report.

As a breed, politicians are probably the most territorially possessive type of people on the planet. Any politician will have difficulty with a change occurring in an established constituency. This has been evident in the Dublin Central constituency. A commission report in the early 1990s overrode probably the most obvious boundary I know of in Dublin, the River Liffey. Senator Minihan referred to the River Lee. The commission, in its wisdom, changed the constituency of Dublin Central, with the altered constituency running from Glasnevin, Drumcondra and East Wall to Cherry Orchard, Ballyfermot and Inchicore. This new set-up had to be worked with and politicians got on with their jobs.

After listening to the eloquent Senator from Leitrim, it is clear that understandable concerns exist. Senators, Deputies and councillors in rural areas tend to have long-standing relationships, in some cases over a generation, while in Dublin and the main cities a certain element of transience is evident. However, the Constituency Commission and the terms of reference it has, which are generally accepted by all, must pay attention to issues such as geographical considerations, the maintenance of contiguous areas, population densities and, where possible, the avoidance of breaking county boundaries. It is not always possible to satisfy these requirements and a delicate balancing act must be undertaken. The commission must also endeavour to maintain continuity in the arrangement of constituencies. As Senator Mooney pointed out, any changes from these terms of reference tend to have major consequences, especially in smaller rural areas.

The changes proposed in the Bill include the increase of the Kildare area to four seats because of a population explosion. The Meath constituency will be split into Meath East and Meath West. Obvious concerns, some of which have been expressed in this debate, exist over the Sligo-North Leitrim and Roscommon-South Leitrim changes as well as with the divide between Longford and Westmeath. Senator Bannon has considered these.

The issue of breaching county boundaries has on a number of occasions been subject to legal challenge but it has not been found to be unconstitutional. The commission, which is constrained by its terms of reference, must adhere as closely as possible to the recommendations set out in the legislation and in view of this its decisions should be taken as a package. This is not an *à la carte* menu from which we can choose.

Over 100 submissions were received from various individuals, groups and organisations and these were taken into account and assessed. The outcome of the commission's deliberations, as well as the reason for instigating the commission as an independent body, would be undermined if we were to pick and choose from the recommendations that have been made. The precedent for any Government adhering to a commission's advice is well-established. We cannot cherrypick and take one thing and not another. That would bring us back to the bad old days when any changes made were construed as an attempt to gain political advantage by the Government of the day.

Huge changes have occurred in Dublin, with 47 seats over 12 constituencies being retained. With these changes, 31,000 voters are directly affected. I welcome the clarification in section 6, which follows the implications of the Kelly case on electoral expenditure from before the last election and the confusion that was caused by volunteers giving up time and petrol to go canvassing.

Winners and losers will always emerge from the shaping of constituencies but the commission, as a statutory independent body consisting of distinguished public servants, has a difficult and technical task. The integrity of the members of the commission is beyond question and I compliment them on their work in producing this report. I wish the Bill well in its passage through the House.

Mr. Browne: I welcome the Minister of State and his officials to the House. This is a missed opportunity on a number of points. I am not happy that Carlow is being split again.

I accept Senator Brady's point about accepting the entire package, but this may cause problems for small counties. I feel sorry for Leitrim which is now at a huge disadvantage because it has been split in two. The Constitution states that county boundaries should be respected where possible. Although this is not always possible, in the case of small counties with small populations, that directive should be adhered to as strictly as possible.

North Carlow was placed into the Wicklow constituency years ago because Wicklow lacked electoral numbers. Currently, Wicklow has a sufficient population to be a five seat constituency in its own right. We made submissions to that effect to the commission and, in fairness, it accepted the point that Wicklow no longer required a section from north Carlow. However, a problem arose in that if the section of north Carlow returned to the Carlow-Kilkenny constituency, it would have made the constituency too big. This would have led to another section of the Carlow-Kilkenny constituency going to another constituency, most likely a part of south Kilkenny going to the Waterford constituency. A difficulty would also have arisen here as a section of south Tipperary is already in the Waterford constituency, or it may be *vice versa*. Either way it would have created a problem with Waterford forming part of three constituencies.

[Mr. Browne.]

The net effect is that a part of north Carlow is being lost. The Minister, Deputy Roche, may be happy with that, as are some of my Wicklow colleagues, but the reality is that Hacketstown, Clonmoran, Rathvilly and Ballyconnell are in the Carlow County Council area for the purposes of voting in local elections. The people from these locations are also in the Carlow VEC area and community games area. They are fully part of County Carlow, therefore, it is difficult to explain, when it comes to making representations, that one cannot do anything for them because one is not their local Oireachtas member. This is a frustrating experience. I hope that the next time constituencies are considered, this part of Carlow will return to the Carlow county lines.

Carlow traditionally had two Deputies in Dáil Éireann. The county now has only one Deputy and is suffering as a result. It is to the advantage of a county when it has at least two Deputies, one on the Opposition side and the other on the Government side. This ultimately benefits the county. I am not sure if I will put down an amendment on Committee Stage to address this aspect.

I disagree slightly with my colleague, Senator Bradford, on the most appropriate day on which to hold elections. Midweek would be an ideal time for an election and the day in question should be a national holiday to afford everyone the opportunity to vote. People live very busy lives and should be afforded a national holiday on the day of a general election. I would not recommend a weekend because people may go travelling and not use the opportunity to vote. By holding the election during the week and making the day a national holiday, people have no excuse not to vote. An increased turnout would probably be evident.

We must examine the issue of using PPS numbers when people vote. It is a farcical situation that people have to re-register before voting. Nowadays people are constantly on the move in their daily lives and it would be sensible to use a system that utilizes a person's PPS number. It would ensure that the problems faced at every election could be overcome. If the Minister of State, for example, was in Carlow on polling day for a presidential election, why should he not be entitled to vote there, given that it is in the jurisdiction? If, for example, one is not in one's county but is in one's constituency on polling day for a European election, one should be able to use one's PPS number as proof of identity at the nearest polling station to cast one's vote. This presents a difficulty for local and general elections as one must be in one's polling district to vote. However, an identity card containing their PPS number would give people flexibility to vote.

I am cautious about postal voting. A new system was introduced in England but there was widespread fraud and the Government should be careful about introducing a similar system. However, account should be taken of people who are on holidays and, therefore, cannot vote if the poll is held while they are away. If a person can produce proof that he or she will be abroad on polling day, he or she should be entitled to a temporary postal vote but it would be dangerous to introduce a uniform postal vote system.

A census is due to be carried out next year. However, according to the latest edition of *The Sunday Tribune*, if the census is carried out then and the next general election is held subsequently, almost half the Dáil constituencies will be under represented, which could lead to a legal challenge that could delay the census or the election. What are the Minister of State's views on this issue?

The adoption of single seat constituencies should have been examined during the electoral review. I do not favour the first past the post system but a model comprising single seat constituencies using the proportional representation system might make a great deal of sense. Invariably, in politics, a Member's enemy may not be on the opposite side of the House but rather he or she may be sitting beside or behind him or her. The mentality of looking over one's shoulder all the time does not add to politics. Single seat constituencies could produce higher quality politicians and could permit them to stay in the game much longer.

It is undemocratic that Tony Blair could be re-elected Prime Minister with 36% of the vote. Ireland could also move towards the European model of a list system. Every political party has members with great talent who would not get elected in a month of Sundays but who could make a significant contribution at national level. The US Cabinet comprises non-serving members of Parliament. One cannot be a member of Cabinet and of Parliament. Perhaps it is time we moved away from the British model. It is the ultimate irony that 80 years after independence, the Republic has a replica of the British Parliament. We should examine European and other international parliamentary systems to provide improved governance.

Dr. Mansergh: I compliment the Constituency Commission on its work. The origins of the commission have been the subject of an exchange of articles in *The Irish Times*. It was greatly to the credit of Jack Lynch that the electoral commission was established. The various so-called gerrymanders, whether they involved Jim Tunney or Kevin Boland, did nothing to add to respect for politics. The system provides for fairness and that is why there is a rooted principle of not overturning the commission's recommendations, controversial though they may be.

I have great sympathy for County Leitrim, as it will be cut in half as a result of the commission's recommendations and I wonder whether the commission called it right. The commission says there is an 11% tolerance but, in these special circumstances, I would have been prepared to stand over that because it will be quite difficult

for the people of Leitrim to elect or re-elect a representative when the county is partitioned. County loyalties are exceptionally strong.

The debate will not affect the legislation but it may be taken into account when the commission considers its recommendations following the next census. There are unsatisfactory aspects to the way in which Tipperary North and Tipperary South are represented. I refer to the constituencies rather than the county councils because their boundaries do not coincide. For example, significant tracts under the aegis of Tipperary South Riding County Council are in the Tipperary North constituency, which complicates representations by Oireachtas Members. Naturally, county councillors who are members of Tipperary South Riding County Council tend to gravitate towards Oireachtas representatives from Tipperary South when they should contact Members from Tipperary North. Sports clubs feel they fall between two stools.

Senator Browne referred to small areas of counties being include in constituencies in neighbouring counties. For some time, a small section of west Waterford has been included in Tipperary South. I canvassed the area and it involves climbing high into the mountains. It is entirely unclear why it is not part of the Waterford constituency. However, if one travels to west Tipperary, one will enter Tipperary rural district No. 1, which is an area within a three or four mile radius of Tipperary town but it is at least 20 miles from Thurles and 30 miles from Nenagh. Part of this district has been transferred from Tipperary South to Tipperary North but most of the residents do their business in the towns in Tipperary South and they are not happy with this scenario.

I acknowledge the population is increasing and towns are expanding. The next census, therefore, may provide for adjustments to the constituency boundaries but I appeal for more respect to be shown for county boundaries. Tipperary comprises two counties for electoral purposes and the county council as well as the constituency boundaries should be taken into consideration so that they can coincide as closely possible for local and national elections. The population in both areas was close to the national average this time round and that is probably why the boundaries were left unchanged. However, I hope the commission will take these problems into consideration next time round.

Senator Browne raised the question of interesting changes to the electoral system but I am afraid I do not agree with either of his suggestions. This is not a party matter; people in various parties hold differing views on it. Single seat constituencies might be comfortable for elected representatives but people like the competition within and between parties, for which I cannot blame them.

I have listened to every Fianna Fáil Taoiseach, and no doubt some Fine Gael taoisigh, who might like electoral reform to make the system tidier. In our present system, however, the people have their elected representatives by the short and curlies and even if there were all-party consensus to change that system, I doubt the people would agree.

The list system would be a total nightmare although there are cultures where it works. Senators Bannon and Browne should try to imagine their party leader numbering the members of their party from one to 20 or 30 or 60 and so on, and the hassle he would cause if he placed Senator Bannon ahead of Senator Browne or *vice versa*. If any party leader thought hard about it the last thing he or she would want to do is get involved in a list system. The Senators might say they would delegate this to the general secretary of the party in which case he or she would be the most hated person in the party.

We have a very good electoral system and it will stay. We could debate electoral reform for the next 50 years but the people would not allow us to change the system because with the electoral commission we have one of the fairest electoral systems possible. Reform would go backwards.

Mr. Dooley: I too welcome the Minister of State to the House and the opportunity to comment on this Bill. I am conscious that, notwithstanding this debate, an independent body has decided on the make-up of the Dáil constituencies for the near future. The forthcoming census may have implications for this. Will the Minister of State in his closing remarks indicate whether the census will affect constituency boundaries and if so, is there a timetable for a further review? This would have implications for the next election, if that is to be held in two years time as set out in the Constitution. It would be helpful for Deputies, or aspiring Deputies, to know what those implications are.

From a parochial County Clare point of view, the redrawing involves relatively small changes. A small portion, however, of what was in the Clare constituency is being assigned to the Limerick East constituency. Recent reviews have included a significant area of Clare in Limerick East. This has created difficulties in Clare because people are represented in the Dáil as being in Limerick East — which is not to say that the Deputies of all parties do not represent them well — but their local administration is Clare County Council.

This situation creates confusion and I support the contention of other Senators that maintaining county boundaries is one of the most important elements to consider in redrawing constituencies. The area of south-east Clare, including Parteen, closest to Limerick city, is a perfect example of where the crossover of Dáil and local authority representation occurs. It is particularly difficult for new people moving into the area to understand they are represented in two different areas, and to recognise where are the centres of power and control.

[Mr. Dooley.]

While Limerick City Council's proposal to extend its city boundaries into County Clare is not part of this Bill it is related to the subject of administration of the regions. Clare County Council and Oireachtas Members from Clare have rejected this proposal. It is difficult when a city attempts to breach its boundaries and take control of land. Senator Mooney referred to people's pride in their county. The thought that a city would be allowed to grow into a neighbouring county is unacceptable. With all due respect to the distinguished guests in the Visitors Gallery earlier today, and the Cathaoirleach, who comes from west Limerick, I do not wish to prejudge any situation.

An Cathaoirleach: The Cathaoirleach cannot interfere with these matters.

Mr. Dooley: I know that but as a citizen of west Limerick he might have a view on this proposal.

If Limerick city is to grow it should move towards County Limerick, not County Clare. This would eventually impact on the Dáil constituencies because if Clare had succeeded in maintaining the portion of its population that was within its territory at previous boundary reviews it would now have five Deputies. That must be taken into consideration, particularly in light of the significant growth in population. If the independent body continues to remove areas close to Limerick city, bit by bit to add to Limerick East, County Clare will remain a four-seat constituency by giving away parts of its county and population to its neighbour. That is not acceptable.

I agree wholeheartedly with Senators who spoke about the importance of maintaining county boundaries because people identify with their counties. Senator Mooney referred to the impact of the GAA in creating and maintaining the image of one's county through support for local teams. Clare may not have much to shout about in that respect now but beidh lá eile. People's pride in their counties is eroded by decisions taken in this case.

The Constitution prescribes certain criteria which must be taken into account in regard to this review but the provision which refers to maintaining county boundaries should supercede certain other provisions to ensure this development, particularly in south-east Clare does not continue. I am aware there is a similar situation in Leitrim but south-east Clare is particularly complicated by the desire of a city to grow. I recognise the need for a city to grow into its natural hinterland but the necessity to maintain county boundaries supercedes that.

I urge the Minister of State to lay that type of information before his departmental officials and the people who will be part of the next review which is due soon. I would welcome anything that can be done on that matter although I am aware nothing can be done immediately.

Mr. U. Burke: I welcome the opportunity to make a number of points concerning this legislation. The Bill highlights a great problem for this country, namely, the population drift from many areas in the west to the east with the exception of some core centres, such as Galway and Limerick cities. An essential part of this debate is the concern of the people of County Leitrim that they may not have Dáil representation after the next general election. Their concerns, as expressed by the group that formed subsequent to this proposal, are not necessarily about where the line will be drawn. For any county to go without Dáil representation would be serious. Other proposals detail only slight changes for constituencies in counties Dublin and Cork primarily. There is a choice of going here or there, as it were, but representation will be within those overall counties.

This is a matter of concern for the people involved and everyone, particularly those from the west, can identify with the serious decline in population levels in certain parts of rural Ireland. The Government has put few if any policies in place to rectify the situation or stabilise the population. Time and time again we are told about the flight from the land but it is more than a flight. Due to imminent threats to agricultural incomes in particular, many young people might live at home for a short time and commute to work over long distances but will leave for urban areas within three or four years. There is a large void in rural areas. We are only discussing County Leitrim today but what will be the status of other counties after the next census in 2006? We can see indications that this process will be accelerated. The end will come for any growing populations in the marginal areas of large towns and cities. People will move to small villages and towns due to their inability to get planning permission in rural areas.

Regarding the compilation and content of the electoral register, the media has highlighted recently that a number of people who are on the register should not be so. We must point a finger in this instance, as there is no clear process in place within local authorities to maintain a register that is reasonably accurate. For example, a young woman of approximately 23 years of age got married before the last general election in 2002 but was on the register five times, three times in her own parish and twice in her newly adopted area. For any local authority to stand over a claim that it has a proper mechanism to compile a register, this example shows it to be totally farcical.

On the matter of resources, the Better Local Government programme initiated by a former Minister for the Environment and Local Government is not working well. To the ordinary person who wants a service or access to local authorities, the situation is worse. Who are the people behind the answering machines and directors of services? I am certain they do not know their supposed areas of responsibility fully.

Someone from the community could be asked to send a list of names to local authorities. The local finance officers representing the local authorities could do this. If a realistic effort were made and actions adopted nationally, it would provide an opportunity to achieve a proper compilation of the register. This could be done through PPS numbers. Every individual in the country is now given a PPS number at birth. As a result, the relevant agency would be aware of dates of birth and the date at which persons become entitled to vote. Persons could also be automatically removed from the register upon death. The Minister of State should turn his attention towards compiling an accurate register.

I wish to speak about a specific case concerning the competency of presiding officers at polling stations. At a particular polling station in a town in the Galway East constituency, as Senator Kitt is aware, 40 first preference votes for me at the 2002 general election were deemed to be invalid solely because the presiding officer did not stamp the voting papers. I challenged this and had someone witness as I reported it in writing to the returning officer, whose response was to reappoint the person in question, who had proven his or her unworthiness to be a presiding officer, to work on the local and European Parliament elections. This was high-handed and inefficient of the returning officer, as he did not tell the person that he or she had been shown to be incapable of carrying out a very simple task. If e-voting had been introduced at the last general election, I dread to consider what might have ensued in the chaos of the new system with such people being appointed as presiding officers.

There is a need for the Minister of State to appraise the voting process, its operation and timing. If we are anxious to have a good turnout, should we not consider weekend polling from Friday to Sunday? We cannot blame the apathy of young people. They are not apathetic by and large but we do not provide ideal opportunities for them to vote.

Mr. Leyden: I welcome the Minster of State, Deputy Batt O'Keeffe, to the House. The Electoral (Amendment) Bill 2005 is important because it will decide the fates of many Members of the Oireachtas, particularly those in the Lower House, in the next general election. The people of County Leitrim have rebelled in light of certain concerns. As the last remaining Oireachtas Member for the Roscommon-South Leitrim constituency from the 1977 period, I wish to say that we gave the people of that area a very good service. The Deputies elected in 1973 were the late Pat Joe Reynolds, Mrs. Joan Burke and Dr. Hugh Gibbons. After the 1977 election, the late Seán Doherty, Joan Burke and I were the three Deputies for Roscommon-South Leitrim and we served the constituency extremely well. I held clinics throughout south Leitrim, in Ballinamore, Mohill and surrounding areas. Deputies elected to that constituency believed it a priority to serve that area in order to ensure the people there did not feel disenfranchised. It was in 1977 also that Deputy Ellis was elected to this House, as was Pat Joe Reynolds, and both served the people of south Leitrim.

In 1981, a constituency change meant County Roscommon was now part of Roscommon-East Galway, encompassing some of what is now Senator Kitt's constituency. This was a natural constituency boundary particularly because it accommodated my electoral base.

Mr. Kitt: It was too natural.

Mr. Leyden: There are constituents of mine in the public Gallery and it seems appropriate to reminisce in this way.

I made a strong submission to the commission but it refused my request to be allowed to make that submission orally. How is it possible that the commission could devise the constituency of Longford-Roscommon which is divided by the River Shannon, the longest river in the British Isles? This so-called commission was supposed to be above reproach, like Caesar's wife, but a situation seems to have arisen whereby it broke every rule in the book.

An Cathaoirleach: The commission acts as fairly as possible.

Mr. Leyden: The Cathaoirleach should ask Deputy Cassidy whether it has acted fairly. The Minister of State, Deputy Batt O'Keeffe, has been left in a very vulnerable position as a consequence of the commission's recommendations.

Mr. Finucane: He is managing fine.

An Cathaoirleach: The commission has a job to do and must abide by the terms of reference which it is set.

Mr. Leyden: The terms of reference are very much influenced by the Secretary General of the Department of the Environment, Heritage and Local Government.

An Cathaoirleach: It is unfair to comment in this manner on a man who is not in the House.

Mr. Leyden: Who decides the terms of reference for the commission?

An Cathaoirleach: The provisions in this regard are laid down in the legislation passed by both Houses.

Mr. Leyden: Will the Minister of State say who provides the mapping and statistical information to the commission?

An Cathaoirleach: The maps are there for everyone to see. That is not relevant.

Mr. Leyden: It is very relevant.

An Cathaoirleach: No, it is not. The maps can be seen by everyone.

Mr. Leyden: The statistics are also available.

An Cathaoirleach: That is correct and they form the basis of the commission's recommendations.

Mr. Leyden: The decision that County Mayo should consist of two three-seat constituencies had a knock-on effect on Roscommon and resulted in the creation of the new constituency of Longford-Roscommon.

I wish to make another observation in this regard.

An Cathaoirleach: The Senator should confine his remarks to the Bill under consideration.

Mr. Leyden: I will do so. I wish to disclose to the House that former Taoiseach Albert Reynolds and I lobbied a member of the commission to vote against the constituency revision in 1989. A vote was taken on this——

An Cathaoirleach: We are discussing the Electoral (Amendment) Bill 2005. Events that took place in 1989 are not relevant.

Mr. Leyden: I am making the point that the commission had little regard for ensuring that Leitrim should be one county for electoral purposes. I put forward my case on the basis of the information I have as a consequence of putting the same case on previous occasions. The redrawing of constituencies affects the livelihood and future policies of the State and the ability of a person to be elected to the Oireachtas. The commission should have some regard to the physical location of existing Deputies so they will at least not be disenfranchised to the extent that their home base is removed from them and they are unable even to vote for themselves. However, these considerations were clearly not of great concern to the commission.

I hope the commission will publish the submissions it received. My submission included several options including a restoration of the old Roscommon-East Galway constituency.

An Cathaoirleach: The submissions are available to anybody who wishes to examine them.

Mr. Leyden: Does this mean they can be published? I am delighted if that is the case.

An Cathaoirleach: They are available for inspection to anyone who is interested.

Mr. Leyden: This is not the first occasion on which I have challenged the commission to allow me to make my submission orally. This is an option that should be available. I put this proposal to the Minister of State although I am aware that none of my other suggestions found favour today. Like many others, I feel aggrieved at the general thrust of the commission's recommendations over the years. Will the Minister of State agree that a facility should be provided for the commission to receive oral submissions from interested parties in regard to the division of constituencies? A wrong has been done in devising a constituency of Longford-Roscommon which is divided by the River Shannon. The Clerk of the Dáil said to me at the time——

An Cathaoirleach: Longford and Roscommon are not relevant to the proposals.

Mr. Leyden: Longford is relevant to Westmeath and Roscommon is relevant to Leitrim.

An Cathaoirleach: They are not relevant to the legislation under discussion.

Mr. Leyden: The Clerk of the Dáil told me I should get a boat in order to visit constituents in County Longford.

An Cathaoirleach: The legislation is not concerned with Roscommon and Longford. I ask Senator Leyden to speak to the Bill.

Mr. Kitt: Senator Leyden won that one.

Mr. Leyden: The voters of Leitrim have the opportunity to vote for Deputy Ellis and the difficulty will be overcome if they all unite behind him. This will mean Fianna Fáil will have one seat in Leitrim and one in Roscommon while Fine Gael will only have one. This represents a 2:1 advantage and indicates that we will be in a position to form the next Government. It is a simple solution to the problem faced by the people of Leitrim.

An Cathaoirleach: This is not a party political broadcast and the Senator's time is up.

Mr. Leyden: It is wonderful to play to the Gallery and perhaps garner some votes in the next general election. I wish Deputy O'Donovan every success in that election.

An Cathaoirleach: I am tired of telling Senator Leyden that he cannot refer to people in the Gallery whether they are Deputies or neighbours. I ask that he heed this advice.

Mr. Leyden: I thank the Cathaoirleach for his advice.

Mr. Finucane: That certainly was a party political offering from Senator Leyden. The commission has a difficult job and must abide by certain parameters in regard to the optimal population per Dáil seat. The commission members try to do this job as best they can. It is worth bearing in mind that some constituencies are still significantly under-represented with a variation as high as -7.5% in one. In some other

constituencies, however, there is overrepresentation. For example, in Waterford the variation is +6.07%.

I wish to draw attention to one aspect in which the electoral system is unfair. I speak from personal experience more than anybody with regard to what could be classified as a close count. I was one of the few people in favour of the proposed change to electronic voting because I believe a computerised system might allow for a fairer outcome. Senator Ulick Burke mentioned that a presiding officer in one particular polling booth had some 40 votes which were declared invalid because they were not stamped properly. When it comes to spoiled votes, it is a terrible heartache to think that one's political future may be determined on the basis of negligence on the part of presiding officers. Votes have been declared invalid even if a person has voted for one in good faith.

The reason I favour computerisation is that it would remove the human element from the electoral system. Where votes are declared invalid because they have not been properly stamped, it should be possible to determine whether those voting slips have come from a particular polling booth. Human nature being what it is, it is not inconceivable that voting slips may sometimes be incorrectly franked. I do not claim this happens in all cases but it is possible. I make this point as a person who saw votes declared invalid for that reason and it is a particular heartache.

Mistakes may be made especially at busy period, in the evening for example, when many people are trying to access the same polling booths. A gross injustice can arise in a transfer situation where it is determined that a person may have transfers of 800 to 1,000 votes to offer. The exact amount is irrelevant. The bundle of votes is taken from the top of the pile of the person already selected. It is an injustice because there is no guarantee that the votes from the top of the pile will favour one or other candidate, depending where they are. A more appropriate arrangement in a situation where Mr. X finishes with 9,000 votes and is 1,000 above the quota of 8,000 would be to count all the preference votes and then calculate percentages based on the exceeding number. This would be a fairer reflection. I am aware of occasions where people were asked to project after the first count on the basis of people who were subsequently successful. People may have predicted success based on the origin of many of the votes but it does not necessarily follow.

2 o'clock

I favour computerisation because the mathematics would be taken out of this kind of manual control. A lot of people claim they would miss the tallies and the tumbling out of the polling booths. I shared that excitement for many years. A winner will undergo a certain degree of anxiety. Losers suffer greater anxiety. The process continues indefinitely and has a human dimension. The human dimension is that one's family is often present. My attitude to this situation is that, while a respectable delay may be intended between counts, I would prefer to know sooner rather than later and not be dragged through this long process. I see validity in avoiding the undue trauma which often arises in recount situations that continue beyond one day. It is a pressure cooker-type situation. It is a great kick and exciting for the people tallying. Maybe satisfaction and emotions are exhausted over a longer period. It would be better if it was conducted over a shorter timeframe. I say this from personal experience. I differ from many colleagues on this but I ask them, after experiencing a close count, to find a fairer system.

On the electoral register, I am sure the Minister of State has heard many times that the current system is not working. It worked in the past when we had vigilant parties who went through it with a fine tooth comb. Certain rural locations may have had vigilant revenue collectors. I know one gentlemen who sends a copy of his analysis of specific areas to me and other public representatives. I compliment that person because it is add and delete and reasons are provided. It is impossible to do this in larger urban areas because populations are rapidly expanding. In many cases, even if one was clued in to the local area, it is not as well known as it was in the past. The register may be analysed in, for example, Newcastle West, the electoral register for which probably exceeds 4,000 and where a number of families and their political persuasions may be personally known. However, in a number of situations, extended families remain on the register indefinitely, despite having moved to other locations and being recorded on other registers.

A certain fear exists in terms of removing people from the register for a simple reason. In the last local or general election, people who always voted were turned away. They could not understand why they were deleted. The current system is not working. The sooner we acknowledge that, recognise local authorities and change the system, the better for democracy and for the provision of the guided information which registrars require in order to provide people with the opportunity to exercise their vote.

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. B. O'Keeffe): I thank Senators for their contributions, some of which were excellent. A number of issues were raised across the electoral horizon. While I wish to focus on issues arising from this Bill, I am happy to also address other issues raised by Senators.

It is important to point out in the presence of Senator Leyden that the integrity of the Secretary General of my Department has been questioned, whether intentionally or otherwise.

Mr. Leyden: I had no intention of questioning the integrity of the Secretary General of the Department.

An Cathaoirleach: Does Senator Leyden withdraw it? Yes.

Mr. B. O'Keeffe: It is important that I state categorically my belief that the commission acted with total impartiality. While I would be among the people who would not be happy with the outcome, I am completely satisfied with the independence and integrity of the commission. It is absolute.

I want to make reference to Senators Bannon, McDowell and Minihan and to avail of the opportunity to address the concerns voiced in terms of the current electoral register. Others also raised this issue. As I am sure Senators are aware, the compilation and publication of the register of electors is a matter for the appropriate local authority. That is in accordance with electoral law and includes the carrying out of house to house inquiries, the delivery of registration forms and the running of local awareness campaigns. It is the duty of local authorities to ensure, as far as possible, the accuracy of the register. In carrying out this work, local authorities depend to a significant degree on the co-operation and engagement of the general public.

We have experienced rapid population growth and development, increased personal mobility and other changes in modern society which will present difficulties in terms of the preparation and maintenance of an accurate and up-to-date electoral register. Yesterday, the Minister for the Environment and Local Government, Deputy Roche, mentioned that difficulties arise in accessing apartment blocks. All of these lead to difficulties in terms of the accuracy of the register.

In overall terms, more than 3 million people on the register in 2002 were eligible to vote in Dáil elections. However, census data from 2002 suggest 2.71 million voters over the age 18 were eligible to vote in these elections, representing a difference of 300,000. The main reasons for overregistration include a slowness in removing the deceased from the register, changes of address, where the local authority is not advised, and people with second houses. I share the concerns expressed on the quality of the register. My Department is mandated to examine any improvements that can and must be made. My Department is, in the first instance, developing best practice guidelines for local authorities to assist them in preparing and maintaining the electoral register. A national awareness campaign will also be conducted later this year associated with the preparation of the next register of electors by the local authorities. We are also looking seriously at developments in Northern Ireland and elsewhere in the context of electoral registration.

The use of PPS numbers was raised in the debate. While that seems fine, difficulties exist in terms of the Data Protection Act. These are particularly so on election day concerning the verification the PPS number, which would require an outlet in every polling station. We are looking at the long-term feasibility of this matter.

In recent times, we have introduced important new controls in the voting process. The Electoral (Amendment) Act 2002 contains more stringent requirements for entry to the supplement to the register. For the 2002 general election, polling staff were advised by Department guidelines to require at least 25% of voters to produce an identity document. That increased from 5%. The Electoral (Amendment) Act 2004 made unlawful possession or use of someone else's polling card a specific offence. Strong legislation must be mirrored by vigilance on the part of polling staff and impersonation agents to ensure that only those eligible are permitted to vote. I hope that message is received by local authorities, and particularly by local councillors, who are extremely loud in their criticism of the accuracy of the register. It begs the question of how many of those local councillors ask their county and city managers at estimates time what budgetary provisions they have in place to ensure the accuracy of the register and to monitor elections more rigidly than in the past.

The Department will continue to keep these issues, including the scope for further improvement, under review. It will be important to strike the right balance between the requirement to maintain the security and integrity of the electoral process and provide for a reasonable degree of flexibility in registration and voting arrangements. We want to encourage more people to register and vote.

Before turning to issues raised on the Bill, I will make a general point. It is most important that we maintain the tradition of implementing in full the recommendations of the Constituency Commission's report. Since the report of the first commission in 1977, its recommendations as presented in legislative form have never been changed by the Oireachtas. To reject some of the commission's recommendations may create a danger of reverting to the partisan approach of the past when constituency revisions were perceived as being framed to secure political advantage for the Government of the day. I certainly do not believe the Opposition would like us to return to that.

During the course of the debate, a number of Senators mentioned County Leitrim. I reiterate that we are all aware of the depth of feeling generated in Leitrim by the county being split between two constituencies. If one examines what the commission faced, one sees it had no option but to recommend change to the existing Sligo-Leitrim constituency. The commission brought forward its proposed solution and for the reasons I have already given, it is not proposed to depart from the package of recommendations that emerged from its deliberations. The commission's recommendations for Leitrim are in line with the constitutional requirements, in particular those concerning equality of representation, and with the commission's statutory terms of reference as

set out by the Oireachtas in the Electoral Act 1997.

Senators Dooley, Minihan and Brady spoke about county loyalties. It is important to remember the Constituency Commission's terms of reference, as set out in section 6(2) of the Electoral Act 1997, require that breaches of county boundaries shall be avoided as far as practicable. However, the commission's recommendations have on occasions been criticised for not keeping to county boundaries. While attachment to county boundaries is understandable we must never lose sight of the fact that the commission's terms of reference are subordinate to the relevant constitutional provisions, which do not refer to counties. In the High Court judgment of Mr. Justice Budd in the O'Donovan case, it was stated:

> Although a system in the main based on counties has in fact been adopted, there is nothing in the Constitution about constituencies being based on counties. The Constitution does not say that in forming the constituencies according to the required ratio, that shall be done so far as is practicable having regard to county boundaries.

There is a danger that excessive importance will be given to county boundaries in the overall national approach to constituency revision. We must keep this in mind.

Senator McDowell raised the issue of protecting city and administrative county boundaries when drawing up constituency boundaries in Dublin. The administrative counties of Fingal, South Dublin and Dún Laoghaire-Rathdown have been in existence for more than ten years. While they are forging ahead in serving their communities, they do not yet have the distinct identity of long-established counties. Over time, as the individual identities of the Dublin counties develop, we should possibly revisit the issue. However, it would be inadvisable at present to restrict the commission in the way in which it draws the constituency boundaries in the Dublin area.

With regard to avoiding the breach of city boundaries generally, the reality is that urban development around cities has spilled over into adjoining counties. Many people living outside the city boundaries have a strong affinity and loyalty to their city and would prefer to be included in city constituencies. For these reasons, we should not require the commission to avoid, where practicable, breaching city boundaries.

Senator McDowell also referred to the constituency of Dublin North-Central. Of the 42 existing constituencies, only three lost population between 1996 and 2002. These were Dublin North-East, Dublin North-West and Dublin North-Central. Taking those three adjoining constituencies together, the variance from national average representation for their ten seats is minus 9.41%, requiring significant changes to the existing constituency formation. Removing a seat from the area would give an acceptable variance of plus 0.65% for the remaining nine seats and as Dublin Nort-East and Dublin North-West are already three seaters, neither could shed a seat. It is clear, therefore, that any reduction of a seat in the area had to come from the four seater Dublin North-Central constituency. It is a fact that seats follow population. This is a requirement of our Constitution. Action had to be taken and that is what the commission recommended.

Senator Bradford raised the issue of titles of constituencies. The Schedule to the Bill sets out in detail both the name and composition of each of the proposed constituencies. The Schedule mirrors the first appendix to the Constituency Commission's report and as I stated previously, the commission's recommendations are being accepted as a package. I cannot foresee circumstances in which amendments seeking to alter either the composition or the name of a constituency would be acceptable. Even minor changes to the commission's recommendations would represent the first step back to the unsatisfactory situation that pertained in the past. The Government does not want to go down that road, nor does it intend to do so.

Senator Bannon, under section 6, spoke of the Electoral Act 1997 that exempted four of the five items dealt with here from being counted as election expenditure. These are free postage provided for candidates, a service provided free by an individual, normal media coverage, and the transmission on radio or television of a broadcast on behalf of a candidate or a political party. The Electoral (Amendment) Act 1998 also exempted a service provided by an employee of a political party, the fifth item at issue here. The Kelly judgment by the High Court in May 2002 and that of the Supreme Court the following November declared separate exemptions for expenses of public representatives paid for out of public funds to be unconstitutional in respect of Dáil and European elections. The judgments were silent on using public funds for presidential elections, and that had to be addressed. In the event, the amendment made by section 33 of the Electoral (Amendment) Act 2004 went too far. It deleted the five items under consideration here, in addition to those directly relating to the Kelly judgment. It was an inadvertent drafting error. The five items are now being restored in section 6 of this Bill. I hasten to add that Senators on the opposite side of the House would be the first to criticise us in Government if we did not act on this issue once it was brought to our attention by the Standards in Public Office Commission. The items at issue are of benefit to all the candidates in an election, not just to sitting Deputies or Senators.

I stress the Government's view that the Constituency Commission recommendations are a package that must be accepted or rejected in their entirety. The Government decided to follow the established practice of implementing in full the recommendations of the independent com-

[Mr. B. O'Keeffe.]

mission. I thank Senators again for their contributions. There will be further debate on these important issues when we return to the Bill on Committee Stage. I thank the Senators for their engagement on this important legislation.

Question put and agreed to.

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

Mr. Kitt: Tomorrow.

Committee Stage ordered for Thursday, 30 June 2005.

Sitting suspended at 2.25 p.m. and resumed at 3.15 p.m.

Interpretation Bill 2000: Committee Stage.

SECTION 1.

Government amendment No. 1:

In page 5, line 14, to delete subsection (2) and substitute the following:

"(2) This Act comes into operation 6 months after the date of its passing.".

Minister of State at the Department of the Taoiseach (Mr. T. Kitt): The amendment is self-explanatory. It is considered that six months is an adequate amount of time to enable interested parties to apprise themselves of the Act.

Mr. B. Hayes: I welcome the Minister of State to the House. The amendment proposes to delete subsection (2), which states "This Act comes into operation on 1 January 2004", and amend it to state "This Act comes into operation 6 months after the date of its passing.". I am against the amendment and I want to explain why. Section 15 deals with the date of passing of Acts of the Oireachtas. It is clear that the Bill becomes an Act on the day the President signs it. This Bill has been in gestation for five years although I concede that Deputy Kitt has not been Chief Whip for that period. Why is the Minister of State suggesting that another six months must elapse before the legislation becomes effective? This is wholly unfair to people waiting on various interpretations in the courts.

Some years ago the Government published a regulatory framework, referring to better regulation, more efficiency and speedier passing of legislation. Now the Government is suggesting the Act would come into operation six months after the date of its passing. It has already been passed by the other House, having been published in 2000. It took three years for this to be disposed of and was passed on 1 July 2003. We debated it last year and we are now on Committee Stage just before the summer recess, yet the Government wants another six months to give proper interpretation and effect to this in the courts. I cannot understand why.

I ask the Minister to refer to section 15, which deals with all Acts. If it is good enough for an Act of the Oireachtas to be enacted when the President signs it why should this Act be any different? I firmly disagree with the line the Government is taking on this matter. If there is one rule for all Acts the same rule should apply to the principle Act on interpretation, given that this is an important piece of legislation.

We have a list of 25 to 30 Government amendments and I am sure the Minister will say that many are technical and deal with the drafting of the legislation. The Bill was published five years ago, yet at the last minute, just before the summer recess, we receive more amendments. Clearly the Government will not be willing to delay the legislation as this would mean the Bill would have to go back to the Dáil. The proposal regarding a six month delay in terms of implementation is a complete dilution of what we would expect of other Acts of the Oireachtas. Consequently, I am opposed to it.

Mr. Ryan: The front page of this Bill is tempting satire. At the top of page five it states "Interpretation Bill 2000". Section 1(1) states: "This Act may be cited as the Interpretation Act 2003" and section 1(2) states: "This Act comes into operation on 1 January 2004". The Minister is now telling us it will come into operation some time in 2006. The Bill, as amended, is unlikely to pass through the Dáil before the summer recess although the Minister of State is probably the best authority on that. It has been sitting around for long enough. Who are the interested parties that need a delay of six months?

A delay of six months is a classic commentary on the manner in which we conduct the business of public administration. There is a resistance to timetables that are demanding in any way. Legislation that requires ministerial approval never states by when the Minister must make a decision. Most difficult decisions are never taken. Local authorities awaiting ministerial approval must wait while the matter is forever under consideration.

I need to be convinced of a plausible reason for this amendment unless the Government is intending to delay matters yet again. If we cannot complete the legislation this week the Dáil will return sometime after the summer recess, presumably between the end of September and the middle of October. This legislation will not take the concentrated effort of all of the powers of Government as it has been stewed over for the best part of five years. Why not specify a fixed date for implementation of, say, 1 January 2006 instead of eternally postponing it?

The only reason I can think of is that the Government plans to sit on this for another six or eight months and it does not want to have to make an amendment to it at that stage, which

would result in the Bill coming back to the Seanad. I am not quite sure what happens next. If a Dáil Bill is referred to the Seanad, is amended in the Seanad, goes to the Dáil and gets amended again, does it come back to the Seanad? I am not sure.

This is another excuse to temporise. The Bill sat on the Order Paper for an unacceptably long period of time. I fear this amendment, without a time constraint that cannot be extended at the Government's convenience, will mean it will sit on the Order Paper of the other House for yet another unacceptably long period of time. I am not in the least impressed with the amendment.

Mr. T. Kitt: There are no covert conspiracies on my part. I read what the Senators said in the debate on the Bill. This is a technical area, we are updating legislation and re-enacting law. There is nobody shivering in his or her boots waiting for the results of our deliberations. We are trying to deal with this in an honest, transparent way. As Chief Whip I assure the Senators that whenever this legislation can be passed in this House I will do my utmost to get it on the agenda of the Dáil. It will proceed to Report Stage and will then become law.

I accept that the Bill has been in gestation for some time. We propose that the Act comes into operation six months after the date of its passing. I ask the Senators to accept my bona fides that I will try to ensure the Bill progresses as quickly as possible. This will be in the next session and perhaps we could meet to discuss when we would like to see it enacted.

The reason for the amendment is that interested parties, such as the courts and the Judiciary, have the chance to be appraised of the Act. I cannot see what is the big deal. We are trying to modernise the law in this area. If we do not enact this legislation I do not think anyone would be knocking on our doors. This is a practical suggestion and I can assure the Senators that I will do my utmost to speed the Bill through the Houses. Hopefully it will be enacted close to the date suggested by Senator Ryan. I cannot give commitments but I will do my utmost to get it through the other House, once it is passed by this House.

Mr. B. Hayes: With respect, the Minister of State has not answered my question. I ask him to read section 15. Best practise, as outlined by the Government's legislation, states, in section 15(1): "The date of the passing of an Act of the Oireachtas is the date of the day on which the Bill for the Act is signed by the President." Why are we doing something different in respect of this Bill when the guideline is set by the Government's legislation? In response to Senator Ryan and I, the Minister of State questioned whether anyone needed to see this legislation in shining lights. There might well be people depending on the legislation being enacted as speedily as possible. Given the importance of interpretation in the courts and the updating of this new Bill in comparison with the 1937 legislation, there may well be people depending on it being enacted as speedily as possible. We may well ask "Is there anybody out there?"

The Minister of State is deviating from best practice and the standard applied in the legislation by suggesting that it should be another six months before it commences. As Senator Ryan said, we have been waiting for this for a long time. The Minister also said this is in the interest of the technological age etc. I have had amendments ruled out of order on the basis of trying to modernise legislation and put it in an electronic format so that the courts would use it. However, there is nothing about that in the Bill.

Mr. T. Kitt: We will come to that.

Mr. B. Hayes: I know, and it is not the Minister of State's fault that they were ruled out of order. I have not heard the rationale as to why this legislation will not be put in place once the President signs it.

Mr. T. Kitt: I have an answer for the Senator.

Mr. Ryan: Without venturing into territory regarding the Minister's position in terms of negotiating Dáil business, Members of this House are not overly impressed with the Dáil's capacity to process legislation. There are currently 12 Seanad Bills waiting to be processed, one of which dates back to 2002. If we leave a deadline in the Bill and say it must come into force on, for example, 1 January 2006, it strengthens the Minister's hand in the other House. As a result of the deadline, the courts and all the interested agencies will be aware that the legislation will come into effect on 1 January 2006. That will concentrate their minds, give the Minister leverage and the Bill will not be put to the end of a list of 13 or 14 items of legislation. Leaving an open-ended operational date means the legislation will get squeezed to the end of the queue yet again. This legislation may not be the world's most riveting legislation, but it is extremely important.

Mr. T. Kitt: I always enjoy my visits to the Seanad and try my best to accommodate reasonable suggestions. I am willing to consider this in the light of what both Senators have said. With regard to the rationale behind our wording, Senator Hayes mentioned section 15 which states: "The date of the passing of an Act of the Oireachtas is the date of the day on which the Bill for the Act is signed by the President." However, a consideration of section 4 will explain to him why the proposal we put forward is legally correct. It states that the provisions apply "unless the contrary intention appears". With regard to how we can get away with the six-month reference, he should note that section 4 states: "This Act applies to an enactment except in so far as the contrary intention appears".

[Mr. T. Kitt.]

The Senators have made a valid point and I will accept Senator Ryan's suggestion that we agree on 1 January 2006 and bring forward an amendment on Report Stage to that effect.

Mr. B. Hayes: That is a very reasonable approach from a man from south County Dublin.

Mr. Ryan: It is a good start to the afternoon. We could make much progress here.

Amendment, by leave, withdrawn.

Section 1 agreed to.

SECTION 2.

Question proposed: "That section 2 stand part of the Bill."

Mr. Ryan: The definitions in section 2 make no reference to legislation of the European Union, which is referred to in section 28. According to the proposed amendments section 28 is opposed. It also is marked with an asterisk, but I am not sure whether that is a misprint or it is the Government that opposes the section. Surely we cannot put through an interpretation Bill without reference to European Union directives and legislation. These, of course, should be incorporated into Irish law, but still have the force of law here, even if not incorporated.

Mr. B. Hayes: As the Minister of State is aware, we dealt with legislation some weeks ago that repealed a raft of legislation dating back to 1309, before the foundation of the State.

Mr. Ryan: Before I was born.

Mr. B. Hayes: Yes, never mind me. The new legislation allowed us to clean up the Statute Book to make more sense of it. Section 2(2) states: "For the purposes of this Act, an enactment which has been replaced or has expired, lapsed or otherwise ceased to have effect is deemed to have been repealed.". In this regard, does this House, where an Act has lapsed, is irrelevant or out of kilter with modern times, still have the power to cite such an Act and repeal it? Can this be done without an Act of the Oireachtas or an instruction on the part of the Minister or Minister of State?

An Cathaoirleach: I understand that the Government intends to delete section 28.

Mr. T. Kitt: The Cathaoirleach has clarified that the Government intends to delete section 28 which refers to the European communities. There are issues relating to cross-referencing of European legislation and Council directives with which I will be glad to deal. On Senator Ryan's specific question, section 2 deals with domestic law and concentrates on that.

I may have to come back to Senator Brian Hayes because I am not sure my officials have the up to date position on it. If any issues need clarification, I will come back on them before the end of this debate. I have just been advised that section 2(2) does not apply to repealed Acts.

Question put and agreed to.

SECTION 3.

Question proposed: "That section 3 stand part of the Bill."

Mr. Ryan: I probably should not have spent as much time this morning reading this Bill as I did. I have a problem with regard to the word "absurd" in section 3(2)(*b*)(ii) in the phrase "the other enactment would be changed in intent or become unclear or absurd". I have no problem with "changed in intent" or "become unclear", but "absurd" is an extraordinarily subjective word. I am not trying to be awkward about this. Wearing my left of centre ideological hat, half the economists in Ireland think my position on many issues is absurd.

Mr. B. Hayes: And they are right.

Mr. Ryan: There goes coalition. We will discuss that later.

My point is that the word "absurd" is an extraordinary one for draftsmen to use. I meant to look the word up in the dictionary earlier.

Mr. T. Kitt: Where are the relevant references? My officials cannot find them.

Mr. Ryan: They are in lines 14 and 25 of page 6 of the Bill. I am not trying to be awkward, but I think "absurd" is an extraordinary word to include in legislation.

Mr. T. Kitt: I have been told that the word "absurd" is well used by the courts. This section provides that this legislation does not apply to another Act if "the other enactment would be changed in intent or become unclear or absurd". Like the Senator, I favour more user-friendly language. The explanation I have been given is that the word in question is well used by the courts.

Mr. Ryan: That is fair enough. If it is the case that such language is part of the parlance of the courts, that is fine and I am happy to accept it.

Mr. T. Kitt: I thank the Senator.

Question put and agreed to.

SECTION 4.

Government amendment No. 2:

In page 6, subsection (1), line 26, to delete "This Act" and substitute "A provision of this Act".

Mr. T. Kitt: This technical drafting amendment will clarify the language being used in this section. While the words "except in so far as the contrary intention appears in this Act" in section 4(1) mean that the Interpretation Act can apply, in part, to another Act, this is expressly provided for by the insertion in the section of the phrase "a provision of this Act". It is a technical drafting amendment.

Amendment agreed to.

Question proposed: "That section 4, as amended, stand part of the Bill."

Mr. Ryan: There is a need for an official in the Office of the Chief Parliamentary Counsel to learn to write intelligible English. It takes one approximately five readings to ascertain what certain parts of this Bill mean. I do not blame the Minister of State for that.

Question put and agreed to.

NEW SECTION.

Mr. B. Hayes: I move amendment No. 3:

In page 6, before section 5 but in Part 2, to insert the following new section:

"5.—(1) All Acts shall contain a provision causing the Act to lapse in whole within a period not greater than three years.

(2) An Act which has lapsed under this section may be renewed by a positive resolution of both Houses at any time prior to the expiry of the sunset period.".

I said on Second Stage, a year ago, that I intended to propose this amendment on Committee Stage. The new section I have proposed, which will provide for the sunsetting of legislation, does not relate to Florida or older people enjoying long periods of time by the beach. It is understandable that the Oireachtas is frequently required to pass new legislation when problems emerge in any aspect of society. Amendment No. 3 provides that all future Acts will become redundant after a three-year period if the intention of the Acts is no longer real and substantive. The Government can ensure that such Acts do not become redundant by passing a positive resolution of both Houses. Such a resolution will ensure that the three-year sunset provision is put to one side and the provisions of the Acts can continue in force.

I have proposed this amendment because I feel that the way in which this country's legislation is produced can be changed if we provide that the Oireachtas can consider making future legislation redundant after three years. We can facilitate the use of non-legislative means of solving problems by allowing the Office of the Chief Parliamentary Counsel and Departments to avail of such a provision, which is in place in other jurisdictions. Currently, the automatic response when problems arise is to decide new legislation is needed to sort it out. I have proposed that a three-year sunset clause be included in all legislation as a standard provision.

The Minister of State referred earlier to the amassed deadwood of post-1309 legislation, which we abolished last month. We increase the amount of legislation on the Statute Book on a daily and yearly basis. We need to consider the substantial question of how much of the legislation will be relevant in the future. The acceptance of this amendment will allow the Oireachtas to consider the relevance of various legislation to a modern-day setting. The three-year sunset rule will apply unless the legislation is renewed by "a positive resolution of both Houses". Such a resolution would enable the Act to continue in force until a future time. The existence of a sunset provision would enable legislators and policymakers to provide a non-legislative solution to many of the problems we face.

Mr. T. Kitt: I am aware that Senator Hayes has raised this matter previously. I will outline the reasons for the Government's opposition to the proposal. The Office of the Attorney General has advised that an automatic lapsing provision, of the nature proposed in this amendment, would create constitutional and major administrative problems. The amendment does not deal with the interpretation and application of Acts. It proposes that statutory instruments be put in place to require that all Acts contain a provision which will cause them to lapse, or cease to have effect, within a period of not greater than three years, unless renewed by positive resolution.

It is constitutionally problematic, as I have said, to purport or provide that all Acts should contain a provision such as that proposed by Senator Hayes. A constitutional amendment would be necessary to enable the Oireachtas to mandatorily bind itself in this way into the future. If such a provision were included in an Interpretation Act, the only constitutional interpretation, if any, that could be given is that the provision is not mandatory, but discretionary. As that would be the only possible interpretation, the provision would become meaningless. The Oireachtas, by means of an Act, cannot impose, in a case such as this, a mandatory restriction on the future exercise of its own legislative powers.

The automatic lapsing of all primary legislation after a period of time would be a fundamental departure from the manner in which legislation is enacted and applied in this jurisdiction. It would also be a departure from the manner in which such matters are dealt with in other common law parliamentary democracies, such as the UK, Australia and New Zealand. Amendment No. 3 misunderstands the nature of an Interpretation Act. Such an Act applies unless the contrary intention appears in a particular enactment. If the contrary intention does appear, the contrary intention applies.

From a drafting perspective, the amendment is imprecise in nature. Does the phrase "not greater

[Mr. T. Kitt.]

than three years" relate to the passing of the Act or its commencement? Problems would be caused if phrases such as " the sunset period" were not explained. The sheer volume of legislation would cause logistical difficulties. I know where the Senator is coming from, but I will give an example. If an Act that deals with a criminal matter lapses, it will cease to have effect. If an Act that establishes a body under law lapses, the body will cease to exist. What would happen to the employees of such a body? I could give a number of examples of such difficulties. I do not really wish to go any further other than to say that the Office of the Attorney General has advised against the acceptance of this amendment. I hope I have explained myself clearly.

Mr. B. Hayes: I thank the Minister of State for his reply. Under this amendment, an Act will lapse only if a positive resolution has not been passed by both Houses of the Oireachtas. I understand that a great deal of primary legislation provides that the Act in question is subject to a mandatory automatic review. I do not think I will win this argument, but if this amendment is accepted, this provision will have a dramatic effect on the way in which we respond automatically to problems by putting new statutes in place.

The Minister of State did not say whether he thinks this is a good idea. He outlined to the House the advice he has received from the Office of the Attorney General, as he is required to do, but he did not comment on whether the proposal would lead to better regulation. When he spoke on Second Stage he referred to the White Paper, Regulating Better, which was published by the Government in January 2004. One of the central arguments used by the Government in favour of this Bill is that the Statute Book is being regulated and a more modern form of parlance is being used for interpretation, which is to the benefit of everyone, particularly the courts. I have proposed a means of much more efficient regulation, which will ensure that legislation that becomes redundant is removed from the Statute Book.

I understand some of the difficulties which have been outlined by the Minister of State. I would have thought that the general principle is important, regardless of whether we think it is relevant. If we review legislation automatically, which is a fundamental provision of many Acts being passed by the Oireachtas nowadays, why is it not possible to terminate legislation if it does not have a modern application? That is the point I am making in amendment No. 3.

Mr. Ryan: It is absurd for the Attorney General to be worried about the sunset of legislation, given that there is an amendment to the Bill which is precisely intended to deal with marginal or shoulder notes. It states that none of the following shall be taken to be part of the enactment. I am not sure why the Attorney General was worrying about marginal notes when there is an amendment stating that they are precisely and unequivocally excluded from the meaning of the enactment.

Having said that, I do not agree with the Fine Gael amendment. If there was a three-year lapse on the Freedom of Information Act, the Government would quite happily let it lapse and there would not be a resolution in both Houses of the Oireachtas to renew it. If we tried to do so, we would be voted down. I would rather have the legislative inheritance of a good Government preserved, like the last time we had one, rather than automatically——

Mr. T. Kitt: Was that when the Fianna Fáil-Labour Party Government was in office?

Mr. Ryan: No, the rainbow Government was in power. That was one of our big mistakes.

I would not be in favour of this amendment. However, the Oireachtas should set up a process of continuous revision of statute law. It would be useful to have a committee of the Oireachtas to examine statute law and also to respond to the Law Reform Commission's occasional submissions on legislation that is defunct. I will have a few queries later about the fact that apparently legislation can never lapse and what this might mean. I am not in favour of the amendment.

Mr. T. Kitt: In reply to Senator Brian Hayes, I share the views of Senator Ryan on this matter. If one considers the dangers of lapsing legislation, leaving aside the views of the Attorney General on constitutional issues, the argument would fall on examining the issue from a more positive perspective. As the Senator rightly acknowledged, we are considering revision of all the legislation and getting rid of pre-1922 legislation where necessary. Much work is going on within my Department in that area.

On the specific question about legislation, there is provision in specific Acts for a review. From that perspective, if there is legislation appropriate for review, it should include that review provision. This is the best way to go about the matter. I take note of what the Senator said. I will relay his views to the great team of officials in the Taoiseach's Department who are examining the broader legislative programme to try to modernise legislation. This is as far as I can go in this debate.

Mr. B. Hayes: The discussion has been useful but I am not aware of the average number of Acts passed by the Oireachtas in the 1990s comparison with the 1940s. We are now living in a much more complex and complicated society and, consequently, legislation is often needed to address modern problems. However, these problems sometimes lapse and a problem that existed in the 1960s is no longer a problem today.

The point of my amendment is to determine how it is possible that some of these redundant

problems in terms of the legislative response are still on the Statute Book. We must find a means of cleaning up the entire Statute Book. I suspect the average number of Acts passed in the 1990s by comparison with the 1940s would be 3:1. This is a bigger application, because there is no point having legislation if it is not enforced or enacted. We frequently pass legislation in both Houses of the Oireachtas which is not enforced. It is becoming utterly irrelevant as it is becoming unenforceable on the ground. The objective of our amendment is to shake-up the mindset at the heart of Government to ensure that when Acts are being proposed and enacted, they are applicable, enforceable and serve a purpose, rather than continually putting Acts on the Statute Book which gather dust.

Mr. T. Kitt: When reporting this morning on our end-of-term work in the Dáil, the point was made that 22 pieces of legislation were enacted since September. As the Senator said, there is a lot of legislation going through at a much speedier pace than was the case one or two decades ago. I agree that there must be a constant renewal and review of legislation. I will certainly take on board the points made by Senators.

Mr. B. Hayes: I want to echo what Mr. Kevin Murphy, the former Ombudsman, said recently when he spoke about the need to scrutinise legislation in both Houses of the Oireachtas. He had difficult things to say to politicians and Government alike in respect of how much each Act is scrutinised and whether there is a proper scrutiny base. There are considerable question marks over that. It adds to the ineffectiveness of Government if legislation is not properly scrutinised by either the Opposition or Government — I readily admit this is a problem on both sides. It is pointless continually putting legislation on the Statute Book which does not have an application that one would expect. In previous generations, we had more time in the Oireachtas. People spent more time on committee work. This point which was alluded to by Mr. Murphy was a very valuable contribution.

Amendment, by leave, withdrawn.

SECTION 5.

An Cathaoirleach: Amendments Nos 4. and 7 are cognate and will be discussed together.

Government amendment No. 4:

In page 6, subsection (1), lines 33 and 34, to delete ", other than a provision that relates to the imposition of a penal or other sanction" and substitute "(other than a provision that relates to the imposition of a penal or other sanction)".

Mr. T. Kitt: These are technical drafting amendments to clarify the language that prevents the possibility of words clarifying a substantive provision being read as the substantive provision itself, that is, paragraphs (*a*) and (*b*) relate back to the opening words of the section, not to the qualification of these words by the phrase commencing with "other than". In simple terms, they relate back to the word "provision". The amendment seeks to make the language clear.

Mr. B. Hayes: This is a victory for the plain language brigade.

Mr. Ryan: Hear, hear.

Mr. B. Hayes: The initial citation was, "the literal interpretation may be departed from and preference given to an interpretation based on the plain intention of the Oireachtas ...". Someone has ingeniously produced a new provision which states, "the provision may be given a construction that reflects the plain intention of the Oireachtas." Congratulations to those involved in that.

Amendment agreed to.

Government amendment No. 5:

In page 7, subsection (1)(*b*)(ii), lines 1 and 2, to delete "the definition of 'Act' in section 2(1)" and substitute "that definition".

Mr. T. Kitt: This is a technical drafting amendment to simplify the language. In the case of the amendment to subsection (2), it aligns the language of subsection (1), which is another improvement.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 6 and 8 are cognate and will be discussed together.

Government amendment No. 6:

In page 7, subsection (1), lines 4 and 5, to delete "the literal interpretation may be departed from and preference given to an interpretation based on the plain intention of the Oireachtas" and substitute "the provision shall be given a construction that reflects the plain intention of the Oireachtas".

Mr. T. Kitt: Amendment No. 8 aligns the language to that proposed by amendment No. 6.

Amendment agreed to.

Government amendment No. 7:

In page 7, subsection (2), lines 8 to 10, to delete ", other than a provision that relates to the imposition of a penal or other sanction" and substitute "(other than a provision that relates to the imposition of a penal or other sanction)".

Amendment agreed to.

Government amendment No. 8:

In page 7, subsection (2), lines 16 to 18, to delete "the literal interpretation may be departed from and preference given to the interpretation based on the plain intention of the maker of the instrument" and substitute "the provision shall be given a construction that reflects the plain intention of the maker of the instrument".

Amendment agreed to.

Section 5, as amended, agreed to.

SECTION 6.

An Cathaoirleach: Amendments Nos. 9 to 12 are related and may be discussed together by agreement.

Government amendment No. 9:

In page 7, line 22, to delete "an Act" and substitute "that Act".

Mr. T. Kitt: These are technical amendments that align subsequent references to Acts and statutory instruments back to the reference to any Act or statutory instrument.

Amendment agreed to.

Government amendment No. 10:

In page 7, line 24, to delete "the Act" and substitute "that Act".

Amendment agreed to.

Government amendment No. 11:

In page 7, lines 24 and 25, to delete "the statutory instrument" and substitute "that statutory instrument".

Amendment agreed to.

Mr. B. Hayes: I move amendment No. 12:

In page 7, line 25, after "instrument," to insert "so as to give the enactment or any provision of it an updated construction".

This is an attempt to improve the language of the legislation. For the layman trying to find his or her way through it the difficulties are endless. This attempts to give concrete proof of the interpretation at the end of section 6.

Mr. T. Kitt: The Government feels it is unnecessary.

Amendment, by leave, withdrawn.

Question proposed: "That section 6, as amended, stand part of the Bill."

Mr. Ryan: I am intrigued that the Interpretation Bill 2000 is going to be one of the most difficult pieces of legislation to interpret.

Something is seriously wrong and I do not know what it is. Section 6 is a fine example. It intends to be a catch-all to prevent people having to brandish their spears to prove they are entitled to enter the Houses of the Oireachtas, or something like that from the 14th century. It states that if the changes conflict with "text, purpose and context" they cannot apply. It might avoid a few awkward situations but we are not really sure what it means.

4 o'clock

We are trying to update the law without identifying where the problem is. If the problem is anything other than a simple textual matter it will still exist in so far as its text, purpose and context permit.

Mr. T. Kitt: The language is taken straight from the Law Reform Commission report to take into account changing circumstances.

Question put and agreed to.

NEW SECTION.

Mr. B. Hayes: I move amendment No. 13:

In page 7, before section 7, to insert the following new section:

"7.—The original and authentic version of an Act is that which—

(*a*) in the case of an Act of the Oireachtas, is the signed text of such law as is enrolled for record in the Office of the Registrar of the Supreme Court pursuant to Article 25.4.5° of the Constitution,

(*b*) in the case of an Act of the Oireachtas of Saorstát Éireann, is the signed text of such law as is enrolled for record in the office of such officer of the Supreme Court of Saorstát Éireann as Dáil Eireann determined pursuant to Article 42 of the Constitution of the Irish Free State (Saorstát Éireann),

(*c*) in the case of any other Act, is such text as corresponds to an enrolled text to which paragraph (*a*) or (*b*) relates.".

Is amendment No. 14 included with this, a Chathaoirligh?

An Cathaoirleach: No.

Mr. B. Hayes: They are similar but not the same.

I propose a new section to give a straightforward interpretation, a literal definition of what is an authentic version of an Act. I am advised that reference is made in the Constitution to an authentic version but there is no literal interpre-

tation in any Act of the Oireachtas including the Interpretation Act 1937 and the Bill being discussed today.

As the Minister can see I have cut and pasted part of another section. If the Constitution refers to it and if reference is made in the courts to an authentic version of an Act there should be a definition of it and I am not aware of one. I am attempting to strengthen the Minister's hand by making interpretation straightforward, as Senator Ryan also wishes.

Mr. T. Kitt: My advice is that this is provided for in the Constitution, a point which may have been raised before when this House debated the Bill. In effect, the amendment paraphrases the Constitution. It is inappropriate to attempt to provide for something which is expressly covered by the Constitution or by the constitution of the Irish Free State. There is no need for this amendment. The Constitution provides for precisely what the Senator is trying to achieve.

Mr. B. Hayes: Are we not continually told by the Supreme Court when it comes to controversial issues, examples of which I will not go into today, that legislators have failed to legislate for things that need to be legislated for? When many such controversial matters have gone to the Supreme Court we have received a collective rap on the knuckles, and rightly so.

If as the Minister has confirmed this is in the Constitution it should not be left to the Supreme Court to interpret what it means. It should be our job. The Supreme Court has stated on many occasions, on issues like abortion, that there was a collective failure on the part of the Oireachtas to legislate. Is it not more sensible that we interpret legislation, even if we do not reinterpret it? As the Minister said it is referred to in the Constitution but not in statute.

Mr. T. Kitt: I appreciate what the Senator is attempting to do but it is ultimately for the courts to interpret the Constitution, not the Oireachtas.

Mr. B. Hayes: The courts have the sole right of interpretation but it is our job to frame law around existing provisions within the Constitution.

Mr. Ryan: Their lordships just want us to write the law so they can slap it down.

Mr. T. Kitt: My advice is not to pursue it, Senator.

Amendment, by leave, withdrawn.

SECTION 7.

Mr. B. Hayes: I move amendment No. 14:

In page 7, subsection (1), lines 28 to 40, to delete all words from and including "set out-" in line 28 down to and including "relates." in line 40 and substitute "in the authentic version of an Act.".

Do the same arguments apply to amendment No.14 as to amendment No. 13, and will the reply be the same?

Mr. T. Kitt: Yes.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendments Nos. 15 to 17, inclusive, are related and may be taken together by agreement.

Government amendment No. 15:

In page 7, subsection (1), line 28, after "set out" to insert "in".

Mr. T. Kitt: These are technical amendments to shorten, clarify or simplify the section.

Amendment agreed to.

Mr. T. Kitt: Government amendment No.16:

In page 7, subsection (1)(a), line 29, after "Oireachtas," to delete "in".

Amendment agreed to.

Government amendment No. 17:

In page 7, subsection (1)(b), line 34, to delete "in" where it firstly occurs.

Amendment agreed to.

Government amendment No. 18:

In page 7, subsection (1), lines 39 and 40, to delete paragraph *(c)* and substitute the following:

"(*c*) in the case of any other Act, such text of that Act as corresponds to the text of the Act enrolled in the manner referred to in *paragraph* (*a*) or (*b*).".

Mr. T. Kitt: This is also to shorten, clarify or simplify the section.

Amendment agreed to.

Government amendment No. 19:

In page 7, subsection (2), line 42, to delete "which" and substitute "that".

Amendment agreed to.

Amendment No. 20 not moved.

Question proposed: "That section 7, as amended, stand part of the Bill."

Mr. Ryan: Section 7 begins: "In construing a provision of an Act for the purposes of *section 5* or *6,*". Section 6 states "a court may make allowances for any changes in the law, social conditions, technology, the meaning of words" etc. and section 5 deals with construing ambiguous or obscure provisions. It surprises me that a court may make use of many things as reference points for interpreting legislation but not, apparently, the debates of the Houses of the Oireachtas. However, it is extraordinary that the section does not include an enabling provision. While it is not intentional, it makes little of the fact that legislation for better or worse is debated often in detail. Questions about ambiguity in legislation are often raised during debates and the interpretation is that clarification is unnecessary but the Oireachtas will be marginalised unless the courts may at least advert to the reports of its debates.

Mr. B. Hayes: Senator Ryan has raised an important issue. Frequently the Committee and Report Stages debates tease out and reflect many provisions, which will be enacted. When they are ultimately interpreted in a court case and an attempt is made by the Judiciary to fully interpret what the Houses meant when an Act was passed, either side of the argument in the case can use passages from the debates in either House to bolster its case. Will the Minister of State confirm this happens? If so, a reference should be made, as Senator Ryan sensibly pointed out, to this in the section. If the debates are used to bolster an argument, a reference should be made in this regard to give it legal grounding. High Court judgments regularly cite what was in the mind of the Executive and the Legislature when legislation was passed. If debates can be used by the defence or prosecution, they should be referenced.

Mr. T. Kitt: The courts examine Oireachtas debates but the danger of stipulating that they should do so is that it would make the law more imprecise. I hope that clarifies the legal position.

Mr. Ryan: No, it does not clarify anything. Section 6 states, "In construing a provision of any Act or statutory instrument, a court may make allowances for any changes in the law, social conditions, technology, the meaning of words used in an Act or statutory instrument and other relevant matters...". How would it not help to clarify what was meant by the words at the time the legislation was passed? What better way is there than to examine what the Members of the Legislature thought they meant, which is what Committee Stage is about?

I do not accept that providing that the courts "may" examine the debates is sufficient. I would be last to say that the courts must examine the debates because I do not wish to constrain the Judiciary and we probably would not be entitled to force the Judiciary to do so. It should be made clear that judges may examine them. All of us accept they examine the debates. However, I recall raising a question with a senior official in a Department regarding something that happened in the House and he replied that the Seanad debates were not circulated to the Department and he did not know what I was talking about. The Houses of the Oireachtas are an important reference point and for all the rubbish I hear uttered in the House on occasion, I have heard a great deal of good sense talked by Members with different perspectives, which set issues very much in the context of the country as it is today.

If the Minister of State is reluctant to do so, I will draft an amendment for Report Stage but I would prefer if he would draw on the expertise at his disposal. There is no reason to exclude a subsection stating: "The debates of the Houses of the Oireachtas and committees thereof.".

An Cathaoirleach: The House is debating the section and, therefore, the Senator cannot be accommodated because an amendment has not been tabled in this regard.

Mr. Ryan: I will table an amendment on Report Stage. If the Minister of State says he will interpret this amendment elsewhere, even in the Dáil, I will be happy. However, a reference to the Houses of the Oireachtas should not be excluded from the section.

Mr. T. Kitt: I have nothing to add. Nothing prevents the Judiciary from reading reports of the Oireachtas debates. I agree with the Senator that a great deal of sense is talked in both Houses. I am not the only Minister who believes this House has done more than its fair share of work on legislation. I agree it is important to have reports of the debates so that the courts can read them but the Senator agrees there is a difficulty requiring the courts to examine them.

Mr. Ryan: The sections states "the court may make use of all matters...". I am concerned that by outlining what the court may do, the Minister of State is also stating what it may not do. If it does not mean the courts are prevented from doing other things, the section is unnecessary but if it means they are prevented from doing other things, then the section is outlining only what they may do. The courts do not have to do everything outlined but it is clear they may not do any more.

Mr. T. Kitt: The section was inserted on the basis of the Law Reform Commission report and it permits the courts to take into account, for example, scientific developments and developments in social conditions and technology since legislation was enacted. That is an example of the reference to relevant matters and the courts may taken into account developments of that nature.

Question put and agreed to.

SECTION 8.

An Cathaoirleach: Amendments Nos. 21 to 23, inclusive, are related and may be taken together by agreement.

Government amendment No. 21:

In page 8, paragraph (*a*)(ii), line 6, to delete "it".

Mr. T. Kitt: These are technical amendments to shorten and simplify the section, which was inserted on Committee Stage in the Dáil.

Amendment agreed to.

Government amendment No. 22:

In page 8, paragraph (*a*)(ii), line 6, to delete "other".

Amendment agreed to.

Government amendment No. 23:

In page 8, paragraph (*b*), line 9, to delete "other".

Amendment agreed to.

Government amendment No. 24:

In page 8, lines 13 and 14, to delete "is specified to bring such proceedings" and substitute "is authorised by that other Act to bring such proceedings".

Mr. T. Kitt: This is a technical amendment to shorten and simplify the section, which was inserted on Committee Stage in the Dáil.

Amendment agreed to.

Section 8, as amended, agreed to.

SECTION 9.

Government amendment No. 25:

In page 8, subsection (1), line 17, after "a" where it secondly occurs to insert "Part, Chapter, section, Schedule or other".

Mr. T. Kitt: This is a technical amendment to clarify the subsection by repeating the words.

Amendment agreed to.

Section 9, as amended, agreed to.

SECTION 10.

An Leas-Chathaoirleach: Amendments Nos. 26 and 27 in the name of Senator Brian Hayes are ruled out of order as they involve potential charges on the Revenue.

Amendments Nos. 26 and 27 not moved.

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

Mr. B. Hayes: Will the Minister of State explain why legislation passed by both Houses of the Oireachtas is not on the website the next day? Our first amendment sought to bring some efficiency to the operation of Government whereby legislation enacted would be on the website the next day. I accept however, that amendment No. 26 is ruled out of order on the basis that it would be a charge on the Exchequer.

If the Government is lecturing business about regulation and saying that it will do something about its own house, it should start here. For the efficient operation of the statute, and to ensure that people know it, it should be up and running electronically within 24 hours of the President's signature. That is the best practice and standard we should apply in these cases.

Mr. T. Kitt: This is a question of resources. I am advised that it would be impractical. The requirements placed on the State through the Office of the Attorney General would impose a significant financial compliance requirement and a charge upon the people. In addition, copywriting the Acts is based in the Houses of the Oireachtas, not the Office of the Attorney General.

The requirement to have chronological tables for all enactments simultaneously available with the enactment concerned, within one day of its making or passing is impracticable, and for large Bills with substantial amendments would be technically impossible even with unlimited resources. The amendment is ruled out of order because it would be a financial burden.

Mr. B. Hayes: How long does it take, on average, for an Act when passed to become available on a CD-ROM or whatever? If we do our business and pass legislation we have a responsibility to get it up and running as soon as possible, particularly for people who regularly use that information in an electronic format. If better regulation means anything it means that we improve our performance on this issue and put the information on the screen as soon as possible.

Mr. T. Kitt: I am told that it is up on the Oireachtas website relatively quickly but it takes time for the Office of the Attorney General to put it up. I can inquire about the precise time for the Senator. It is an issue of resources which I know from dealing with the officials in that office, is an important one. Hopefully, some of the updating legislation we are introducing will improve this process. We are pushing for better regulation, a matter in which this House also has a strong interest.

Mr. Quinn: That answer is not good enough. If the material is already available on one website,

[Mr. Quinn.]

to put it on another website involves only pressing buttons. There is no cost involved. It does not make sense. If the Office of the Attorney General delays in doing that it is not a question of manpower or costs but only a matter of transferring the information from one website to another.

Mr. B. Hayes: The problem is greater in regard to statutory instruments than in regard to Acts. Practitioners in this area who try to get general applications before going into court to argue a case say it is virtually impossible to access the statutory instruments expeditiously on a website soon after the Minister has signed them into law. Instead, they must go to the Government Publications Office and pay €3.75 per page. That is a crazy way to do business in 2005.

Mr. T. Kitt: I would be more than happy to raise this issue with the Office of the Attorney General. The information appears first on the Oireachtas website. I will be glad to discuss with my officials whether anything can be done to increase the speed with which the information is processed. We will deal later with the Senator's amendment about the electronic form of a document. Problems surround the issue of disclosure on websites.

Question put and agreed to.

SECTION 11.

Government amendment No. 28:

In page 8, line 30, to delete "that" and substitute "such".

Mr. T. Kitt: This is a technical amendment so that the reference in line 30 to a provision relates back to line 29 as "such provision", when the example is in a schedule.

Amendment agreed to.

Section 11, as amended, agreed to.

Section 12 agreed to.

SECTION 13.

Mr. B. Hayes: I move amendment No. 29:

In page 9, line 3, after "Act" to insert "in electronic or printed form".

This section states,"An Act is a public document and shall be judicially noticed". In this amendment we suggest that judicial notice be taken of Acts in electronic as well as printed format, which is not the case now. The current situation is a paper trail. If the court notices an Act it is as a printed document. It seems bizarre that one cannot refer to an Act on a screen or in an electronically usable format.

Some of the arguments surrounding this issue relate to the inaccuracies in some CD-ROMs. Nevertheless, the reference should be extended. The Oireachtas makes this decision. This matter should not be left to the Judiciary which should follow what we ask it to do in this case, namely, notice a public document in printed and electronic format.

Mr. Quinn: My amendment No. 56 might have been covered by this point. If it is not correct to debate it now I will wait until we reach it, if we do.

An Leas-Chathaoirleach: Amendment No. 56 was ruled out of order.

Mr. T. Kitt: The proposed amendment is connected to amendment No. 30 inserting a new section 14 regarding the electronic version of Acts. The amendment is not accepted.

In addition, the proposed amendment misunderstands the nature of section 13. This section merely deals with the consequences of something being an Act, namely, that it shall be "judicially noticed". It does not deal with the physical text of the Act other than as a document.

In the event of a question as to what constitutes that text ultimate recourse must be had to the version as signed by the President. I refer the Senator to Article 25.4.5° of the Constitution. That version is in effect the public document referred to in section 13 of the Bill. It must be signed by the President, or by the commission exercising the functions of the President under Article 40 of the Constitution. Article 13.3.1° requires that: "Every Bill passed or deemed to have been passed by the Houses of the Oireachtas shall require the signature of the President for its enactment into law". In that context the proposed amendment does not appear to accord with the Constitution.

This is a technical area. I appreciate the interest shown by Senator Brian Hayes and other Senators in the electronic form of Acts and recognition of technological developments. The information society is one of my areas of responsibility. We will introduce some initiatives in e-democracy and we are doing significant work on e-government. While I appreciate the Senator's point of view I must give a technical answer. The only official text of an Act is the version as signed by the President, which is then enrolled in the Supreme Court office. Every Act must be signed by the President.

Mr. Quinn: I did not realise that my upcoming amendment has been ruled out of order.

An Leas-Chathaoirleach: It is outside the scope of the Bill.

Mr. Quinn: The Minister of State referred to the Oireachtas e-democracy unit, which I recently learned won a deserved award for the best parliamentary website in Europe. We clearly

recognise this area. We are not living in the 18th or 19th centuries but the 21st century. While I understand that the paper document signed by the President is the actual Act, we must recognise the need and sense of having electronic communications in this area. Those of us who see the amount of paper in our offices each morning know that the vast majority of it will not be read again. If one were to multiply the amount received by each Member by 226, the damage done to the environment is sufficient reason to wonder whether there is an easier way.

Mr. Ryan: Hear, hear.

Mr. Quinn: No cost would be incurred. If we must ensure we use electronic means of communication, our solutions are included in the amendment.

Mr. B. Hayes: I understand from Article 25 that the President signs the legislation in English and Irish and it is then enrolled in the Supreme Court office. Is the Minister of State saying that for this to become applicable, we must change the Constitution?

Mr. T. Kitt: I will clarify the issue.

Mr. B. Hayes: Many of the amendments the Minister of State is favouring are derived from recommendations of the Law Reform Commission. Has the commission been asked to examine the issue?

Mr. Ryan: As I sit here, I feel I could return to the time of Gutenberg's invention of the printing press, when people said something was not authentic unless it was handwritten and that printers were an untrustworthy idea. The machines could produce many documents. People asked how they could possibly be secure if they did not have a handwritten inscribed document. I am certain this is what they said 500 years ago and it is now being said again. People suggest that this electronic way to communicate is suspect. I should have a screen in front of me in this House on which I could access the information without needing buckets of paper.

Mr. B. Hayes: Hear, hear.

Mr. Ryan: I should be able to examine every single Act. Any Member who cannot handle the technology should learn how to do so on a special course.

Mr. T. Kitt: I am advised that further work can be done by the Senator on this matter. Perhaps we could all do so. Proof of what the Act states could be pursued under the Documentary Evidence Act 1925. Under section 2, proof of an Act can be given "by the production of such Act or Journal printed under the superintendence or authority of and published by the Stationery Office". We are discussing a technical area.

Mr. Ryan: This is 80 years later.

Mr. T. Kitt: A seal was used in medieval times, as the Senator knows, and the signature became the authentication of the seal. This matter is steeped in history. I suggest the Senator examine the Documentary Evidence Act 1925 and I will ask my officials to do likewise.

Mr. B. Hayes: Am I correct in saying that printouts from CD versions of Acts are not admissible in courts, that it must be the actual physical text of an Act?

Mr. T. Kitt: I am advised that the Senator is correct.

Mr. B. Hayes: That is crazy.

Mr. Quinn: If I remember correctly, it was one or two years ago that the Taoiseach gave his electronic signature to Intel or Microsoft.

Mr. Ryan: It was Gateway, which has since closed down.

Mr. Quinn: Perhaps my example was a poor one. I will address the jargon of "laying" something before the Houses of the Oireachtas. Where do we lay these matters? We do not, as we put documents in the Oireachtas Library and send paper documents to every Member. It would be more sensible to lodge something in the Library and send it in electronic format to Members, who could lay their hands on the document if they so wished. It is essential to make this service available.

I want to convince the Minister of State that we are trying to bring democracy closer to the public. Many people in the community do not realise the amount of work carried out here. Part of our task is to make the people understand how much good work we do. One means of doing so is ensuring the information is available and getting people to understand the benefits of electronic communication.

Mr. T. Kitt: I will confide in Senator Quinn that one of the first questions I asked my officials when I examined this Bill related to the issue of electronic signatures. As the Senator said, the Taoiseach and the former President of the United States of America, Mr. Bill Clinton, were involved in promoting the move towards electronic signatures in a technological age. At this stage, it would be best to say this is not an interpretation provision. As I said to Senator Brian Hayes, it would be better to pursue this legitimate issue through examining the Documentary Evidence Act. I will ask my officials to pursue this matter also.

Mr. B. Hayes: The reason the Minister of State will not accept the amendment is not constitutional but because the amendment is not appro-

[Mr. B. Hayes.]

priate to this legislation. It is appropriate to another Act.

Mr. T. Kitt: Correct.

Mr. B. Hayes: We could make this amendment if it is not constitutionally unsound.

Mr. T. Kitt: In respect of this legislation, my advice is that something is not an authentic document in electronic form. I understand there are disclosures on websites in other jurisdictions. Serious issues surround this matter as there can be certain errors when moving towards an electronic mode of conduct.

Mr. Ryan: This is just like Gutenberg.

Mr. B. Hayes: Why not fix the problems regarding the CD formats?

Mr. T. Kitt: We are opposing this amendment because we want certainty but I suggest to the Senator that there are other ways we can examine the matter. We will be glad to share any information that emerges through our own investigations in this area.

Amendment put and declared lost.

Section 13 agreed to.

An Leas-Chathaoirleach: Amendment No. 30 in the name of Senator Brian Hayes is out of order as it involves a potential charge upon the Exchequer.

Amendment No. 30 not moved.

SECTION 14.

Government amendment No. 31:

In page 9, subsection (1)(*c*), line 13, after "one" to insert "parliamentary".

Mr. T. Kitt: This is a technical amendment. Textually, "session" must be a reference to a parliamentary session. For the sake of greater clarity, it is felt appropriate to expressly refer to parliamentary session.

Amendment agreed to.

Question proposed: "That section 14, as amended, stand part of the Bill."

Mr. Ryan: I must put the last three lines of section 14 on the record of the house: "A comma immediately before a reference to a year and a comma immediately after such a reference that is not required for the purpose of punctuation may be omitted". I am referring to the ludicrous nature of law as much as anything else and am not making fun of anyone. I appreciate that this provision is significant but I could not resist saying something.

Mr. T. Kitt: I am told we gave an assurance to the Bills Office that we would include this provision.

Question put and agreed to

SECTION 15.

An Leas-Chathaoirleach: Amendments Nos. 32 to 35, inclusive, are related and will be discussed together. Is that agreed? Agreed.

Mr. B. Hayes: I move amendment No. 32:

In page 9, subsection (1), line 28, to delete "on" and substitute "following".

I have been reliably informed of an important principle in law, which states that ignorance of the law is no defence. One cannot use in court the fact that one has no knowledge of the law as a defence against a charge. I will read the current drafting of section 15(1) for the attention of Senators: "The date of the passing of an Act of the Oireachtas is the date of the day on which the Bill for the Act is signed by the President." This means an Act has automatic application once it is signed by the President. The principle that ignorance of the law is no defence is a core principle in our democracy. This amendment proposes that the word "on" be replaced with "following" so that the date of the passing of an Act of the Oireachtas is the date of the day following which the Bill for the Act is signed by the President. This will at least allow people time to have some knowledge of the legislation in question. As currently drafted, the provision suggests that one must have automatic knowledge of the legislation when the President signs it.

Mr. Ryan: That is only the case where the legislation is coming into force, which is not the same thing. For example, the Health (Mental Services) Act 1981 never came into force.

Mr. B. Hayes: Yes. However, I have highlighted this drafting point in order to ensure that fairness prevails as to the date at which legislation becomes applicable. I am interested to hear the Minister of State's response on this matter.

Mr. T. Kitt: If accepted, this amendment would result in different rules applying for those Acts passed before and after the enactment of this Bill. In addition, difficulties would arise where a Bill, once passed, could not become operative until the commencement of the following day. This would be particularly problematic in terms of emergency legislation. The only theoretical difficulty with commencing on the same day is that, technically, this could create retrospective criminal legislation if not properly drafted by the Office of the Chief Parliamentary Counsel.

However, the latter is well aware of this possibility and drafts accordingly.

The current arrangement in regard to the commencement of legislation has been in place since 1889. Changing it will cause confusion as between future and existing legislation. The position is that legislation which is signed on a Tuesday, for example, applies from midnight on Monday night. That is the way the system works. Senators are aware that commencement dates may also be used and are used quite regularly. I hope the Government's position is clear on this.

Mr. B. Hayes: It is crystal clear.

Amendment, by leave, withdrawn.

Section 15 agreed to.

SECTION 16.

Amendments Nos. 33 to 35, inclusive, not moved.

Section 16 agreed to.

Section 17 agreed to.

SECTION 18.

An Leas-Chathaoirleach: Amendment No. 36 in the name of Senator Brian Hayes is out of order as it involves a potential charge on the Exchequer.

Amendment No. 36 not moved.

Government amendment No. 37:

In page 10, paragraph (*c*), line 43, to delete "so read" and substitute "read accordingly".

Mr. T. Kitt: This is a technical amendment to improve clarity.

Amendment agreed to.

Government amendment No. 38:

In page 11, paragraph (*d*)(ii), lines 9 and 10, to delete "or, where the child has been adopted outside the State, whose adoption" and substitute "or a child adopted outside the State whose adoption".

Mr. T. Kitt: This is a technical amendment. The final phrase in this paragraph, "whose adoption is recognised by virtue of the law for the time being in force in the State" can logically only refer to a child adopted outside the State. Adoptions under our Adoption Acts are automatically recognised by the State. This amendment ensures that the final phrase refers only to foreign adoptions recognised by the State.

Amendment agreed to.

Government amendment No. 39:

In page 11, paragraph (*f*), line 17, to delete "*Description*" and substitute "*description*".

Mr. T. Kitt: This is a minor technical amendment to change the initial letter in the word "description" to lower case.

Amendment agreed to.

Government amendment No. 40:

In page 11, lines 21 to 31, to delete paragraph (*g*) and substitute the following:

"(*g*) *Marginal and shoulder notes, etc*. Subject to *section 7*, none of the following shall be taken to be part of the enactment or be construed or judicially noticed in relation to the construction or interpretation of the enactment:

(i) a marginal note placed at the side, or a shoulder note placed at the beginning, of a section or other provision to indicate the subject, contents or effect of the section or provision,

(ii) a heading or cross-line placed in or at the head of or at the beginning of a part, chapter, section, or other provision or group of sections or provisions to indicate the subject, contents or effect of the part, chapter, section, provision or group;".

Mr. T. Kitt: Reference to "Subject to *sections 6* and *7*" is inappropriate as only section 7 qualifies this section. The wording in paragraph (*g*) has been rearranged for clarity.

Mr. Ryan: The Minister of State might draw the Attorney General's attention to this amendment since he was so concerned about marginal and shoulder notes in his earlier advice.

Amendment agreed to.

Government amendment No. 41:

In page 11, paragraph (i), line 38, to delete ", for general purposes in the State,".

Mr. T. Kitt: The words proposed to be deleted add nothing to the text. If an Act refers to another time zone then that will be clear from its context.

Amendment agreed to.

Section 18, as amended, agreed to.

Section 19 agreed to.

SECTION 20.

Government amendment No. 42:

In page 12, lines 1 to 4, to delete subsection (1) and substitute the following:

"(1) Where an enactment contains a definition or other interpretation provision, the provision shall be read as being applicable except in so far as the contrary intention appears in—

(*a*) the enactment itself, or

(*b*) the Act under which the enactment is made.".

Mr. T. Kitt: This is a drafting change to improve clarity so as to ensure the provision is interpreted in such a way that the words "except in so far as the contrary intention appears in" relates to what is proposed to be provided in both paragraphs (*a*) and (*b*) rather than just paragraph (*a*).

Amendment agreed to.

Section 20, as amended, agreed to.

Section 21 agreed to.

SECTION 22.

Government amendment No. 43:

In page 12, subsection (3), line 23, to delete "the power" and substitute "a power".

Mr. T. Kitt: This is a technical amendment. The use of the indefinite article rather than the definite article is more appropriate in the context of the subsection.

Amendment agreed to.

Section 22, as amended, agreed to.

Section 23 agreed to.

SECTION 24.

Government amendment No. 44:

In page 12, line 33, to delete "confers new jurisdiction" and substitute "confers a new jurisdiction".

Mr. T. Kitt: The amendments in regard to this section are minor technical amendments.

Amendment agreed to.

Government amendment No. 45:

In page 12, line 38, to delete "the court" and substitute "that court".

Amendment agreed to.

Section 24, as amended, agreed to.

SECTION 25.

Government amendment No. 46:

In page 13, line 3, to delete "proved" and substitute "proved,".

This is a technical amendment.

Amendment agreed to.

Question proposed: "That section 25, as amended, stand part of the Bill."

Mr. Ryan: It is a great pity that where postal services are described, no attempt was made to include electronic postal services. I genuinely perceive that we are reliving the Gutenberg experience whereby modern technology is being resisted because people do not believe it can do the job as effectively old snail mail. We must move on. If the Judiciary will not lead on this, the Oireachtas must drive forward in promoting the benefits of electronic communications. The risk of untraceable errors is probably greater in paper documents than in electronic documents. Fears regarding security and the uncertainty of people of my generation and older are issues on which we must give a lead.

Mr. Quinn: I wish to add to Senator Ryan's comments and it is an issue about which I spoke earlier. Given the Minister of State's commitment to the promotion of modern means of communications it is surprising that he has not taken this opportunity to include everything that brings us into the 21st century. It is a shame that electronics means of communication have been almost excluded from this Bill because they represent the way of the future. In less than five years' time, it will be recognised how out of date the legislation is in this regard.

Mr. T. Kitt: There is a separate code dealing with electronic communications under the Electronic Commerce Act 2000.

Question put and agreed to.

SECTION 26.

Government amendment No. 47:

In page 13, subsection (1), line 9, after "provisions" to insert "for the enactment so repealed".

Mr. T. Kitt: This is a technical amendment to clarify the relevant subsection.

Amendment agreed to.

Government amendment No. 48:

In page 13, subsection (2), line 11, to delete "the".

Mr. T. Kitt: This is a technical amendment to implement the modern style of identifying definitions.

Amendment agreed to.

Government amendment No. 49:

In page 13, subsection (2), line 12, to delete "in" and substitute "by".

Mr. T. Kitt: I make the same case. This is a technical amendment.

Amendment agreed to.

Government amendment No. 50:

In page 13, subsection (2), line 13, to delete "the new enactment" and substitute "new enactment".

Mr. T. Kitt: This is, again, a technical amendment.

Amendment agreed to.

Government amendment No. 51:

In page 13, subsection (2)(*c*), line 23, after "may" to insert ", subject to section 27(1),".

Mr. T. Kitt: This amendment is to prevent section 26(2)(*c*) being interpreted in a manner that would result in an interference with the judicial process.

Amendment agreed to.

Government amendment No. 52:

In page 13, subsection (2), lines 27 to 34, to delete paragraph (*d*) and substitute the following new paragraph:

"(*d*) if after the commencement of this Act—

(i) any provision of a former enactment, that provided for the making of a statutory instrument, is repealed and re-enacted, with or without modification, as a new provision, and

(ii) such statutory instrument is in force immediately before such repeal and re-enactment,

then the statutory instrument shall be deemed to have been made under the new provision to the extent that it is not consistent with the new enactment, and remains in force until it is repealed or otherwise ceases to have effect;".

Mr. T. Kitt: This is a technical amendment to improve the clarity of the provision.

Amendment agreed to.

Government amendment No. 53:

In page 13, subsection (2), lines 35 to 40, to delete paragraph (e) and substitute the following:

"(*e*) to the extent that the provisions of the new enactment express the same idea in a different form of words but are in substance the same as those of the former enactment, the idea in the new enactment shall not be taken to be different merely because a different form of words is used;".

Mr. T. Kitt: This amendment means that it reads better.

Amendment agreed to.

Question proposed: "That section 26, as amended, stand part of the Bill."

Mr. Ryan: I will not comment on the Minister of State's last few remarks. We will leave them to history. I have concerns on subsection (2)(*a*) which states, "a person appointed under the former enactment shall continue to act for the remainder of the period for which the person was appointed as if appointed under the new enactment". I am thinking of the Government's proposal to restructure the Higher Education Authority, in which an enactment will repeal another enactment and substitute other provisions. Does this mean that the Government cannot replace the current members of the Higher Education Authority, who have been appointed under one enactment, by the group it wants to appoint under the new enactment? I am not trying to waste time but this crossed my mind when I read the Bill. Where Government bodies are appointed but the Government changes the law, as will be done in the case of the Higher Education Authority, what happens to the existing appointees?

Mr. T. Kitt: Earlier I referred to section 4 which states ". . . unless the contrary intention appears . . .". This legislation and language exists to provide certainty and continuity with regard to other legislation. Section 4 specifically addresses any concerns Senator Ryan may have.

Question put and agreed to.

SECTION 27.

Question proposed: "That section 27 stand part of the Bill."

Mr. Ryan: Maybe section 4 will clarify this but section 27(1) states: "Where an enactment is repealed, the repeal does not...affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment...". That is a sweeping provision. I accept that section 4 may help this and I may be mistaken in that I did not

[Mr. Ryan.]

figure it out. I defy anybody to understand section 4 on a third or fourth reading, not to mention a first. I wonder what it means. Is it a saving section in case another event does not transpire?

Mr. T. Kitt: An example would be, if the Senator committed a criminal offence——

Mr. Ryan: Never.

Mr. T. Kitt: ——he could still be prosecuted under the old Act.

Mr. Ryan: That was the previous section. This concerns rights, privileges and obligations. I can make sense of others but how can anybody retain rights given under an enactment if it is abolished?

Mr. T. Kitt: The contrary intention would also safeguard that situation. I referred to liability in my comments.

Question put and agreed to.

SECTION 28.

Question proposed: "That section 28 be deleted."

Mr. Ryan: I want to hear a reason.

Mr. T. Kitt: This section was inserted on Committee Stage in the Dáil. Acts of the European Community and European Union, normally directives and regulations but also the treaties of the European Community, are often referred to in Acts of the Oireachtas and statutory instruments. From time to time, these regulations and directives are revoked and made again with or without modification. The question arises as to what effect a revocation has on references in our Acts and statutory instruments to these European references.

It was hoped that the section currently in the Bill as passed by the Dáil would address this issue. However, most references are to directives and the majority of these are given effect by ministerial regulation made under the European Communities Act 1972. The regulation making powers in that Act are contained in section 3. In its application to European directives, it is limited to giving effect to the directive and "...may contain such incidental, supplementary and consequential provisions as appear to the Minister making the regulations to be necessary for the purposes of the regulations...".

If replacing a directive makes material modifications, as many do, to what had been provided by the earlier directive and the earlier directive had been augmented by regulations made under the 1972 Act, those ministerial regulations may not be capable of being kept alive simply by means of the device provided for by section 28 of the Bill. The scope of the regulatory power that the Minister concerned can exercise to give effect to the new directive could have increased or decreased in comparison with the corresponding power that was exercised to give effect to earlier directives. On that basis, it is better to address this issue on a case-by-case basis, rather than provide generally for it in the Interpretation Act. If there is a cross-reference in another Act to a Council directive, we want it to refer to the new Act. As we implement directives by ministerial regulations, we have to implement them fully.

Mr. B. Hayes: If I interpret the reply correctly, it means that re-enactment will be decided on a case-by-case basis. Is that what is being said? If that is the case, it would presumably clog up a lot of parliamentary time because it could not be done by means of statutory instrument.

Mr. T. Kitt: The answer to Senator Hayes's question is "Yes". It has to be done. It would not necessarily clog up time because it would be done by ministerial regulation.

Mr. B. Hayes: It is done by order.

Mr. T. Kitt: If an EU directive changes, we need a new regulation or primary legislation.

An Leas-Chathaoirleach: I see Senator Ryan rise from his seat.

Mr. Ryan: I do that occasionally. It is a bad habit I have.

Mr. B. Hayes: Just like the rising of the moon.

Mr. Ryan: It is not the intent, but the effect is to marginalise the role of the Oireachtas in dealing with a lot of European legislation. I do not want to say more than we should return to it. I suggest that, if we had a further ten minutes, we would satisfactorily complete the Bill without rancour.

Mr. B. Hayes: Senator Ryan will have to return to it on Report Stage.

Mr. Ryan: The Report Stage amendments are printed.

Acting Chairman: The Senator will have to propose an amendment. Does the Minister of State wish to reply?

Mr. T. Kitt: This would mean that the Oireachtas committee on secondary legislation would have an important role in scrutinising legislation.

Question put and agreed to.

SCHEDULE.

Government amendment No. 54:

In page 16, line 1, to delete ''Valuation Acts'' and substitute ''Valuation Act 2001''.

Mr. T. Kitt: This is a technical amendment to carry through an amendment on Report Stage in the Dáil by deleting the obsolete definition of "Valuation Acts" and inserting appropriate reference to the Valuation Act 2001.

Amendment agreed to.

Government amendment No. 55:

In page 16, line 25, after "'year" to insert ", when used without qualification,".

Mr. T. Kitt: The additional words now proposed to be inserted concern the definition of "year" in the Interpretation Act 1937.

Amendment agreed to.

Acting Chairman: Amendment No. 56 in the name of Senator Quinn is out of order as it is outside the scope of the Bill as read a Second Time.

Question proposed: "That the Schedule, as amended, be the Schedule to the Bill."

Mr. Quinn: The purpose of my amendment was to improve the Schedule. I have already made the point I wish to make in a shorter manner than I intended. The Bill would be improved if we were able to ensure that, in future, we use electronic communications to reach a wider audience. I cannot express this better than Senator Ryan. It is somewhat similar to not recognising the change from handwriting to type and printing. It is akin to not recognising that electronic means of communication now exist. The generation following me do not write letters. They use text or e-mail. We have not stepped into the 21st century and this is an opportunity to do so.

Mr. B. Hayes: I fully support Senator Quinn. In addition, one of the objectives of the legislation is to tidy the existing Statute Book. The real problem for practitioners is that the Government has not yet published a revised Statute Book despite its intention to do so. Will the Minister for State include in his reply details on the current timeframe for publication of a revised Statute Book? It is of huge importance to practitioners. In a previous amendment I tabled, which was not accepted, I proposed that a set of revised statutes would be published by the Minister and his Department at three-year intervals. It was ruled out of order on the basis of cost.

5 o'clock

An Leas-Chathaoirleach: As it is now 5 p.m. the Acting Leader of the House wishes to extend the time for this Bill.

Mr. Moylan: I propose an amendment to the Order of Business to extend the time for this Bill to 5.15 p.m.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Mr. T. Kitt: With regard to Senator Quinn's comments, it is a matter for each House of the Oireachtas to make its own rules and standing orders. That is the position. I will return to Senator Brian Hayes with precise information on the issue of a revised Statute Book.

Mr. Ryan: I wish to ask a couple of questions on the Schedule. I agree with my two colleagues but will not take up time by repeating what they stated. A definition of "Northern Ireland" is not among the definitions, although a definition of "Great Britain" is included. The definition of an "ordinance map" is a map made under the powers conferred by the Survey (Ireland) Acts 1825 to 1870. Is that the most recent legislation under which ordinance survey maps are made or is there some uniqueness about this term that applies only to those maps? I was surprised by the antiquity of the reference.

Mr. T. Kitt: That is taken from the present legislation. An "ordinance map" means a map made under the powers conferred by the Survey (Ireland) Acts 1825 to 1870.

Mr. Ryan: Has there been more recent legislation on the Ordnance Survey? Is it a mistake?

Mr. T. Kitt: Not that I am aware of.

Question put and agreed to.

Title agreed to.

Bill reported with amendments.

An Leas-Chathaoirleach: When is it proposed to take Report Stage?

Mr. Moylan: Now.

Interpretation Bill 2000: Report and Final Stages.

An Leas-Chathaoirleach: Before we commence I would like to remind Senators that a Senator may speak only once on Report Stage except that a proposer of an amendment may reply to a discussion on the amendment. Also, on Report Stage each amendment must be seconded.

Government amendment No. 1:

In page 5, line 14, to delete "2004" and substitute "2006".

Minister of State at the Department of the Taoiseach (Mr. T. Kitt): This arose from earlier discussion.

Amendment agreed to.

Mr. Ryan: I move amendment No. 2:

[Mr. Ryan.]

In page 7, between lines 40 and 41, to insert the following:

"(*d*) in the appropriate debates of the Houses of the Oireachtas.".

I do not blissfully assume the Minister of State will accept this, although perhaps he might as he is a nice man and can sometimes be helpful. I merely wish to put this on the record.

We discussed the issue of the courts seeking guidance in terms of sections 5 and 6. I believe the courts ought to be allowed to make reference to and seek information in the appropriate debates of the Houses of the Oireachtas, and that is what this amendment endeavours to do. They should not be compelled or coerced. While the courts are utterly independent, we write the rules on how they conduct their business and their superstructure. I move the amendment and propose that the appropriate debates of the Houses of the Oireachtas should be one of the references the courts are permitted to use in endeavouring to construe the provision of an Act.

Mr. B. Hayes: I second the amendment on behalf of the Fine Gael Party. The subject matter of the amendment is already in place because I am aware that specific reference is regularly made in the High Court and Supreme Court to columns of debate in this House and the other House as a means of supporting or denying a claim made by a plaintiff. If the Minister of State, in respect of subsection (*b*) refers to marginal notes, an Act of the Houses of the Oireachtas or to the Supreme Court itself, why cannot the transcripts of this House, the other House and committees of the House be given the type of legislative standing that is applied in the courts?

Senator Ryan correctly states there is no automatic application. It is simply that the courts may make use of such matters. It is only consistent that this is put into section 5, which refers to other institutions of the State and their role in providing supporting documentary evidence in court cases.

Mr. Quinn: I also support Senator Ryan's amendment. The Senator has tabled a logical amendment, as he uses the word "may" rather than "must" and it is already taking place. If someone has a doubt about the intent of legislation and is trying to interpret it correctly, it would be correct to examine what was stated during the debates of the House. This amendment is well worthy of support.

Mr. T. Kitt: We touched on this earlier, and at the time I stated one of our concerns would be that the law would become dispersed if we introduced this. I must oppose it. This area is developing. Mr. Justice Costello considered Dáil debates in the case of Wavin Pipes Limited *v.* Hepworth Iron Limited, and the courts in England took account of parliamentary debates in Pepper *v.* Hart. Debates of the House constitute many different views. We would not agree with this provision.

Mr. Ryan: I am not surprised the Minister of State will not accept the amendment now. I am disappointed he did not indicate that he would examine it between now and when the Bill is considered in the other House.

Mr. T. Kitt: I will do that.

Mr. Ryan: I thank the Minister of State. Perhaps because I am a perennial backbencher I believe the Oireachtas is marginalised. The Oireachtas, as distinct from the Executive, is a central part of our democracy. As the Minister of State has indicated he will examine the amendment I will withdraw it.

Mr. T. Kitt: I will examine the amendment if it is possible to do so under the rules and procedures. Perhaps Senators know if it is possible from their experience of other legislation.

Mr. B. Hayes: Is it not the case that the only amendments the Minister of State can present to the other House are those put in this House? The Bill has already passed through the Dáil.

Mr. T. Kitt: If the rules allow me to do so I will have to insert that provision——

Mr. Ryan: The Minister could accept the amendment and then delete it in the other House.

Mr. T. Kitt: A number of issues have been raised of which we should take note in the context of better regulation and legislation, and we will do that.

Amendment, by leave, withdrawn.

Bill, as amended, received for final consideration.

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

Mr. B. Hayes: I thank the Minister of State and his officials for the time they put into the Bill which, as the Minister knows well, is a long time coming. While it is a technical Bill it is very important. It is important that there is consistency and absolute certainty in the courts in terms of the meanings we put on Acts of the Oireachtas. I stress to the Minister that when it comes to the issue of better regulation, line Departments and both Houses of the Oireachtas have a responsibility to ensure that Acts of the Oireachtas are understood, written in straightforward language and, when passed, that the information is transmitted in a consumer-friendly way. The State has not done that appropriately in recent years. The principal exampleof that is the revised statute. A commitment was given that we would see that

published on a regular basis and it is not in a good condition. I ask the Minister of State to examine that issue. I thank the Minister of State and his officials.

Mr. Quinn: I add my words of thanks to the Minister of State. The Bill has been five years in gestation and I welcome the fact that it is before the House. I believe the Bill can be improved and the Minister of State's words are such that we will see it improved before it becomes law.

The objective all of us should have is the one I touched on earlier. I have been a Member of this House for the past 12 or 13 years and I am surprised by the number of people who do not know what goes on in these Houses.They do not appreciate the effort that goes into our work, some of which can be seen here today. Part of our objective should be to make this available to a wider audience thereby ensuring that the citizens of this country understand legislation and may get involved in it. I hope interpretation will make it easier for them to so and I would welcome any changes the Minister can make to the Bill between now and its final consideration to ensure that happens.

Mr. Ryan: I thank the Minister of State for his willingness to accept a proposal from Senator Brian Hayes for a fixed timetable for the introduction of the Bill. As a Member of the House I would appreciate that.

On the issue of records and so on, when my children, who are aged from mid 20s down, say, "I wrote to somebody", they mean they sent them an e-mail**.** If they wrote a letter and put a stamp on it, they will describe that at length but the term "I wrote to somebody" now means sending an e-mail. We have to catch up in that regard. The Davos World Economic Forum, in putting us a little further down on the world competitive list, mentioned the declining flexibility and agility of State bodies as one of its reasons for doing so. This is a short Bill but in terms of the mountains of paper involved, we are falling behind.

This is a profoundly important Bill which underlines the importance of the legislative role of the Oireachtas. This is a Bill which binds the courts and Governments. It is a widely applicable Bill and I believe it got a thorough discussion here. I am certain that there is not a single person from the media in the House who would have read the Title, not to mention the rest of it.

Mr. Moylan: I thank the Minister of State and his officials. I express the thanks of those of us on this side of the House to the Opposition spokespersonswho gave the Bill a good airing at all Stages. A number of Senators have spoken in the past about reviewing Bills and a strong case is made that Bills require to be reviewed, whether it be every three or five years, because problems may arise with legislation we have passed and time will always reveal such problems. There should be an opportunity to review or change legislation.

I compliment the Minister of State on the Bill which, as Senator Ryan said, is important legislation**.** I welcome the fact that the House passed the Bill this evening and allowed for the extension of time. I got very excited earlier. I was watching one clock which is 20 minutes ahead of the other. We were in real difficulty at one stage but I realised we had some time when I spotted the other clock. I thank the Members.

Mr. Ryan: I thank the Deputy Leader for facilitating us in that regard.

Mr. B. Hayes: Hear, hear.

An Leas-Chathaoirleach: We are in a bit of bother now as well.

Minister of State at the Department of the Taoiseach (Mr. T. Kitt): I will conclude by again thanking the Senators for their sensible suggestion about the fixed timetable and for being flexible in passing the Bill. We were trying to ensure the speedy passage of the Bill through this House and the other House, although I have some work to do to get it moving in the other House.The Senators made some very useful suggestions. I did not expect such a comprehensive debate on a technical Bill but it has been very useful. This House has been very progressive, especially in the area of technology, modernisation of our procedures——

Mr. Ryan: Copyright.

Mr. T. Kitt: ——and copyright, although I hope we left our mark on that also. I thank the Senators.

Question put and agreed to.

National Consumer Agency: Motion.

Mr. Leyden: I move:

That Seanad Éireann:

— welcomes the publication of the report of the consumer strategy group and is in agreement with the group that in order to ensure the needs of the modern consumer are met, it is essential that a new agency with an expanded remit be established;

— congratulates the Minister for Enterprise, Trade and Employment, on the decision to establish a new statutory national consumer agency to promote and protect consumer interests;

— maintains that the new agency will ensure for the first time that the interests of consumers will be brought to the forefront of national and local decision making in Ireland;

[Mr. Leyden.]

— supports the establishment of the board of the new national consumer agency on an interim basis until such time as the necessary legislation can be enacted to establish the agency on a statutory footing;

— believes the new agency will act as a forceful advocate for the consumer and that it will have the necessary powers, functions and support to challenge vested interests and to ensure that the consumers voice is heard;

— notes the comprehensive nature of the entire consumer strategy group report which contains over 30 separate recommendations and welcomes the decision to establish a high level interdepartmental committee to examine all the group's recommendations and to report back to Government with a detailed implementation plan within three months;

— supports the decision of the Minister to engage in a public consultation process on the future of the groceries order and notes that process is expected to be completed within two months;

— and urges the Minister to continue to bring forward initiatives in the area of consumer awareness, advocacy and education which will help to demonstrate to consumers that further progress can be achieved.

With the permission of the Acting Chairman I will allow the Minister make his contribution.

Acting Chairman (Labhrás Ó Murchú): The motion will require a seconder.

Mr. Leyden: In that case I will speak on the motion. I welcome the——

Mr. B. Hayes: Acting Chairman, on a point of order, is it not the case that for a motion to be moved it requires a seconder to be present in the House?

Acting Chairman: We will not call for a seconder until Senator Leyden has used up his 12 minutes.

Mr. Leyden: I will make my contribution and I presume it will be seconded at that stage. The Senator should fear not.

Mr. B. Hayes: Given that the cavalry has arrived, I do not think there will be a problem but to formally move a motion requires a seconder to be present in the Chamber.

Mr. Leyden: To be correct, I am in the process of making my contribution.

Acting Chairman: That is what I asked the Senator to do.

Mr. Leyden: When I conclude I presume there will be somebody here to second the motion. We will allay the fears of Senator Hayes. I know he is very concerned about this matter but we are well aware of the procedures here and we intend to adopt them.

I recognise the publication of the report of the consumer strategy group entitled Making Consumers Count: A New Direction for Irish Consumers. I welcome the Minister, Deputy Martin, to the House and wish him well in his extensive Ministry. It is an enormous responsibility. Having served in the Department of Enterprise, Trade and Employment as Minister of State with responsibility for trade I am aware of his overall responsibility and the enormous effort involved with Enterprise Ireland, the IDA and all the other aspects of trade and regulations. I congratulate the Minister on his new Employment Permits Bill, which is a worthwhile proposal.

The report of the consumer strategy group is a milestone in Irish public policy. It is the first inclusive report written entirely from the consumer's point of view. Current consumer policy was not effective in meeting the needs of the modern consumer. Therefore, it is essential a new agency with an expanded remit be established.

Fianna Fáil is committed to making consumers count, so the change is in their pockets after purchasing goods. We are committed to making consumers count just how much value for money they are getting. This is evident from the establishment of the consumer strategy group by the Tánaiste and then Minister for Enterprise, Trade and Employment, Deputy Harney, in March 2004, in response to widespread public concern and reaction to what was termed rip-off Ireland.

The brief of the consumer strategy group was to make a proposal for development of a national consumer strategy for Ireland. At that stage, I also launched a name and shame campaign because I was concerned a serious problem in regard to prices existed, an issue I raised on numerous occasions in the House. The consumer strategy group in its report states that the Irish consumer needs to be rationalised and given support and encouragement to trigger a cycle in which well-informed consumers are not only more willing to spend their money but more likely to favour progressive suppliers who offer more choice, better quality, superior services and innovative products and services at fair prices.

Enhancing the position of consumers within society is not just a matter of lowering prices. There should be a marriage of strong legislation and informed consumers for policy to work. Consumer power in Ireland is currently weak. It is widely accepted that informed and empowered consumers are a powerful social and economic force. This Government policy should strengthen and empower the consumer, enabling individuals

to make better choices and be better able to obtain their rights.

Ireland's social partnership model provides an additional channel through which different groups can influence a programme for economic and social development. However, there is no direct consumer input into the social partnership process. The Government has, therefore, taken the steps to ensure consumers have a direct input into policy formulation and into decisions that have a major consumer impact. This is clearly evidenced by the decision of the Minister to engage in a public consultation process on the future of the groceries order.

The members of the Joint Committee on Enterprise and Small Business have already considered the groceries order. We are deeply concerned with any proposals to remove the ban on below cost selling, a matter the Minister is also considering. The committee has had numerous meetings, some attended by the Minister. We urge caution in regard to the removal of the order because it has proved very successful and its removal would be dangerous.

When the committee discussed the issue last week, the Chairman stated he was aware of a multiple selling items at more than 20% below cost. At that meeting, I stated I was concerned that the consumer strategy group was another semi-State organisation. I appeal to the Minister to make the group effective and efficient in its work. In the past we have tended to consolidate and amalgamate semi-State organisations. In that regard, this organisation is a new departure.

I hope the Minister will indicate to the House the projected cost of the consumer strategy group and the benefits that will accrue to the economy due to its establishment. A voluntary organisation is currently in operation, the Consumers Association of Ireland, which is neither well funded nor supported. I understand from my dealings with it that it is a small organisation, which has worked exceedingly hard in difficult circumstances but has not received the support of Irish consumers. Its funding is approximately €60,000 per annum. The Minister and his officials might consider the matter. If he cannot provide the information today, he might do so in the future. While the Consumers Association of Ireland was well-intentioned, it was not in a position to deliver a strong consumer organisation for the State or the consumer. In a sense, I understand the Minister's rationale in establishing the consumer strategy group.

The Joint Committee on Enterprise and Small Business met Ms Ann Fitzgerald, chairperson of the consumer strategy group, on Wednesday, 22 June last. The committee was concerned with certain aspects of her report, including the compilation of the basket of goods used as a comparison to, in a sense, question costs in this economy. We questioned the inclusion in that basket of items such as an electric toothbrush, Bacardi rum and other items. From a press statement reported in *The Irish Times* on 23 June last, I believe Ms Fitzgerald is now having second thoughts on the recommendations she made to the Minister in this regard. We should compare like with like. This economy has a minimum wage of some €7.65 compared to one of approximately €3.50 in Spain. It is not fair to compare these. The article in *The Irish Times* stated: "The chairwoman of the Consumer Strategy Group (CSG) has called for a compromise on the question of abolishing the Groceries Order to give both consumers and retailers a 'fair deal'." I welcome that statement.

The Minister comes to his Department with a fresh approach. While he may feel it is of no benefit to consumers to retain the groceries order, the general consensus of the Joint Committee of Enterprise and Small Business was that we should retain the order as a cornerstone of the industry. We see no benefit in tampering with the order, which has served the consumer well. To remove it might sound the death knell for small rural shops, which are under major threat at present.

Concern about the order was expressed by the Minister for the Environment, Heritage and Local Government, Deputy Roche, with regard to the size of hardware stores. However, that did not apply to groceries. The Minister might indicate that the present structure and size of stores are generally accepted in the State and have proven quite successful. There is no reason to increase the size of stores, a point the Minister should consider.

Small shops in rural areas are under pressure and have been so for a long time. In my area of County Roscommon, Donamon has only a small shop left. The post office is gone and two other shops are closing. Small shops in places such as Ballinaheglish are gone and many rural areas are devoid of small shops. If the Minister removes the order at this time, it will signal the end of stores which have been successful in fighting competition from the multinationals.

Roscommon town is an interesting example of what is happening in the grocery industry. Tesco has arrived in the town and is being followed by Dunnes Stores, which will probably be followed by Aldi and Lidl. It is undoubted that this is a boost to the town and has created much-needed employment, as well as giving consumers choice. Where consumers were travelling to Athlone, Longford and Galway, they are now shopping in the town and customers are being attracted from the surrounding areas. To my knowledge, this has not to date caused any closures in the locality and local shops are quite happy to compete with those organisations provided the groceries order is retained.

The Minister is establishing the consumer strategy group on a non-statutory basis but a statutory framework will be provided in due course. The combined wisdom of the Joint Committee on Enterprise and Small Business believed that the groceries order should be retained. The members had no vested interests, other than the interests of consumers and those in rural areas. If

[Mr. Leyden.]

the Minister changes the current position, it will be to the detriment of small businesses. The national consumer agency will act as a powerful resource for consumers and as a strong voice on their behalf. It will have ready access to information on goods and services, and on prices and quality.

By his presence the Minister recognises the position of this House. On behalf of this House I thank the Minister as I know there are demands on his time.

Mr. Hanafin: I second the motion. The consumer strategy group is very important and I commend the Minister on his work in this regard. This agency ensures that, for the first time, the interests of consumers will be brought to the forefront of national and local decision-making in Ireland. The Minister announced that the board of the consumer strategy agency would be established immediately on an interim basis, until the necessary legislation could be enacted to establish it on a statutory footing. The interim board is chaired by Ann Fitzgerald, CEO of the Irish Association of Investment Managers, who also chairs the consumer strategy group. Membership also included the existing Director of Consumer Affairs, Ms Carmel Foley, whose powers and functions are to be incorporated into the new agency. Paying tribute to the contributions of successive directors of consumer affairs, the Minister stated:

> It is critical that, in moving towards the expanded remit envisaged by the NCA, we build on the valuable work done by the Office of Consumer Affairs. Carmel Foley will bring valuable expertise to bear on the work of the interim board. Her office was established in 1978 and was designed to suit the economic circumstances of the day. It is right that that model be modernised to reflect our modern economy and to meet the needs of modern consumers.

I reiterate and support the words of the Minister. Other members of the interim board who were announced subsequent to the launch of the consumer strategy group will add significantly to the work done. The Minister stated that he was "determined that the new agency will act as a forceful advocate for the consumer and that it will have the necessary powers, functions and support to challenge vested interests and to ensure that the consumer's voice is heard". In acknowledging that legislation to formally establish the new agency could not be produced overnight the Minister stated it is important that the momentum on the consumer strategy group be maintained and he expects the interim board to immediately begin planning for the final structure and operations of the new consumer agency.

The Minister expects that the interim board would carry out some initial work in the area of consumer awareness, advocacy and education which would help to demonstrate to consumers that real change is under way. We should also applaud the strategy group for the comprehensive nature of its report. The report contains over 30 separate recommendations and clearly demonstrates the extent to which the consumers' interests are entwined with every facet of economic, political and social life. The extent of the consumer strategy group recommendations required a co-ordinated response and the Minister established a high level interdepartmental committee to examine all the group's recommendations.

On the groceries order, the Minister said "the consumer strategy group has recommended that the order be revoked in its entirety. However, the report acknowledges that there are strong arguments to be made on either side of the debate". I have given an opinion on the groceries order, namely, that if there is any change it should assist the lower paid. In other words, it should apply to foods that are in every basket. Naturally this will assist those who earn €100,000 per year as well as those on the minimum wage. The same is true of social welfare payments, which assist those who need them, even if there is also abuse of the system. Any changes in the groceries order should specifically include food items from which the less well-off can benefit. If supermarkets wish to use these as loss leaders, so be it. If we must make changes it must be with the purpose of assisting the less well-off.

I commend the Minister on his work in this regard and his continuing efforts on behalf of the consumer.

Mr. Coghlan: I welcome the Minister to the House and thank him for listening to the debate on this important subject. I move amendment No. 1:

> To delete all words after "Seanad Éireann" and substitute the following:
>
> "• condemns the Government for the imposition of a plethora of stealth taxes;
>
> • notes that Ireland is now one of the most expensive countries in the European Union;
>
> • regrets that Dublin is among the most expensive cities in the world;
>
> • regrets that the Government rejected Fine Gael proposals for the establishment of a consumer rights enforcer;
>
> • calls on the Government to desist from the imposition of increases in taxes and charges above the rate of inflation; and
>
> • urges the Government to set up speedily the consumer council and notes that the council is very similar in nature to the consumer rights enforcer proposals of Fine Gael."

The position in Ireland in 2005 is as follows. Two years ago the Government promised to keep down personal and business taxes in order to strengthen and maintain the competitive position of the Irish economy. In the following two years it implemented 34 stealth tax increases which cost the average family €1,800 per year. The average tax contribution per household last year was up €2,800.

Between 2001 and 2002, Ireland overtook the UK and Sweden to become the third most expensive country in the EU for consumer goods and services. By 2003 Ireland was almost on a par with Finland as the most expensive country within the euro zone, both countries being significantly more expensive than the next group of euro zone countries. Dublin is now the 21st most expensive city in the world. The capital is more expensive than Los Angeles, Paris, Miami, Singapore, Honolulu, Vienna, Helsinki and Abu Dhabi. Dublin is the fourth most expensive capital in the EU, behind only London, Paris and Copenhagen.

Ireland has gone from fourth in 2000 to 30th this year in the World Economic Forum's global competitiveness report, due mainly to the Government's failure to control prices. The National Competitiveness Council states Irish prices rose 22% more than those in other EU countries in the years 1999-2003. Economic consultants Compecon state the lack of competition in the banking sector is costing small business €500 million. The National Competitiveness Council states in its 2004 annual report that the need to recover cost competitiveness is crucial to the country's medium-term economic future.

lreland came 14th of 15 countries in terms of broadband penetration in a survey by the European Competitive Telecommunications Association. Ireland has only 63,610 broadband telephone lines while Denmark, a country of similar size, has 839,170. It is against this background that the Fianna Fáil Members have decided to pat themselves on the back and congratulate the Minister on commissioning a report. He is not being congratulated for doing anything, just for commissioning a report. Let us get real here.

The findings of the consumer strategy group and the recent publication of the Investment Funds, Companies and Miscellaneous Provisions Bill, which will increase fines for breaches of consumer law, show that some in Government are finally listening to what Fine Gael has been saying for some time. However, it is a great shame that it has taken this long for the Government to take an interest in the plight of consumers.

In the Dáil last November, it voted down Fine Gael's Consumer Rights Enforcer Bill which the consumer strategy group now appears to be recommending. At the time, Minister of State at the Department of Enterprise, Trade and Employment, Deputy Tony Killeen, referred to "comprehensive measures and policies already in place and envisaged, both domestically and internationally, to protect and represent consumer interests" and instructed Fianna Fáil and Progressive Democrat Deputies to vote down our proposals. Our Bill would also have increased fines for breaches of consumer law, such as failing to display proper price lists, which are far too low at present. The Government should now move to adopt Fine Gael's entire agenda to ensure consumers get the voice they need, a consumers' rights enforcer, increases in penalties across the board, consumer representation at social partnership talks, the removal of local price cartels through action by local authorities, regular price league tables to give them information needed to make an informed choice, and an end to stealth taxes that have done so much to create an image of Ireland as overly expensive. However, given the Government's reluctance to act on our Bill before Christmas, I strongly suspect the consumer strategy group's recently published report will gather dust.

I regret the decision not to appoint a representative of the Consumers Association of Ireland to the interim board of the national consumer agency. This omission implies that none of the association's good work has been recognised.

Senator Leyden referred to last week's meeting of the Joint Committee on Enterprise and Small Business. That meeting established that there is a strong feeling that the analysis by the consumer strategy group was deeply flawed. The report failed to provide any analysis of food price inflation, which undermines its conclusions. The prices of internationally branded products were incorrect because of the inclusion of products such as Bacardi rum and electric toothbrushes. Senator Leyden's annoyance in this regard was quite explosive. The price comparison in the report did not take excise duty into account.

Food prices at retail level are falling. Since 1994, inflation on goods not covered in the groceries order is 15% higher than on goods covered by the ban. The CSG report stated that France had announced that it would remove its ban on below-cost selling, but this is not the case according to what we heard last week from Mr. Ciaran Fitzgerald of IBEC. Prices are higher in Ireland because costs are higher here. Pay costs have increased at a far higher rate than equivalent rates for the rest of the European Union. These costs must be tackled if the price of goods is to fall.

The groceries order stops large retailers pricing smaller players out of the market before upping prices. Predatory pricing campaigns will lead to the closure of smaller entities. Britain, as we know, does not have a ban on below-cost selling and as a result of predatory pricing there, 42% of its villages no longer have a local shop. The abolition of the groceries order will give more power to the larger retailers and enable them to squeeze the smaller shops out of the market and put a tighter squeeze on food producers. We would not want to see our producers abused if this were to happen here. The removal of the order would threaten thousands of jobs in the food producing

[Mr. Coghlan.]

sector. Additional jobs in servicing the food sector and in farming would also be seriously affected. At stake is a potential €12 billion shift in the balance of payments.

There was no evidence in the report of the consumer strategy group that abolishing the ban would bring about a sustained level of lower prices. It was conceded at the committee meeting that meat, fruit and vegetable products, which are not covered by the order, are rising at a higher rate than groceries order goods. The groceries order has not prevented Aldi, Lidl, Tesco or anyone else from competing in the Irish market. Last week's committee meeting exposed the flawed thinking and analysis with regard to the conclusions reached in the CSG report.

The motion put forward tonight is somewhat arrogant. No consumers will thank the Government for commissioning a report. Neither will they thank the Senators on the Government side of the House for droning on about it. It is time to act.

Mr. J. Phelan: I second the amendment. The usual nature of a Government motion on Private Members' time is to be self-congratulatory, but tonight's motion takes the biscuit. If the first paragraph were published in any national media, the jaws of the public would drop as low as the ground. The public would be amazed that the Seanad, after eight years of a Fianna Fáil-Progressive Democrats Government, would welcome the publication of a report on consumer awareness. If that is the level at which the Government is tackling the issue, it is completely out of touch with the reality of the costs faced by households, businesses and consumers in general.

I could, possibly, be persuaded to agree with some of the points made in the motion, but the general tone of welcome for a report is pathetic. This Government is continually one step away from making progress because it is always moving towards another report. One of the points of the motion urges the House to welcome the fact that a high level implementation committee will be set up that will report back to Government within the next three months. Therefore, we must wait another three months for a further report to see whether the recommendations of the group that was set up will be put in place and before action is taken. This is pathetic.

The main reason I find the motion somewhat strange and disturbing is that it welcomes and supports the establishment of the board of the new national consumer agency. I cannot understand why the board is being established, but everything else is being left until later. Why is it that the quango that will be packed with the usual suspects will be up and running first, whether for just three or six months? It will float along on its own before the necessary regulations, legislation or powers necessary for successful enforcement by the agency are introduced.

This Government has been in office for eight years. I do not want to single out the Minister as he is relatively new in his position as Minister for Enterprise, Trade and Employment, but he sat around the Cabinet table with his predecessor who held his portfolio for seven years, but did virtually nothing for consumers. Her advice to them was to shop around. She may feel she got away with that, but, to borrow a phrase, the people are waiting in the long grass for the next opportunity. We will have to wait and see what happens when the opportunity comes.

My colleague, Senator Coghlan, outlined the different stealth taxes and increased costs for which this Government is responsible. I will not rehash that list. The amount is substantial. Over €2,000 in extra taxes were collected from every household in the country last year as a direct result of Government policy. If this Minister is to do something during his term in office, he should usefully address some of the charges that have been introduced. They affect a variety of areas. Local authority charges such as development charges directly impact on people trying to provide themselves with a home and have a further detrimental effect on the cost of housing. As my colleague pointed out, Dublin and Ireland are among the most expensive places to live in the world. It is unacceptable that at this point in time we are waiting on the publication of another report before the Government will take any definitive action in the area of increased charges.

ISME recently conducted a survey of its members. One result of the survey was to show the abject failure of the Government to protect our international competitiveness thereby placing approximately 35,000 small firm jobs in danger. The same survey showed that most small business people consider the Government acts as a regulator with regard to small business rather than a facilitator. Mr. Jim Power, an often quoted individual on economic issues, said recently:

> Irish Competitiveness has been seriously eroded by a sharp increase in the overall cost base, which will not be reversible. To ensure the future prosperity of the Irish economy it is absolutely essential that investment in education to upskill the workforce, and a correction of the very damaging infrastructural deficit are given immediate real priority, not just lip service.

There have been some improvements in that regard in recent years, but it is clear from today's media reports about the projected cost over-runs in respect of an infrastructural project in Limerick city that a great deal remains to be done. It is difficult for Ministers and politicians to tell the public to "shop around", to use the Tánaiste's phrase, when Government agencies and bodies often fail to make the best use of public resources. It seems that the contractor in the Limerick case will have to be given substantial compensation from central or local govern-

ment. There is a great deal of room of improvement in this regard.

The Minister is aware that my colleague, Deputy Hogan, has been highlighting this issue for a number of years. He launched a Fine Gael website, *www.ripoff.ie*, as part of his campaign. The Government denied the existence of rip-off Ireland for the first couple of years of the campaign. A Minister said the same thing recently. The reality for most people is that rip-off Ireland very firmly exists. People are talking about it tonight almost as much as they are talking about the fine evening we are having. I would like to give a couple of examples of rip-off Ireland before I conclude. A consumer was charged almost €19 for a small organic chicken in a local supermarket.

Minister for Enterprise, Trade and Employment (Mr. Martin): How small was it?

Mr. J. Phelan: A customer in Dublin paid the ludicrously high amount of €11.50 for the entrance fee to a local pub and a soft drink.

Mr. Martin: Was that a charge to get in?

Mr. J. Phelan: A new homeowner——

Mr. Martin: Can the Senator clarify that?

Acting Chairman: Can the Senator repeat that for the Minister?

Mr. J. Phelan: A person paid €11.50 for the privilege of entering a pub in Dublin and buying a bottle of coke.

Mr. Martin: Why would the person do that?

Mr. J. Phelan: It has been paid.

Ms Ormonde: There is something strange about that.

Mr. J. Phelan: I think it is too high. A new homeowner who e-mailed *www.ripoff.ie* complained that the builder of the house asked for €70 to install a doorbell after he had paid the actual cost of the house in the first place. I could give numerous other examples, but I do not wish to get bogged down.

We need to do more than back-slapping. I am conscious that the Minister, Deputy Martin, has not been in his post for very long. It is time for action — it is not just about appointing boards or asking for further reports to be commissioned. The Minister can carve out a bit of a niche for himself on this issue by tackling it head-on. There is genuine and real concern in this regard. We can all give examples of people being ripped off on a daily basis in this country.

Mr. Martin: I thank Senators for their contributions to this debate so far. I thank Senator Leyden for moving the motion and Senator Hanafin for seconding it. I also thank Senators Coghlan and John Paul Phelan for their contributions. It is interesting that a congratulatory motion has evoked such a negative response. Some people are fed up of the overly condemnatory motions which have been part and parcel of adversarial politics for a long time.

Mr. Leyden: Hear, hear.

Mr. Martin: One could argue about the futility of such motions. All Senators should welcome the opportunity the motion before the House has given them to discuss consumer issues. Before I speak about the details of the proposed consumer agency, I would like to introduce a sense of perspective to this debate. Senator John Paul Phelan spoke about the "abject failure of the Government". The bottom line is that the economy has been powering ahead. It has been transformed over the last decade. Those who come to this country consistently comment on the Government's significant pro-business and pro-enterprise attitude, which has been maintained over a period of time. Such people compare our attitude favourably to that of other governments in Europe. They have spoken about the agile nature of our systems and their responsiveness to the enterprise and business agenda. Over 450,000 additional jobs have been created since 1997.

Mr. J. Phelan: Nobody questions that.

Mr. Martin: This country's unemployment rate has decreased to 4.2%, based on the number of people on the live register. That is action, not procrastination. It is not the case that we have been waiting for reports — we have been taking action. There are more people in work than ever before in the history of the State.

Mr. J. Phelan: The Government has had little or nothing to do with that.

Mr. Martin: We need to introduce a sense of perspective to this debate. I acknowledge that wages have increased, as Senator Coghlan said, as we have moved into a high-value economy. We have signed up to social partnership, about which various people have different views. I know that Fine Gael has big problems with social partnership — it opposed benchmarking, for example.

Mr. J. Phelan: We did not oppose benchmarking.

Mr. Martin: It did not want public servants to get any reasonable pay increases.

Mr. J. Phelan: We opposed what was on the table.

Mr. Martin: That is fair enough. Fine Gael is entitled to its position on such matters, but it cannot play both sides of the fence, as it is increasingly attempting to do. Its key point

[Mr. Martin.]

relates to charges. I would be the first to acknowledge that difficulties are being caused by high electricity, utilities and energy charges. Such costs are out of line with those being charged in our competitors abroad, particularly in the UK. The Senators opposite need to bear in mind that they control a significant number of local authorities. They have been boasting about that for some time.

Mr. J. Phelan: That is absolute rubbish.

Mr. Martin: The Senator should hang on a second.

Mr. J. Phelan: It is nonsense.

Mr. Martin: I have seen no evidence in the past 12 months——

Mr. J. Phelan: The Minister is talking rubbish.

Mr. Martin: ——of any effort——

Mr. J. Phelan: Local authorities have to depend on central Government for virtually all of their funding.

Mr. Martin: ——to try to maintain commercial rates at the current level.

Mr. J. Phelan: The Minister is talking nonsense.

Mr. Martin: The Fine Gael-controlled local authorities have made no attempt to do that.

Mr. J. Phelan: That is nonsense.

Mr. Martin: They have not introduced a development charge, or whatever one likes to call it. One can talk about macro-policy all one likes, but I know from my experience as a former member of a local authority that the instinct of certain parties on local authorities — I refer to parties with which Senator Phelan's party is anxious to coalesce — has always been to increase expenditure. They have never voted for a cut in local authority expenditure. They keep shouting and roaring for services here and there, but they have never made tough decisions on local authorities. Such decisions have always been left to the current Government parties.

Mr. J. Phelan: That is rubbish.

Mr. Martin: We will watch with interest. As Minister for Enterprise, Trade and Employment, I am particularly interested in this area.

Mr. J. Phelan: The Minister is talking nonsense.

Mr. Martin: Many businesses throughout the country are keen to ensure that they are not disproportionately hammered in terms of either the commercial rate or other charges, which can be seen as a soft options by members of local authorities. As Minister for Enterprise, Trade and Employment, I have travelled the country to meet various interested parties. I am aware that there are strong views. If Senators from every political party are sincere about what has been said in the House this evening, they are obliged to get the message across at local level, as I have been doing.

The consumer strategy group was appointed by the Tánaiste in March 2004 to advise and make recommendations for the development of a national consumer policy strategy. It is important that we should have an in-depth and informed perspective on this matter. The catalyst for the establishment of the group was the increase in concern about the core issue, which is the position of the consumer in the decision-making process in this country. The group considered whether Irish consumers are getting a fair deal. The group's report, which was published on 18 May last, contains over 30 recommendations relating to a variety of Departments and State agencies. It covers practically every facet of consumer activity. The motion rightly notes the comprehensive nature of the group's report. I wish to express my gratitude to the members of the group for their work. In particular, I thank its chairperson, Ms Ann Fitzgerald, for her enormous contribution.

As I have said, the question of whether Irish consumers are getting a fair deal has been the subject of much recent debate. Those who have read the report of the consumer strategy group are aware that on the basis of its research and analysis, the group has found that Irish consumers are not getting a fair deal in many areas. The analysis in the group's report of the price of a range of consumer goods and services found Ireland to be among the most expensive countries in the euro zone, if not the most expensive. It is a very persuasive and compelling analysis. Senators on the other side who complain about stealth charges contend that the report is flawed because it suggests that Irish consumers are being charged too much. There is no coherent or clear view emerging from the Opposition. I accept that the group's survey of prices in various European countries is compelling. We cannot dismiss this issue.

When I listened to "Morning Ireland" this morning, I heard visitors to this country talking about their perceptions of Ireland. Some them said that restaurants and pubs are quite expensive. A lady from Munich said she though that meals in Ireland were more expensive than those in Munich. She said she thought bed and breakfasts were excellent value for money, however, so it was not all one-way traffic. Value for money is offered in those areas in which competition is found. The communications sector is far more competitive than the energy sector, for example. We need to have a certain sense of balance as we

approach this issue. In this regard it was interesting to listen to the anecdotal and random survey that was conducted by an RTE reporter this morning. Four or five holidaymakers in the west were asked about the cost of eating out and consuming alcohol. The principal factor in this is that current consumer policy is seriously deficient and does not adequately meet the needs of modern consumers. It analyses current policy and finds that one of the main reasons for the deficit in policy stems from the group's belief that the consumer agenda and consumer protection is not embedded in our economic model. The report stresses the need for the balance of power to be shifted towards consumers and the need to awaken consumers to the potential economic and social power they can wield. People should not pay €11.50 to go into an establishment to have a pint. We have a choice here. If people began to exercise that choice, businesses might operate differently in regard to charges and so on. The balance of power must be shifted, and consumers have power. This power must be structured so that it can be wielded effectively. The Bi-Annual Average Price Analysis, published last month by the CSO, demonstrated the value that can be obtained by informed consumers on different goods and services when they use that power.

Having analysed current policy, the group, as required by its terms of reference, has suggested a way forward. I welcome the fact that in mapping out its vision of the future, the group has eschewed the calls of some commentators for the reintroduction of price controls. I concur fully with the group that freely functioning competitive markets are more effective at setting fair prices than any form of price control. A look back at the history of price controls clearly demonstrates that they have not been an effective weapon for keeping prices down as experience has shown that the maximum price often tended to become the minimum price. I, therefore, welcome the fact that in framing its report the group concentrated on recommendations and initiatives to empower and strengthen the voice of consumers. The group rightly identifies the biggest challenge in this area as ensuring that consumers are well-informed, empowered and confident so that they can act for themselves, that they can and will insist on good value for money, that they will expect to be treated fairly and that they will know where to go for support.

6 o'clock

The group has made a number of specific recommendations as to how this challenge should be met. The core recommendation is that a new national consumer agency be established. The group has outlined in detail in its report its vision as to how the new agency should operate. The group envisages that the NCA will incorporate the existing functions of the Office of the Director of Consumer Affairs but it will also have an expanded role and additional statutory functions. The group, in recommending the establishment of a new agency, is adamant that in order to be able to provide the services consumers need, the NCA must undertake functions of consumer advocacy, research, information, enforcement, education and awareness.

In the area of advocacy, the group recommends that the NCA must have a statutory function to act as a forceful advocate for the consumer in public debate and in the preparation of legislation and also that the agency be empowered to advocate the consumer's case with regulated industries and individual regulators. In the matter of research, the group is of the view that the credibility of any advocacy, information, awareness campaigns on which the NCA might embark must be grounded in well-founded research and that without the ability to carry out such research the NCA could not hope to challenge vested interests who invariably spend considerable amounts of money in this area. On the question of information, the group is strongly of the view that consumers only benefit from competition in the marketplace when they are informed and that the NCA has a pivotal role in providing information to consumers.

In regard to enforcement, the CSG found that enforcement of consumer protection rights and ready access to redress for consumers with complaints are most important in gaining and maintaining the confidence of consumers. The CSG recommended that the NCA builds upon the enforcement work currently being carried out by the ODCA. Another important support which the CSG recommends the new agency should provide to consumers is in the area of education and awareness. The group is of the view that mandating the agency to educate and raise consumer awareness will develop greater confidence among consumers to help them feel secure in the choices they make. The group made a very strong case that any new agency, to be fully effective as a robust champion of the consumer, must be statutorily mandated to undertake the specific functions detailed above. I support fully the views of the group on this matter.

Senators will be aware that the Government has agreed in principle to the establishment of a new national consumer agency. I appreciate the support for that decision in the motion. My Department has already commenced the necessary preparatory and organisational work to ensure that the NCA is established as soon as possible — this is one report that will not be left on a shelf — and that the recommendations of the group as regards the structure, scope and functions of the new agency, including those to which I have already referred, will be taken fully into account in that work.

Notwithstanding my determination to ensure that the new agency is up and running as soon as practicable, I am conscious that this may take some time. I am anxious that the consumer momentum, which has built up through the valuable work of the group and the publication of its report, should not be dissipated. For that reason, I recently appointed a board for the new agency to act in an interim capacity until such time as

[Mr. Martin.]

the NCA is established on a statutory basis. I am pleased the chairperson of the consumer strategy group, Ms Ann Fitzgerald, has agreed to act as the chairperson to the interim board and also that the board will have the benefit of the valuable experience of the current Director of Consumer Affairs, Ms Carmel Foley.

Mention has been made of the Consumers Association of Ireland. I deliberately set out not to make the agency a representative-type body, as in picking a nominee from different organisations. I want to get a cross-section of disciplines, from ordinary people on the street who would be representative of people who go shopping every day, to columnists and people who have a particular interest in consumer affairs. I believe we have struck the right balance. We will continue to support the Consumers Association of Ireland in its work through funding. We will work with the association to see what more we can do. Sometimes some agencies do not lend themselves to a representative nominee-type approach. This may not always result in the kind of cross-discipline model or composition one would like. This is the reason I took a particular line. While one could argue that the Consumers Association of Ireland is not formally represented, the personnel include people who have also been members of the association. One member is on the board because of his personal characteristics, abilities and interests as opposed to having been a member of the association.

I have requested the interim board to immediately begin planning for the final structure and organisation of the fully-fledged national consumer agency. I also hope the interim board will start to develop some initiatives in the area of consumer advocacy, research, awareness, etc., as envisaged by the CSG and as urged in the motion. I am confident that the establishment of an interim board and the work undertaken by that board will be an important and tangible demonstration to consumers that real change is underway and that the focus will firmly be on the needs of consumers. I am also certain that the interim board, through its work, will enable the national consumer agency to hit the ground running once it is established in law.

In conjunction with setting up the interim board and preparing the legislative and other work to establish the NCA, consumer policy continues to develop. Many developments and protections in this area emanate at European level. It is not surprising given the commitment in the Amsterdam treaty that consumer protection requirements be taken fully into account in all future Community policies and activities. An example of a recent EU consumer protection policy development is the adoption last month by the EU Council of Ministers of the directive on unfair commercial practices. This important directive, which will establish a legal framework for the regulation of unfair business to consumer practices across the European Union, is an illustration of the concrete benefits which membership of the EU is bringing to Irish consumers.

In addition to developments in European consumer law, it is vital that domestic legislation in the area of consumer protection is attuned to the needs of modem consumers as advocated by the group in its report. In this regard, my Department is currently engaged in a comprehensive review of all existing consumer protection legislation. As the extant code of consumer protection law is spread over a considerable number of different statutes, some of which date from over a century ago, it is vital that the code of law be reviewed and codified to ensure that consumers fully understand their rights and that traders understand the obligations placed on them by those rights. I intend to ensure that this review is completed as quickly as possible as recommended by the CSG in its report.

In addition to the issues I have already mentioned, the CSG report deals with a whole range of other issues-sectors which affect the quality of life for Irish consumers. In total, the report contains more than 30 different recommendations involving a variety of different Departments and Government agencies whose activities directly impact on the interests of consumers. The extent to which consumer interests are entwined with practically every facet of economic, political and social life can only be appreciated by reading the full report of the CSG. It is not surprising, therefore, that the report's findings and recommendations cover such diverse area and sectors as health, planning, utilities, transport, food and drink, etc. Given the scope and breadth of the CSG's recommendations, it is clear they will require a co-ordinated response from Government. To that end, my Department has established a high level interdepartmental committee to examine and advance the various recommendations in the CSG report. I have asked the committee, which has already commenced its deliberations, to report back with a detailed implementation plan within three months.

While the establishment of a new national consumer agency is one of the core recommendations contained in the report, another significant recommendation, which has been the subject of much recent comment, relates to the future of the groceries order. It is no secret that there have been different and opposing views expressed by many parties and interests as to the future of the order. Undoubtedly, the group has come to a definitive view on the matter by calling for the order to be revoked in its entirety. I appreciate that notwithstanding its conclusions on this matter, the CSG reflects in its report that arguments can be made for retaining as well as revoking the order. It is my view that the arguments for and against the order are many and that given the importance of the matter they require serious and careful consideration. For that reason, I launched a public consultation process last month on the future of the order. I am aware that a number of parties have questioned the need for

a consultation process on this matter and have expressed concerns that engaging in such a process could delay any decision on the future of the order. This is not the case. Senators should be aware that the Attorney General has advised that any amendment to the order, even its abolition, would require primary legislation. In any event, consultation is appropriate.

I have instructed my Department to conclude the consultation process on the order by the end of next month. Following the process I intend to bring proposals to Government on the future of the groceries order. I am glad the consultation process is supported in this evening's motion and I am sure it will involve all parties, particularly groups like consumers whose voice has not yet been heard in this debate. In these circumstances, the consultation process will greatly assist the decision-making process on this issue.

I encourage all those who engage in the consultation process to give some lateral thought to it and I urge that they not confine themselves to merely considering the retention or revocation or the order. They should also give some thought to amending or replacing the order and to what such an amendment or replacement might be.

I am glad that this evening's motion has provided the opportunity for me to outline to the House the policy initiatives being brought forward by the Government in the area of consumer protection. I welcome the support of the initiatives as expressed in this evening's motion. The work of the consumer strategy group is undoubtedly of critical importance and its report will be a reference for future development of consumer protection policy. The report presents the opportunity to build a new environment of consumer protection and assist consumers in empowering themselves so that they can perform their daily activities with the confidence that they will receive a fair deal. We will seize the opportunity presented by the consumer strategy group's report to shift the balance of power towards consumers.

A strong consumer ethos will benefit not only consumers of goods and services but will also benefit providers of such goods and services. A direct correlation between consumer power and thriving markets and businesses undoubtedly exists. It is therefore important to acknowledge that the group's work will not only benefit every consumer but valuably contribute to the continued development and success of our economy and society. I thank the Senators for facilitating the opportunity for this evening's debate.

Mr. Quinn: I welcome the Minister and I welcome this debate. There is not much doubt about what the question is here. I will speak only about the groceries order because it is something I know about.

Senator Coghlan stated that prices are high in Ireland because costs are higher. However, prices are higher in Ireland in similar areas because sufficient competition does not exist. Taking the example of what happened in the airline business ten or 15 years ago, we used to pay £239, if I remember correctly, to fly to London. Two airlines could be used and both charged the same price, agreed between them. Competition was introduced, and a person can now travel to the same destination for a far lower price.

The decision on the groceries order is a difficult one that I know will not be popular no matter which way it is decided. With the decision being made, the Fianna Fáil and Government spokesman talks about urging caution, even after all these years of debate. On the other side, Fine Gael puts down an amendment which does not refer to the groceries order. It is possible that people do not want to make decisions. The Minister will have to make a decision and he has done the right thing in putting a deadline on making the decision, which I see is only four or five weeks away at the end of July.

When I started in business in 1960 no groceries order existed. I wanted to compete and I had the choice of either taking out a £10,000 advertisement in the *Irish Independent* or selling 100,000 items at 10p less than cost price. I decided that the latter was a much better way to do business. It was more in the interest of the consumer, who got something at a lower price. I sold butter, sugar or whatever the popular item in those days was at 10p below cost. This aggravated the competitors but customers loved it. This strategy was not advertised because word of mouth was a better advertisement. Below-cost selling is a benefit to the consumer.

Legislation was then introduced which prohibited such a sales strategy because it was deemed not to be fair on others. In those days, a buyer would ask a supplier for a lower price on bulk orders. However, more legislation was introduced prohibiting the bullying of suppliers. The supplier was then not expected to give the buyer a lower price because it was not fair on the suppliers. We have made illegal things that actually created lower prices. Disadvantages did exist, and competitors, who may have been used to meeting each other to fix prices, felt such practices were unfair. In those days, a concept called retail price maintenance existed. In the 1950s legislation was introduced to eliminate this, with the result of more competition, lower prices becoming evident and customers being able to decide what they wanted to do.

An alternative to the selling of materials below cost is to give customers a treat, such as a cup of coffee, a glass of wine, a massage or a lift home, for example. One would not get such things in a supermarket of course. However, giving such things is legal while selling below cost price is not. This is not logical. It is necessary to let market forces play their role. This is the objective of today's debate, along with getting lower prices.

Disadvantages exist and Senator Coghlan has touched upon these. In Britain, when competition of that magnitude came about, Senator Coghlan indicated that 40% of towns and villages were

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without a local shop. The Minister would have to take this into account.

I have an answer to the below-cost selling rule. It should be abolished, but in doing so the Minister should introduce a stipulation that no limits can be placed on the amount that somebody can buy. I remember years ago I sold Zip firelighters at approximately 6p below cost. People came from all around to buy these. My competitor from up the street came in with wheelbarrows to load up ten cases of Zip firelighters. It cost my business money to sell them to the competitor. My business was unwilling to put a restriction on it, so the competitor told his friends who in turn bought more firelighters until the stock was sold out in a small amount of time. A restriction might have stipulated that only two boxes of firelighters be sold to every customer. If the groceries order were abolished and full competition was allowed, the big nasty supermarkets would be allowed to undercut everybody else, but they should not be allowed to place a limit on what people can buy. A local competitor can then go to the local supermarket, irrespective of whether it is a big international supermarket, and buy all the stock because it is being sold below cost. This is one way around below-cost selling that suits both the customers and smaller traders, but does not suit the big nasty supermarket selling below cost.

Mr. Cummins: The Senator's company was never one of the big nasty supermarkets.

Mr. Quinn: My company may have been big and nasty because it did sell below cost. I would still sell below cost. This below-cost legislation is unfair as it does not apply to companies that are not based in Ireland. If a company's headquarters is in Düsseldorf or London, the company can do as it likes. The Government can write to the company asking for invoices but a reply will not be forthcoming. A few years ago, the *Irish Independent* carried a story of a large chain in Ireland that was in breach of Irish legislation, but the Irish operator did not realise this because it happened in Britain. Legislation in Ireland stipulates that suppliers should not be squeezed for lower prices because the practice is not fair, but when the chain undertook a takeover it invoiced all its suppliers, requesting money to cover costs. This came about because such practice was not illegal in Britain. Although it was illegal here, the company did not break the law within the State.

These are a few reasons that if competition is to exist, it must be encouraged. Benefits will come with such competition. As Senator Coghlan pointed out, disadvantages will also come with such competition.

I have just returned from Hungary and I was recently at a grocery convention in the Czech Republic. Last year I spoke at an event in Thailand. In these countries, practically none of the grocery outlets is owned locally. All of them are big international companies. If that type of business in Ireland is desired, it will come about and we will have lower prices. Senator Coghlan will not be able to state that Ireland is the most expensive country in the world. Ireland will not be the most expensive country but the operators we deal with will not be based here. The Minister must make the decision. The groceries order should be abolished because competition will be created, as the grocery retailer will negotiate with the supplier, which will be good for customers. The voice of the customer has not been heard in this area clearly enough. While that would be beneficial, vested interests will howl about the disadvantages of abolishing the order, which is understandable.

The cap on the size of grocery stores is not mentioned in the motion. The limit on the size of stores is 3,000 sq. m. outside Dublin and 3,500 sq. m. in Dublin. The legislation probably makes sense because, as Senator Coghlan stated, in Britain the large stores have soaked up the grocery business in small towns. A choice must be made. If the Government wants to encourage lower prices in the grocery sector, it must abolish the groceries order. I have outlined a number of suggestions regarding how that can be done while protecting the smaller trader. It is the correct course of action because it will restrict international operators from breaking Irish law because they avoid breaking the law by buying abroad. The Minister has four weeks to make a decision. He will receive a report then and I hope he does not heed Senator Leyden's urgings to be cautious after all these years. He should make a decision and put the issue to bed.

Mr. Morrissey: I wish to share time with Senator Ormonde.

I support the motion, which covers many issues in the debate, including the consumer strategy group, the new national consumer agency, the national and local decision making process, consumer advocacy procedures, the high level interdepartmental committee and a public consultation process. However, the kernel of the debate is price, which determines a person's disposable income and a company's profits.

The only way to force prices down is through competition. For those of us who work in the marketplace, we have seen at first hand every day, especially over the past five to ten years, what has happened to prices in certain sectors of the economy. Where there is competition, prices fall. For example, prices are at the same level as ten or 15 years ago in a number of sectors because of competition. The process of establishing a consumer agency is being undertaken because of high prices. That is why the consumer strategy group was set up by the former Minister for Enterprise, Trade and Employment, Deputy Harney, and we await a further report from the group.

I propose a halfway house to address the issue of the groceries order. The invoice price does not take into account the bulk discounts offered by

suppliers at the end of the year. The order could be retained on below cost selling but the bulk discounts given by suppliers to grocery stores could be passed on.

Mr. Coghlan: That is why the multiples are so profitable in Ireland.

Mr. Morrissey: Uniquely, consumers believe the price they pay is too high as do suppliers who cannot pass on the bulk discounts. This issue of bulk discounts should be examined, given that competition has resulted in lower prices in many sectors of the economy.

The great detractors in the debate believe small stores will close if the order is abolished. I live in an expanding area in west Dublin, which used to be served by one small shop ten or 15 years ago. However, the community has sprawled and Spar, Centra and so on have opened stores while shops in the town centre remain open. The smaller stores are open until 10 p.m. but when people enter them, they do not know the prices of various products and many of them do not care because they are paying for convenience. They can shop around but they decide to shop locally because it is convenient, the shops have car parking and they are open late. They do not go to the town centre because of the traffic. For that reason, as the former Minister said, it is about shopping around. I do not have the same fears for small shops as heretofore. At the end of the day the consumer will decide. I ask the Minister to consider my halfway house proposal of retaining the order while ensuring discounts are passed on to the consumer.

I thank the Minister for introducing the work permits Bill 2005 earlier.

Ms Ormonde: I welcome the opportunity to contribute to the debate. Anything to do with the consumer is important because the bottom line is the consumer has not had a voice for years. Ireland has developed a reputation for a rip-off culture and for overcharging. This has resulted from a buoyant economy and the significant amount of disposable income available to people. The standard of living has increased, wages are high but transport costs are extraordinarily high. One can analyse the overcharging to death and provide reasons but, at the end of the day, the consumer does not have a voice. The consumer strategy group report proposes the establishment of the national consumer agency to give power to the consumer.

Mr. Coghlan: No consumer representative was appointed to the interim board.

Ms Ormonde: A representative will be appointed. The Minister has set up an interim board so that all the recommendations in the report will be implemented. This is the first stage and the Minister is moving towards consumer representation. What does the Senator want? Does he expect the Minister to snap his fingers and establish the agency overnight? The Senator knows better than me that is not the way to do business.

The Government has got its act together and is putting the agency in place. A redress mechanism will be provided for consumers. We were all overcharged in the past but we did not know how to complain because no mechanism was in place. However, procedures will be implemented, including access to the Small Claims Court. In the past nobody had confidence in lawyers and, therefore, they contacted the media to seek redress.

The consumer must be educated that he or she has choice. For example, Dublin has numerous restaurants, which are mushrooming in number. People need to be educated to question the price of meals and so on. I was surprised that the report found the price of clothes was low in Ireland. I do not agree because during sales 50% is knocked off the cost of a garment, which highlights that the mark-up is colossal. The report recommends that a regulator be appointed to deal with this issue.

The jury is out on whether the groceries order should be revisited. I am glad Senator Quinn has left the Chamber because I hate supermarkets. Small is beautiful. I would rather see small local shops in convenient locations. Maybe we should link up with development plans to ensure the infrastructure is in place to allow the local shops flourish. I do not want big supermarkets. I do not want the heavy guys to come in and destroy the fabric of society and rural communities.

Mr. Coghlan: The Senator should look at how expensive Dublin is where the large multiples dominate.

Ms Ormonde: We are in a position to put this right. We must educate our consumers, give them choice and tell them how to spend their money. Many people spend without thinking because they have so much spending power. We have been ripped off because the retailers saw us coming. They were smarter than us — they saw money in our pockets and increased their prices accordingly. There was no regulation or system.

This new agency will give a voice to the consumer. I am delighted that voice will be heard in the future. I have often wanted to go to the media to call for redress for high prices. Even if we do nothing else the consumer will be very glad we have put new structures in place. I hope the Minister will implement this proposal. I remain cautious about how we will revisit the groceries order. I want to protect the small trader, because small is beautiful in this regard.

Mr. Coghlan: The Senator could not estimate how many seats that might cost her party.

Mr. Ryan: I am somewhat less organised than usual but I know the Leas-Chathaoirleach will forgive me because he is always very forgiving.

I never subscribed to the left-wing mantra that we should control prices. I never did and do not now believe it. Even at the high point of the early days of left-wing experiments it never succeeded in eliminating the impact of levels of supply and demand on the real world.

Mr. Coghlan: The Senator is still a socialist.

Mr. Ryan: I live in the real world and socialists are the ones who must deal with the realities and cruelties of that competitive world. That does not mean one can deny what happens. There is a fair amount of evidence now that many people got rich in Britain during the Second World War by ripping off both the state and their neighbours. They charged what the market would stand for goods and services even though it was supposed to be regulated and controlled. The account of this profiteering was omitted from the record of the glorious sense of common purpose which people recall from the Blitz.

The State's role in the area of pricing is to ensure that consumers know before they reach the point from which they cannot retreat what something will cost them. We do not publicise prices adequately. The new agency could usefully produce at regular intervals a table of the best and worst prices in every town and city, and estimates of the margins operating on various products.

One can easily work out where the high margins are because one sees what proliferates. Margins on wine in off-licences must be high because every shop in the country seems to be getting a wine licence. This is in part a response to demand but that demand is for a product on which there is a substantial margin. If my local small shop is making a substantial margin on a bottle of wine it is hard to imagine what a restaurant is making on the same bottle. That is not to say we should control the price. We should empower consumers by giving them the maximum possible information.

The Internet is a flexible and easy way to provide that information. The lead price on many products can be extremely misleading. I am not complaining but recently I booked for myself and my family to fly to London in August. The lead price was €9 each way or €18 return. I ended up paying €350 for five of us. There were additional charges of €55 but nowhere on the Aer Lingus website could I find a breakdown of those extras.

I am not complaining because €70 for a return flight to London with Aer Lingus is not a bad price. However, the difference between the price of €18 return and the €70 I paid is difficult to explain. It does not empower consumers when they do not know for what they are paying and so cannot evaluate choices.

My view of this matter was considerably altered many years ago. I may have mentioned this before. I was in a restaurant with a national reputation in the west where the owner proclaimed loudly to some friends that it was hard to make a living in his business. It is true, running a restaurant is a tough business in principle and many do so only for love of the job.

This restaurant, however, which is in a tourist area, closed from October to May, and the owner made it clear because we all heard him, that he took off to the Canaries for those months while his children attended the most expensive boarding school in Ireland. That is not my definition of just making a living.

Many high quality restaurants provide a service and often just because people like the business. Restaurant reviews, however, suggest that there are more high price restaurants than high quality ones. It seems to be easy, particularly in this city, to get away with sloppy productions at outrageously high prices. I know this from reviews because I do not often eat out in Dublin for various reasons.

Let us by all means have competition and let that competition be based on consumer choice but let us remember that competition is not enough on its own. If one leaves pricing to competition in the marketplace gaps will appear. The groceries order, and surrounding arguments, is an example of this. I sympathise with Senator Quinn's position that it is unenforceable. We could deal with that by a proper licensing procedure, according to which multinationals wanting to operate in Ireland must sign a licensing agreement to the effect that they will operate the spirit and the letter of Irish legislation or they cannot enter the market. That might solve Senator Quinn's problem.

Until recently the Common Agricultural Policy was the most anti-consumer concept ever imposed on any section of suffering society. I recall being enlightened at a meeting of the Oireachtas Joint Committee on European Affairs some years ago at which a prominent member of the Irish Farmers Association familiar to Members of the Oireachtas, gave an erudite 45-minute description of the problem of food and agriculture without ever mentioning consumers or customers. According to him, agriculture did not involve customers, it involved producers.

If we allow producers, whether of agricultural products, banking services, or food in the retail area, dominate, the customer will be the victim. We must create a climate of information, fairness, proper regulation and reasonable local authority charges. These charges have run out of control because we have decided to reduce corporate, personal and capital taxes. The State's revenue has been reduced and has left it to its customers, particularly in the areas of water services, refuse services, etc., to make up the gap between what the State provides and the customer needs. This imposes large charges in the same way as the insurance industry because the State allowed the unregulated legal profession to charge whatever it wanted. There was a cosy arrangement in place

whereby there would be no complicated legal work and lawyers and any debt would be paid off while the consumer paid the overall price. There was no competition once this became the case. Hopefully, we are now turning this situation around.

Mr. MacSharry: I join with other Senators in welcoming the Minister of State, Deputy Killeen, to the House, as I welcome the opportunity to make a number of points concerning this motion, the consumer strategy group and its recommendations. I welcome the group's strategies but, in supporting the motion, I will point out that some of the group's findings are somewhat na ve and are not founded on the business reality on one hand and consumer reality on the other. It is one-sided in certain respects. This notwithstanding, the group's recommendations are good. I welcome the establishment of an interdepartmental group to examine the recommendations and determine how they can best be implemented.

Historically, Ireland is a nation of people who settle too easily for mediocrity, not just in terms of quality of products but particularly in terms of price. We do not question prices. People buy petrol without knowing the cost. Unlike me, some of my friends are good in this respect and know where the cheapest petrol or diesel can be found. It is only when I run out of petrol or am about to, that I stop to get more without looking at the price. A consumer agency such as that proposed is welcome. Education is the key to this issue. If we can be made aware of how high and low prices are, we can become more educated as a people and will not just settle for whatever price is placed in front of us.

The groceries order has served us well since 1987 but it is timely to review it. I commend the Minister of State for the way in which he is doing so. The process is open, transparent, invites submissions and consults with all interested parties so they can give their views on the matter to allow a decision to be reached. I do not know whether it will be in late July as Senator Quinn has said but it will be at some stage in the near future. The consultation process will be finished in late July. We will have a definitive outcome that will be representative of the views of all the interested groups and consumers at large and can advance from that point.

I do not wish to pre-empt the decision based on the consultation process but Senator Quinn's point of view is based on his significant business experience since 1960 and should be explored instead of simply abolishing the potential of below-cost selling, which would give consumers cheaper products. The idea of a limited number of items per person should be abolished. If it is below-cost selling, we should each be entitled to tell sellers we want everything they have. If the larger multiples wanted to sell a product at a below-cost price, the smaller RGDATA members throughout the country could buy all of that product.

Mr. Coghlan: Senator White would never allow her chocolates to be sold on that basis.

Mr. MacSharry: I am sure she would not. Senator Coghlan is a personal friend of mine but the Fine Gael amendment to the motion is highly irresponsible. It does not deal with consumers' interests or the groceries order and, rather than engaging in a meaningful debate about what consumers need, it is an attempt to slap Fianna Fáil even though there is no opportunity to do so. Consumers' needs are the concern of the motion. I have heard about consumers' needs from the Independent and Labour Party benches but Fine Gael's amendment is not in this vein.

Mr. Coghlan: I thought this was a pat on the back for the report.

An Leas-Chathaoirleach: Senator MacSharry without interruption.

Mr. Coghlan: The Senator does not need any protection.

Mr. MacSharry: Senator Quinn's opinions might be worth exploring in the consultation process. I am sure his submission has gone to the Minister of State in private as well as in this House and it should be examined in detail. When speaking of consumers, we too often consider the people who buy only one item over counters. As both Senators White and Coghlan are aware, business people are increasingly becoming consumers. Most businesses in Ireland are SMEs and have withstood unprecedented increased prices for utilities, electricity and commercial rates, which have risen by 80% in many counties in recent years. Smaller businesses have not been in a position to pass their costs on to the end consumer because they do not manufacture or trade their products. It is an unavoidable scenario that they must withstand these charges.

Any consumer agency should be cognisant of small businesses as consumers of semi-State products and services and local authority services. The various remunerations through benchmarking, particularly in local authorities, are not based on performance in the way they should be. Small businesses are entitled to this recognition. When the interdepartmental team has completed the implementation and establishment of the agency, I hope it is mindful of this fact.

While the agency will educate us in an attempt to take us away from the mediocrity we have settled for as consumers for so long, I hope it will have the teeth necessary to enforce regulations and to represent consumers in the way they have wished to be represented for many years, which we have failed to do. As I have often said, there are many reasons for failure but no there are no excuses. I am confident that the Minister of State and his colleagues, the Minister for Enterprise, Trade and Employment, Deputy Martin, and the Minister of State, Deputy Michael Ahern, will

[Mr. MacSharry.]

give this agency the teeth it requires to do its job in such a way as to be representative of individual and business consumers when following those recommendations of the consumer strategy group that can be implemented. SMEs and home-grown family businesses, for example, need this type of representation.

Mr. Ross: I am speaking at the request of Senator Leyden. It interests me that the Government proposes a motion in this House as I doubt there are any merits for the Government. It has all the time in the world to propose its own legislation and motions and I do not understand why we share time with it through this particular process, a point proven in this instance. It is another congratulatory motion by the Government for a so-called initiative that will come to nothing.

Mr. Coghlan: It is an end of term pat on the back.

Mr. Ross: If one examines it closely, this motion is window-dressing in an attempt to champion the cause of the consumer. I am suspicious when I hear the word "strategy". To me, this is a substitute for the word "action". The Government is giving itself a pat on the back for establishing a consumer strategy group that has decided to recommend a new agency, which will apparently manifest as an interim board that must function with its hands behind its back while it waits for the recommendations of a high-level appointments group. A proper board may be set up but its purpose is unclear. Senator MacSharry said he hoped it would have teeth but the Minister of State's speech indicates this will not be the case. The latter said he had "requested the interim board to immediately begin planning for the final structure and organisation of the fully fledged national consumer agency". This means nothing.

I hope the interim board will begin to develop some initiatives in the area of consumer advocacy, research, awareness and so on, as envisaged by the CSG and as this motion urges. However, I see no evidence it will have teeth and be able to take effective action in this area. I see yet another State agency being set up with the intention of fooling consumers that the Government is doing something to protect their interests.

There are fundamental questions as to whether the Government can do anything for the consumer and whether it should do so. What is certain is that the Government is trying to give the impression it is doing something for the consumer while probably doing little.

Mr. Coghlan: It is a smokescreen operation.

Mr. Ross: It is a smokescreen and one must wonder whether this strategy will work. We have had a series of what now appear to be failed State agencies and State appointments——

Ms White: Will the Senator name them?

Mr. Ross: ——to protect the power of the consumer. An example is the Office of the Director of Consumer Affairs. Does that satisfy Senator White to begin with? That body is now apparently irrelevant and will be subsumed, along with its director, into the new agency. This indicates that this office was a busted flush. It did not work and we all know that to be the case. The simple reason is that it did not have any powers.

Mr. Coghlan: It was another toothless wonder.

Mr. Ross: The Office of the Director of Consumer Affairs found fault with many of the banks. Ms Carmel Foley is a wonderful woman who did a great job but when she found the banks had broken the law, she could do nothing about it. Those whom she found guilty of committing offences could not be prosecuted by her in the courts.

The Government could not put up with this any longer so it set up another quango. It is to be commended that there is at least an effort to include some representatives of consumers' bodies on the board of the new agency. It is unusual for the Government to take such an approach. When the Pensions Board was established, only one representative of pensioners was included. The Government normally includes Senator O'Toole's friends in the trade union movement, IBEC and elsewhere on such bodies. In this instance, it is at least the case that consumer representatives will be included.

However, they will not be able to do anything. The establishment of this agency is merely a more elaborate umbrella or smokescreen to give the impression that the Government will protect and promote the interests of consumers. The Government knows well that direct interference is dangerous and is something it cannot face. We need only consider that the abuses which go on in the business and financial arenas and elsewhere have not been tackled. What will this body do about the cartels that exist?

It is instructive to consider what has happened to another body whose effectiveness is becoming more questionable every day. One might have imagined the Competition Authority would be able to tackle the quasi-monopoly of CRH, the cartel of the banks, the extraordinary similarity in the prices of fund managers and the stockbrokers who charge almost uniform commissions. Nothing has happened. These areas of the so-called market have been neglected and allowed to run the same old price-fixing system as was always in place.

What are these Government agencies doing? They give an impression to the public that they are curtailing the worst excesses of business. I contend, however, that the worst excesses of the business world are flourishing unchecked by Government agencies and Government measures. Nor will they be checked or hindered

in any way by an agency of the type now proposed. We have ombudsmen galore, such as those overseeing the insurance industry and the credit institutions. They make not even a dent on behalf of the consumer because big business still dominates. These types of fig leaf measures will do nothing except give an impression that some action is being taken.

I would like to see this particular agency immediately set about tackling specific problems rather than general awareness. It should not be a case of distributing information to the public about consumer issues. That will not work but will merely take the responsibility from the agency which can claim it put all this information into the public arena. This does not guarantee that anybody is listening. The agency should come out and say, for example, that auctioneers' guide prices are unacceptable and the Government should respond to this immediately. No agency ever seems to do that.

The State agencies seem to publish aspirational, indicational ambitions on behalf of the consumer but achieve virtually nothing in the end. I cannot understand, for instance, what has happened to the commission on auctioneering which was set up some time ago thanks to efforts by Senator O'Toole and other Members of this House. This commission was set up to curb the worst excesses of auctioneers, estate agents and other property interests. It was due to issue a report by the end of June but that report will be late because the commission members are waffling on about particular problems which they cannot resolve among themselves.

That commission consists of three auctioneers and only one consumer representative and serves only to give the impression that it was set up to represent the interests of consumers. It will come out with some type of flimsy report which the Government will examine but probably ignore.

Mr. Coghlan: I understood only two of the commission members are auctioneers.

Mr. Ross: No, there are three.

Mr. Coghlan: Who is the third?

Mr. Ross: It is an auctioneer from the chambers of commerce.

It is dangerous for the Government to set up agencies of this type to give the impression of action without giving them any teeth. This will be yet another piece of window-dressing which will have virtually no effect on behalf of the consumer.

Mr. O'Toole: I hope the consumer strategy group will look carefully at tonight's motion and amendments and at the issues we have discussed. The most amazing aspect is that the motion makes only passing reference to the groceries order while the Fine Gael amendment makes no mention of it.

Mr. Leyden: That is correct.

Mr. O'Toole: It is exactly correct. If the consumer strategy group expects action from the current or the possible next Government, forget it. It is not going to happen. This is political dynamite and one may read from tonight's motion and amendment that neither of the two main parties wants to know anything about it. My friend and colleague, Senator Coghlan, has to represent a particular viewpoint. I know his viewpoint on this but his party is not taking action on the groceries order. That is one conflict. There is conflict in every aspect of this discussion. My colleague, Senator Ross, made some valid points but, while making them, became tied into his own philosophies and backed off immediately.

Mr. Ross: Senator O'Toole is confused again.

Mr. Coghlan: Some of us are more confused than others.

Mr. O'Toole: He thought that this new body will have no teeth. Even if it had, he suddenly thought to himself, it might begin to interfere with the market. From the point of view of Senator Ross, the last action we want to take is interfere with the market. He backed off that and began discussing quangos, trade unions and the absence of action. That is exactly what will happen here.

I tried to be fair minded and disinterested in looking at the groceries order with regard to what will and will not work. I examined the arguments of both sides and have to say that they balance out. The groceries order has existed for a number of years but it is patently not working. It is not doing what it is supposed to do. That is the reason people want to get rid of it.

If we get rid of it, we will eventually depend on the large supermarkets and, in particular, Tesco and the multinationals. We would then be trusting organisations such as Tesco. I know that Senator Ross tried on a number of occasions to establish the profit margins of Tesco in Ireland. The decent people in Tesco told any of us who sought this information to get lost, that it was none of our business and they would not inform us. We recognise that Tesco's profit levels are higher in Ireland than in any other country in which it is based but we do not know how or why.

Ms White: It employs thousands of Irish people.

Mr. O'Toole: The eradication of the groceries order would leave us placing our trust in these people. I agree with Senator Ross on the issue of the cartels which operate all over the industry. I invite anybody, on their next 100 mile trip outside Dublin, to ascertain for me the number of small towns in Ireland where retail fuel outlets have differing prices on their boards. This does not exist unless somebody is trying to break into the local market. In some inspired way, apparently without

[Mr. O'Toole.]

conspiracies or the operation of a cartel, they suddenly come up with the magic figure of 102.9 cent. It is the same price down the road, yet nobody breaks the law.

It appears that we will not resolve this issue with the groceries order. However, from the point of view of the groceries order, it is important to ask the retail invoice price and what it means. Who determines the invoice price? In many ways, a groceries order which prohibits below cost selling allows somebody else to determine cost. Discounts, commissions, golden handshakes and hello money are considered when determining cost. None of these needs necessarily be taken into consideration. In effect, a situation obtains under the groceries order where the manufacturer can state the price of his or her product and nobody may sell below that price. That is anti-consumer. The consumer loses out whichever way we go on this. There will be a problem with or without the groceries order.

Earlier today, I remarked that we need to look at the way food is distributed. I have asked the IFA on numerous occasions why Irish lamb is cheaper in French supermarkets than in Irish ones. It is branded as Irish lamb and sells more cheaply per kilogramme. Why is that? This morning, I heard a farmer from Gorey say on Morning Ireland that he had returned to lamb production through his involvement in farmers' markets. He pointed out that the income he derived from selling at local markets was quadruple what he would expect in farm gate prices from factories and wholesalers.

One of our problems is that we tied ourselves up in regulations attached to retail outlets. Many years ago, Senator Ross and I tried vainly to block an extraordinarily complex set of rules and regulations for the establishment of restaurants. We failed. The regulations were designed to make it impossible to get into the business. Many are still extant. They include ridiculous requirements, such as two or three toilets in restaurants. A counter may be required in some situations and not in others. They have to meet certain regulations which are not required in other parts of Europe. When I compare prices between Ireland and other European countries, I come across the problem of regulations attached to retail outlets. In many cases, they are utterly unfair. This does not happen in other European countries and the cost continuously rises. The hygiene requirements and the extraordinary level of VAT in the food and restaurant industries also brings up prices. We should also examine and take on board these issues and be careful about them.

The problem with the consumer strategy group report — and I listened to its explanation in a committee last week — is that it is almost impossible, despite its best efforts, to compare like with like across various countries in Europe. For example, excise duty is high in Ireland but low in other countries. If a bottle of wine is added to a basket of groceries, the comparison is immediately knocked off kilter. These issues become difficult.

I agree with Senator Ross that we are discussing tonight the establishment of a new agency. This agency will have the powers requested by the Director of Consumer Affairs, Ms Carmel Foley, including rights to advocate and impose serious penalties, increased legislative authority and the money to police the decisions it makes. That is where the difficulty will arise. The consumer agency will not make a significant difference unless we change the law in order to give it power.

I concur with the remark by Senator Ross that, against the odds, Ms Foley is doing a superb job in terms of drawing our attention to these matters. She has been frustrated repeatedly when, having drawn attention to overpricing in Landsdowne Road and by banks, restaurants and bed and breakfasts, taking action involves bringing them to court to incur absurdly low fines. That is the difficulty we face. We need to look carefully at how we reflect the needs of consumers.

We need to put another issue on the record. We constantly discuss the rights of consumers. It would be helpful if we had what Ms Foley calls proactive consumers. The fact is that most of us are happy to park our car with the engine running outside the local convenience store, walk through the door and pay well over the odds for being able to do so. We will continue to do so. Irish people appear content to pay more than other consumers around Europe. That is another part of the problem and is why education must also be included. People must begin to ask the price of items. Perhaps the more affluent we become, the more we hate losing money or being overcharged — consider U2's court action today — and we will chase small amounts as well as others. It may well be that people question more what they are being charged, argue more and bring pressure to bear on that basis. I do not believe the consumer agency on its own, nor the groceries order, will bring about the changes we seek. The issue is how we get the product from manufacturer to consumer without the huge waste that occurs along the way.

In terms of my earlier reflection on farmers' markets, the efforts by Europe to make it impossible to sell local product at local prices in local venues must be resisted. I welcome the Minister of State to the House and thank him for being here. I ask him to note that in markets all over Europe, particularly in France, almost 90% of the produce in the beautifully laid out displays of fresh vegetables and fruit is not acceptable under European legislation. I have taken photographs to prove it. The French ignore that legislation while we tend to abide by those rules. As a consequence if one goes to fruit farms, tomato or strawberry growers in the east of Ireland one finds they throw out produce every week because it does not meet the size and sorting requirements

of the European Union. That is also driving up our prices.

Mr. Leyden: I thank all of the Senators who contributed to the debate. It was most stimulating to hear both Senators Ross and O'Toole who made good contributions. One of the first newspapers I read on Sundays is the business section of the *Sunday Independent* because it is one of the most informed Sunday publications, and is uncontested as such.

Mr. Coghlan: The Senator is able to trump the competition.

Mr. Leyden: I also welcome the Minister of State, Deputy Killeen, to the House. I received a letter from Mr. Tadgh O'Sullivan, chief executive of the Vintners' Federation of Ireland. He casts serious doubts on the credibility of the consumer strategy group's report. He makes serious comments; I will not use the word "allegations".

Mr. Coghlan: Members of the consumer strategy group attended a meeting of the Joint Committee on Enterprise and Small Business, of which Senator Leyden is a member, last week.

Mr. Leyden: Mr. O'Sullivan states, "Clearly we would be concerned that the mistakes evident in this section are replicated in other sections of the report. If that is the case then the report must be consigned to the bin". He is an expert on licensing law and picked out numerous flaws in the report. They should be seriously considered and investigated by the Department. If the report is flawed in this regard, where else might it be flawed? I hope Mr. Tadgh O'Sullivan will be in a position to attend a meeting of the Joint Committee on Enterprise and Small Business to put the author of the report to the test. I do not have time to go into the matter as the letter is dated 24 June and I have just had an opportunity to read it.

Mr. Coghlan: Senator Leyden dealt with Bacardi rum and electric toothbrushes at that meeting.

Mr. Leyden: I thank my opposite number, Senator Coghlan, for his worthwhile contribution. Some confusion exists, and Senator O'Toole put his finger on it. It is obvious the motion we put forward should be accepted without a vote. We welcome the publication of the report. This motion deals with the establishment of the organisation involved. It does not deal with the amendments put forward by the opposition. What confused me is that Senator Coghlan, who is not in a position to do so, criticised a section of the motion protecting the retention of the groceries order. I am flabbergasted.

Mr. Coghlan: Senator Leyden did not hear my contribution.

Mr. Leyden: Senator Ross is not all that enamoured by the groceries order. I am not sure about Senator O'Toole. This side of the House strongly supports it.

Mr. Coghlan: Senator Leyden did not hear Senator MacSharry's contribution. Senator MacSharry did not strongly support its retention. We must wait for consultation within the party.

Mr. Leyden: The motion supports the decision of the Minister to engage in a public consultation process on the future of the groceries order and notes the process is expected to be completed within two months. That is positive.

Mr. O'Toole: Can Senator Leyden explain what is positive about that? The Senator has made up his mind that he is in favour of it.

Mr. Leyden: I support it and Senator Coghlan supports it.

Mr. Coghlan: Fianna Fáil is divided over it.

Mr. Leyden: Senator Coghlan should also be aware——

Mr. Coghlan: We should wait to see what colour smoke comes from the Senator's parliamentary party meeting.

Mr. Leyden: Senator Coghlan is also aware of a statement by his colleague at our committee meeting when he clearly supported the retention of the groceries order. Deputy Hogan stated there was no evidence in the report that abolishing the ban would bring about a sustained level of lower prices, yet Senator Coghlan did not include his concerns in his motion. Deputy Hogan is the spokesperson for consumer affairs in the other House.

Ms O'Rourke: We are not worried about him.

Mr. Coghlan: I voiced my concerns here this evening.

Mr. Leyden: I am trying to pick out the flaws of the Opposition's argument. I am surprised and concerned by Senator O'Toole. He is getting weak at the knees about the retention of the groceries order.

Mr. O'Toole: I would not throw stones if I were Senator Leyden.

Mr. Leyden: Senator O'Toole is shifting ground and his liaison with the Mullingar accord will come to nil.

Mr. Coghlan: Do not worry about that. It is a pact.

Mr. Leyden: I hope the Bill from Senators Coghlan and O'Toole will have some success but I doubt it.

Ms O'Rourke: It will.

Mr. Leyden: I believe it will be published in the morning.

Ms O'Rourke: Yes.

Mr. Coghlan: We are all agreed on that.

Mr. Leyden: I wish the Senators well in its publication. I apologise for straying from the motion. I request the House to support our well-worded, detailed motion and avoid a vote. There is no reason to vote against the motion.

Amendment put.

The Seanad divided: Tá, 20; Níl, 32.

Tá

Bradford, Paul.	Henry, Mary.
Browne, Fergal.	McHugh, Joe.
Burke, Paddy.	Norris, David.
Burke, Ulick.	O'Meara, Kathleen.
Coghlan, Paul.	O'Toole, Joe.
Coonan, Noel.	Phelan, John.
Cummins, Maurice.	Ross, Shane.
Feighan, Frank.	Ryan, Brendan.
Finucane, Michael.	Terry, Sheila.
Hayes, Brian.	Tuffy, Joanna.

Níl

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

Tellers: Tá, Senators Coghlan and O'Toole; Níl, Senators Moylan and Minihan.

Amendment declared lost.

Motion put and declared carried.

Garda Síochána Bill 2004 [*Seanad Bill amended by the Dáil*]**: Report Stage (Resumed).**

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

An Cathaoirleach: I call on the Minister for Justice, Equality and Law Reform to speak on the subject matter of the group 4 amendments, Nos. 15 to 24, inclusive.

Minister for Justice, Equality and Law Reform (Mr. McDowell): Before addressing the group 4 amendments, last evening in this Chamber, Senator Higgins made allegations in regard to the Garda Commissioner. He suggested in particular that he had misled the public. He suggested also that I had shown shock in public at a misleading statement of the Commissioner and further suggested that I had probably in private reprimanded him on that account. These were very serious charges to lay against an office holder of the status of the Garda Commissioner.

Given that Senator Higgins indicated to the House that all would be revealed in good time, I made it my business this morning to contact the Garda Commissioner to find out the truth of the matter, namely, that there is absolutely no truth whatsoever in the allegations made by Senator Higgins. The truth of the matter is that Commissioner Conroy was only appraised of the alteration of the status of this investigation on the PULSE system in November 2004, he immediately communicated with the relevant parties, he was in no way personally involved in that decision prior to that and the allegations made in this House by Senator Higgins are totally untrue.

I knew they were untrue as regards myself because I was present when the Commissioner made the remarks in public. The Commissioner is a man of transcendent honesty and decency.

Ms White: Hear, hear.

Mr. M. McDowell: He would not mislead the public in this way. The suggestion that I reacted by surprise or incredulity to his remarks is wholly malicious and completely false. The suggestion that I reprimanded or had a conversation in private with the Commissioner in regard to this issue is completely false. The suggestion that the Commissioner had any involvement, good, bad or indifferent, with the decision to alter the status of the Barron investigation on the PULSE computer is completely untrue, malicious and false.

I put that on the record of the House and invite Senator Higgins to come to the House to retract every word he spoke here last night. I am here to defend myself and will always do so in these circumstances. However, these allegations were made against a person who was not in a position to defend himself in the House. As I said, he is a man of transcendent honesty. I deeply regret that last Friday he was asked to consider his position by Senator Higgins. I regret doubly that yesterday he was the subject of an untrue attack in this House in circumstances which were unworthy of Senator Higgins and unworthy of a Member of the House. The allegation was made in irrelevant circumstances and was out of order on a group of amendments that had nothing to do with the issue on which he spoke. As the House will recall, I had to intervene on a point of order to prevent further irrelevancies of that kind happening. I want it clear in this House that the Commissioner told the absolute truth when he responded to that question in public. The imputation that he did not was an unworthy one.

On the amendments, section 10 in the version of the Bill as passed by the Seanad provides for the appointment by the Government of deputy and assistant Garda Commissioners. However, section 11 which provides for the removal of the Garda Commissioner, appointed under section 9, or a deputy Garda Commissioner, appointed under section 10, makes no provision for the removal of assistant Garda Commissioners, also appointed under section 10. The amendment, which I brought forward on Report Stage, included assistant Garda Commissioners in section 11 for the purpose of their being removed from office. Accordingly, section 11(1) now applies to the three top officer grades in the force and it sets out the grounds on which for stated reasons only they may be removed from office. These relate to, first, failure to perform the functions of the office with due diligence and effectiveness or, in the case of the Commissioner, a failure with respect to the matters set out in section 26(2) of the Bill, second, engaging in conduct that brings discredit on the office or which may prejudice the proper performance of the functions of the office, or, third, such removal being in the best interests of an Garda Síochána. Amendment No. 15 is a consequential amendment to section 10 to make it clear that assistant Garda Commissioners continue in office subject to the provisions of section 11 and not subject to the regulations.

Amendments Nos. 17 to 19, inclusive, and amendment No. 22 are technical drafting amendments proposed by the Parliamentary Counsel who advised that the changes are necessary for the purpose of ensuring consistency with normal drafting conventions. This is to do with the use of word "direct" instead of "require". Amendment No. 23 is a textual drafting amendment proposed by the Parliamentary Counsel to improve the text of section 12(4)(*c*).

The purpose of amendment No. 20 to subsection (3) of section 12 is to provide additional scope to the person appointed under subsection (2) to conduct an inquiry or to give any other direction which he or she considers necessary, just and reasonable in the circumstances of the case concerned. Every case will have to be considered on its merits. I would not want to restrict the appointed person in terms of the directions he or she may wish to give for the purpose of the inquiry by attempting to set out in the Bill every type of direction that might be necessary.

With regard to amendment No. 21, I indicated on Committee Stage in the Dáil that it would be necessary to include a provision in subsection (4) that where a person fails or refuses to comply with a requirement made by a person appointed by the Government to hold an inquiry, the High Court should have the power, first, to order such persons to comply with that requirement and, second, to make such other order, if any, as it considers necessary and just to enable the requirement to have full effect.

As it stands, the subsection is a punitive provision only. Similar provisions are contained in the Tribunals of Inquiry (Evidence) (Amendment) Act 2002, the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997, and the Commission to Inquire into Child Abuse Act 2000. This provision will have the same effect. In other words, it is not simply just a criminal offence not to comply with a direction of an inquiry but something can be done about it. If somebody for whatever reason refuses to do his or her duty under this statute, criminal sanctions are one way of approaching the matter but, as in the case of former Deputy Liam Lawlor, it is also necessary on occasion that the High Court can require somebody to do something, and punish if they do not comply as a contemner — in other words, under the contempt of court arrangements of the High Court. Otherwise, people would brazenly not co-operate with inquiries.

Amendment no. 24 was necessary as a result of changes made in the original text of section 13. Subsection (1) of that section dealt with appointments to the ranks of chief superintendent and superintendent while subsection (2) referred to the remaining ranks of inspector, sergeant and garda.

In light of the strong comments in the second Morris tribunal report, which, in the context of

[Mr. M. McDowell.]

the tribunal's concerns with the fact several members of the Garda Síochána who were severely criticised in its first report continued to serve, recommended that a new means for removing gardaí from office should be considered, I inserted a new provision in section 14 of the Bill providing for summary dismissal by the Commissioner. This applies to the ranks of gardaí from inspector downwards, and it is analogous to the power that is currently vested in the Government in regard to the ranks above inspector. We will come to this matter later in the context of the amendments listed in group 10. Amendment No. 24, therefore, only deals with chief superintendents and superintendents and it means that section 13 as it now stands refers only to those ranks in terms of their appointment and dismissal. In this latter respect, it applies the provisions of sections 11 and 12, which refer to the removal of a Commissioner, deputy Commissioner and assistant Commissioner to those two grades of office holders.

Mr. Cummins: We support the amendments in this grouping as outlined. To include the word "direct" rather than "require" strengthens the intent and content of the Bill. We would be concerned that due process would apply in any area where dismissal would be considered. However, the procedures contained in sections 11 and 12 adequately deal with this matter. The Minister has also addressed the issue relating to inquiries. We believe it is necessary that these amendments would form part of the Bill also.

Ms Tuffy: We have no difficulty with these amendments. I do not have anything to add to what was said by Senator Cummins.

Mr. M. McDowell: I have nothing further to add.

An Cathaoirleach: Is the grouping agreed? Agreed. We move to group 5, the subject matter of amendments Nos. 66 to 114, inclusive, 116, 119, 120, 136 and 137.

Mr. M. McDowell: In the main, the purpose of the amendments made to the ombudsman commission provisions of the Bill was to provide for the appointment of a chairperson of the ombudsman commission. On Committee Stage in the Dáil, I accepted in principle the point made by Deputies Jim O'Keeffe and Joe Costello that it was desirable that one of the members of the commission should act as its titular head and as chairperson in that capacity. The other amendments here, including those to Schedule 4 of the Bill, are consequential upon that change.

The amendment dealing with absences by the chairperson are consequential upon the change to appoint a chairperson to the ombudsman commission. The provisions are standard ones. Similar provisions are to be found in the Competition Act 2002.

Concerning amendments Nos. 70 and 71, the Fine Gael justice spokesperson raised this matter on Committee Stage in the Dáil on the basis that the wording of the subsection might be taken as precluding the ombudsman commission from reporting to the Garda Commissioner when it reports to the Director of Public Prosecutions. This is clearly not meant to be the case. As a consequence, the Parliamentary Counsel redrafted the section to clarify that the Garda Commissioner should be notified about all reports prepared by the ombudsman commission, including those sent to the DPP.

Amendment No. 72 was made on Report Stage in the Dáil in the light of the introduction of the chairperson provision. Originally it was intended that this would be a matter for the commission to decide between its members, with possibly one of the members being designated to deal with management and administration matters generally. With the introduction of the chairperson provisions, I decided that the chairperson should be responsible for the management and control generally of the commission's officers and the administration and business of the commission. It is not merely a titular head of the commission; the public face of the commission will be a chairperson who will also actually manage its business.

There are two schools of thought on this matter of the composition of the office of the ombudsman. Some think there should only be one person in the job, others think that a commission of three would be advantageous. The advantage argued for one person centred on the notion that there should be a publically recognisable face to the ombudsman and that it should not be an anonymous body, the members of which were not known to the public. In so far as a compromise could be reached between the two provisions I have done this in deference to the Opposition spokesmen in the debate on Committee Stage.

Amendments Nos. 73, 74 and 75 arose from the debate on Committee Stage when questions were asked about the appropriateness of including a reference to bankruptcy when a judge could be involved. Having reflected on the matter, I decided to remove the reference to bankruptcy. The other changes were made in the light of that discussion and to bring the provisions into line with similar provisions in other legislation.

Amendment No. 76 was brought forward in the light of the debate on Committee Stage in the Dáil when questions were raised on how the ombudsman commission would conduct its business and related matters concerning the basis for decisions being taken. My amendments on Report Stage are based on other similar legislative provisions such as those in the Competition Act 2002. They provide for such matters as the quorum for meetings and the basis for decision making. This will be by way of a majority of the votes of the members present and voting on the question. Provision is also made in the case of an

equal division of votes. In such cases the chairperson, or the member presiding, will have a second or casting vote. Provision is also made for the ombudsman commission to regulate its own procedures.

Regarding amendment No. 77, I gave a commitment on Committee Stage in the Dáil that I would examine this matter on the basis that it might appear that all of the existing staff of the Garda Síochána Complaints Board could be designated by the Minister for service with the new ombudsman commission. That was never going to be the case for several reasons, including that relating to the Government's decision to decentralise the Garda Síochána Complaints Board which the ombudsman commission will replace. That is a decision about which I wish to think further. I mentioned to Senator Hayes that I want to ensure a decentralisation decision does not affect the workings of this board. In any event the term "any" has replaced "every" in case it was argued that every member had to transfer.

Amendments Nos. 80, 81, 82, 84, 96, 97, 98, 100, 105, 107 are technical in nature. They were made on the advice of the Parliamentary Counsel with a view to improving the text. Amendment No. 83 relates to section 71(3), entitled Accountability to other Oireachtas Committees. The point came up during the Committee Stage debate in the Dáil that the wording of this subsection might be unduly restrictive in ruling out comment by the ombudsman commission to an Oireachtas committee, other than the Committee of Public Accounts, on any matter that has been before a court. Accordingly, I amended the wording, substituting the words "is or is likely to be" for the wording "is, has been, or may at a future time be". The amended wording reflects probability rather than the technical possibility that a matter might come before a court as a reason the ombudsman could not comment.

Concerning amendment No. 85, the provision at subsection (10)(*b*) was added to address an inconsistency between section 70(2) and section 71(10). This was brought to my attention by the Fine Gael justice spokesperson on Committee Stage. It involved the insertion of paragraph (*b*) into to the text of 71(10).

Amendments Nos. 86 and 87 are simply to transpose subsections (5) and (6) in the Bill so that the provisions in what is now subsection (6) will apply to all reports from the ombudsman commission. Amendments Nos. 88 and 89 relate to the section on the Garda inspectorate and commissions of investigation. These are technical amendments which provided for the inclusion of the Garda inspectorate or an officer of the inspectorate and a commission of investigation in the list of bodies to which disclosures of confidential information could be made. In the latter regard, this amendment was made in response to an observation by the Fine Gael justice spokesperson on Committee Stage that a commission of investigation established under the Commissions of Investigation Act 2004 should be added to the list of bodies in section 73(4).

The purpose of amendments Nos. 90 and 91 was to include the Garda Commissioner as a person to whom a complaint may be made about alleged conduct constituting misbehaviour by a member of the Garda Síochána. This was always the intention. Amendment No. 92 is a technical drafting amendment as advised by Parliamentary Counsel. Amendment No. 93 is necessary to cover the situation where a complaint may be made to a member of the Garda Síochána at or above the rank of chief superintendent at a place other than a Garda station. Its purpose is to ensure that in such cases the Commissioner is notified of the complaint and receives a copy of it. If the complaint was not in writing, a copy of the record of the complaint must be sent to the Commissioner.

Amendment No. 94 is a consequential amendment to amendment No. 90 in the context of the receipt of complaints by the ombudsman commission. Amendment No. 95 deals with the need for the ombudsman commission to notify in writing not only the complainant and the Garda Commissioner of its decision that a complaint is inadmissible, but also the member of the Garda Síochána whose conduct was the subject matter of the complaint. This matter was drawn to our attention by the Garda Representative Association and it is a basic requirement of fairness in such circumstances that the person about whom the complaint is made should be notified.

As a further incentive to members of the force to use the informal resolution procedure, I was impressed with a point made to me in the course of discussions with the Garda Representative Association. That is the purpose behind Government amendment No. 99, which is designed to ensure that if a complaint is resolved informally, and while the Commissioner as the manager of the force is notified of that fact, any record of the complaint held in Garda records must be expunged. This will ensure that, in so far as the member is concerned, his or her agreement to use the informal resolution procedure will not be held against him or her in any way whatsoever in terms of his or her future career and prospects within the force. A garda will not settle cases informally if the record of the complaint is always there, like a ticking bomb, ready to destroy the garda's career at a later stage. He or she would stand on his or her rights and would refuse to apologise in order to stop the row. There would be no informal acceptance of wrongdoing or guarantee not to repeat the behaviour. That kind of response, without a formal complaint, is sometimes necessary.

The Commissioner will already be aware of the fact that a complaint will have been made against a member and of the fact that the ombudsman commission will have decided to rule it admissible or non-admissible. If in the former case the commission intends to deal with the matter under the informal resolution procedure by agreement with

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the parties, the position will be that the Commissioner will be informed accordingly and that will be the end of the matter. Any records held by the Commissioner about the matter will be expunged.

Section 86 is the subject of amendment No. 101. The purpose of this amendment was to clarify the position relating to reports of investigations of complaints carried out by the Garda Commissioner which are supervised by the ombudsman commission and which reveal that a criminal offence may have been involved. The Bill was silent on this matter, but it now deals with this eventuality in that it provides for the ombudsman commission, after considering a report to the Garda Síochána investigating officer, to either direct a designated officer of the commission to investigate the complaint in accordance with the procedures for investigating complaints involving offences, or to comply with section 93(2) as though the report of the investigating officer of an Garda Síochána had been made to a designated officer of the ombudsman commission under section 93(1), in which case it would be referred to the DPP.

Section 88(10) is the subject of amendments Nos. 102 and 103. Subsection (10), as originally formulated, provided that any information, document or thing provided by a person in accordance with the requirement under subsection (1)(*a*) or subsection (3)(*a*), or with a direction under subsection (6) would not be admissible against that person in civil or criminal proceedings. I amended this provision on Report Stage to remove the reference to "civil" as I considered it inappropriate to remove the possibility for civil proceedings, notwithstanding that an admission had been made or that information had been supplied suggesting wrongdoing. While exempting such information for the purposes of criminal proceedings was clearly in order, I could see no basis for having it in the case of civil proceedings.

Take, for example, a case where somebody sues a member of an Garda Síochána for assault and that garda has admitted the assault to the ombudsman commission. To render that admission inadmissible and to require the person who knows it was admitted to prove it by some other means would be an unjustified obstacle to civil justice, as opposed to criminal justice being achieved.

Amendments Nos. 104 and 106 arose in the context of clarifying the status of the report of the ombudsman commission upon its transmission back to the Garda Commissioner for the purpose of taking disciplinary action. Some doubt was expressed regarding the status of such reports when submitted to be dealt with under the disciplinary process. These amendments simply provide for the inclusion in the ombudsman commission report of a statement of the facts established by the investigation and the status to be accorded the commission's report in any disciplinary proceeding.

Section 90 is the subject of amendments Nos. 108 to 114. These were technical amendments advised by Parliamentary Counsel. The intention is that the powers, immunities and privileges associated with the matters referred to subsection (1)(*a*) to (1)(*g*) should be exercisable by the ombudsman commission against any person and that the provision of the section should not be limited to a member under investigation, as was originally provided for. Members can understand that a situation could easily arise where a person would resign and therefore cease to be comprehended by the term "member".

On amendment No. 116, in keeping with the other oversight provisions in the Bill, I decided on Report Stage in the Dáil that the Minister's consent should be sought in circumstances where the Garda Commissioner considers the disclosure of information could prejudice a criminal investigation or prosecution, or prejudice the security of the State, or prejudice the safety of any person. There is a clear need for an adjudicator in circumstances where there might be a difference in opinion between the Garda Commissioner and the ombudsman commission. If the Garda Commissioner says something would prejudice a criminal trial and the ombudsman commission says that is rubbish, somebody must decide whether it is a valid ground for objecting. A referee must be put in place. The Minister would seem to be the appropriate person to perform this function because, as we will see in another context, the Minister, through the Secretary General, is entitled to send for any record in the possession of the Garda Síochána. If there is an argument as to whether something would prejudice the security of the State, the Minister will be in a position to look at a file and agree or disagree.

Amendment No. 119 was made on the advice of Parliamentary Counsel. It provides that the publication of any statement made without malice by a member of the ombudsman commission is also privileged for the purpose of the law of defamation. Amendment No. 120 provided for the inclusion of the Garda Síochána inspectorate, along with the Garda Commissioner and the Garda Síochána ombudsman commission, in the consultation process when regulations are being made by the Minister under the Act. It was a consequence of my amendment to the Bill which provided for the establishment of the Garda Síochána inspectorate.

Mr. Cummins: When the Bill went through this House several Members expressed their doubts on the three-person commission. The same doubts were expressed in the Dáil. The Minister has come some way by suggesting that a chairman of the commission should be appointed, but I believe this is a fudge. The Minister and the public know this. There is a demand for a Nuala O'Loan type figure to investigate wrongdoing within the Garda Síochána.

The strength of single independent ombudsman was demonstrated again last week by Kevin

Murphy, the former State Ombudsman, when he criticised the failure to allocate political responsibility with regard to the nursing home scandal. The revelations arising from the second report of the Morris tribunal demand that a single, powerful, independent ombudsman be appointed to monitor the Garda Síochána. A three-person body, even with a chairman, remains a fudge.

The Minister has gone on record as saying that a single ombudsman would pose a problem were he or she to go on holiday. We have a single Ombudsman in Emily O'Reilly, in the children's ombudsman, Emily Logan, a single information commissioner, a single insurance ombudsman, a single data protection commissioner, one director of corporate enforcement and one Minister for Justice, Equality and Law Reform, yet the Minister says that a single Garda ombudsman would be unworkable and unacceptable. That argument does not stand up in the circumstances. We need a single exemplary person, like Nuala O'Loan, unfettered and free to act in the public interest.

A number of the amendments put forward are technical and we agree with them. We are pleased that a number of the observations made by our spokesperson in the Dáil, Deputy Jim O'Keeffe, have been taken on board. We support the situation where, if a complaint is made against a garda, he or she should be notified of it. On the matter of a referee, we do not know the Minister's ability as a referee, but we accept his bona fides as regards the security of the State.

Senator Brian Hayes will deal with some specific matters. Fine Gael still believes that we should have one ombudsman rather than a commission.

Ms White: When the issue of a three-person commission came up in our earlier discussions, I did not feel it was the right solution. We have just one Minister for Justice, Equality and Law Reform, one Attorney General and one Director of Public Prosecution. Nuala O'Loan stands for independence and integrity. A chairperson of the ombudsman commission is not a sufficient title to give authority to the position. The position needs to be identified in a person we all trust, like Nuala O'Loan who made herself available when Robert McCartney was murdered in the North.

Even from the South, I have faith in Nuala O'Loan. The chairperson of the commission must have an identity, rather than just being the chairperson of the ombudsman commission where the position is just a fudge. From a marketing point of view, the position must be clear and it must be clear what the holder stands for. Will the Minister explain how he will put it into the public arena? The person selected as chairperson will need to be as good a communicator as Nuala O'Loan who has been one of the most outstanding people in the North over the past number of years. Will the Minister clarify the position regarding the chairman and the three-person commission?

8 o'clock

Mr. B. Hayes: As this is my first opportunity to speak tonight, I want to respond to the remarks made by the Minister, Deputy McDowell, about a colleague of mine, Senator Higgins, at the start of this evening's debate. The charge of abuse of privilege is a very serious one. As every Member of the House is aware, there are means and ways of investigating such a charge if it is made by a Member of the House. The Cathaoirleach, and nobody else, is responsible for adjudicating on the matter. More importantly, such a charge can be made and allegations can be levelled in line with the procedures of the Committee on Procedure and Privileges.

I did not hear the comments made by Senator Higgins last night, but I will read the transcript as soon as I can. I want to say this, however — Senator Higgins is someone of the highest repute and standing in this country. If it had not been for the work of the Senator and Deputy Howlin, the shocking truth about certain events in County Donegal would never have been known. I want to make it very clear to everyone who might be listening to this debate that Senator Higgins's conduct during this entire saga is not up for investigation. I think it would be better for the Minister and all concerned to stick to what we have to do this evening, rather than throwing around stuff about a colleague of mine who is not even here tonight to debate the matter.

An Cathaoirleach: Yes. I did not hear what——

Mr. B. Hayes: I would like to inform those who may not be aware of it that the only persons who can raise points of order in the Seanad are the Members of this House.

The fifth group of amendments relates to the proposed establishment of an ombudsman commission. The Government has moved some of the way to addressing the concerns which have been raised by Opposition Members of this House and the other House. It is certain that the establishment of the position of chairperson of the ombudsman commission represents an improvement on the original proposal to establish a three-person commission. I have met the Police Ombudsman for Northern Ireland, Mrs. Nuala O'Loan, and seen at first hand the work she does. I am impressed by the structure that has been put in place in Northern Ireland, not least because it is a totally new office. It has been useful, in terms of getting the message across in Northern Ireland, that complaints levied against members of the PSNI will be taken seriously, that Mrs. O'Loan has been a kind of personification of the new office.

Ms White: I agree.

Mr. B. Hayes: Like some of my party colleagues, I met Mrs. O'Loan and I saw the operation of her office. I was impressed by the manner in which her inspectorate works. It is clear that

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Mrs. O'Loan cannot come to a determination on every single case. She relies on her investigating team of officers, many of whom are from other jurisdictions. I noted a number of people from the London Metropolitan Police, for example. I was impressed by the way in which Mrs. O'Loan's office can deal expeditiously with all the cases which come before it. I wonder whether the three-person model that has been proposed by the Minister for Justice, Equality and Law Reform will slow the commission's operation. A great deal of its effectiveness will depend on the personalities of the three people who will be selected to serve on the commission.

I would like to speak about amendment No. 76, which specifically relates to the role of the chairperson and the members of the proposed ombudsman commission. The relationship between them will be unequal. If two members of the commission cannot agree a decision on a case, the chairperson will be able to make the ultimate decision. I refer to a decision on whether to progress a case, for example. There will be an unequal relationship between the two commissioners, even if one of them is the chairperson. I am afraid that such a clash of personalities might not lead to the kind of quick and fair decision-making that we will demand in all cases. It will depend on the personalities of the people who are selected, as I have said. I ask the Government to rethink its position on that matter.

Amendment No. 101 relates to the section of the Bill that gives the proposed ombudsman commission the power to decide whether to progress a case to a full hearing, for example, or to make a decision at all. The members of An Bord Pleanála ultimately decide whether to accept or reject an appeal. Inspectors have frequently issued reports to An Bord Pleanála suggesting a certain course of action, but the members of An Bord Pleanála have decided to do something different. We have details about An Bord Pleanála's decision-making process because the public is entitled to such information.

Will we know, as we do in the case of An Bord Pleanála, whether the decisions of the three-person commission are in line with the recommendations of the inspectorate in each case? I have asked that question because I am keen to avoid public concern and anxiety if the inspectors, whose report will ultimately land on the commission's desk, are found to have recommended a certain course of action but the commission has done something entirely different. Such a course of action would be unfair to the complainant. Will it be possible to know in each case whether the inspectors' report has been adhered to by the commission, which will have the ultimate responsibility for making the decision? It is important that the commission should produce reports on a regular basis stating whether the recommendations of the inspectorate have been adhered to.

This entire matter would be much easier if just one ombudsman was making a decision. Not only would the public have a much clearer public personification of the role of the ombudsman, but it would just be much easier. There could be personality difficulties involving those who take up this challenge.

Ms White: Hear, hear.

Mr. B. Hayes: I do not think it is an equal relationship if one is left with two people, one of whom favours one decision and the other of whom favours another decision. The person who is deemed to be the chairperson ultimately makes the decision. It is an unequal relationship. We need to consider this aspect of the matter in further detail.

Dr. M. Hayes: I was one of those who argued strongly in favour of a single ombudsman. I continue to prefer such a model. I accept that the Minister has moved a considerable distance in our direction. We are now charged with encouraging him to find an amiable extrovert to fill the office in question. The key argument in favour of a one-person ombudsman model is brand recognition. It is important that the public are aware that a certain person is the police ombudsman. I am glad that the chairperson of the ombudsman commission will be seen to be running the show. The chairperson will be the important person.

Some of the points made by other Members, particularly Senator Brian Hayes, are worthy of consideration. I would be very worried if the entrails of the ombudsman commission were to be constantly exposed to scrutiny. That would be the wrong way of dealing with the matter. In making a decision, the commission will be exercising a quasi-judicial function. It is like asking a judge why he did something that way, rather than this way. Concerns about split decisions, etc., would be removed if we had a one-person ombudsman, but that is another story.

I would be anxious for the ombudsman commission to organise itself in such a way that we will not have to wait for it to hold a monthly meeting before it makes a decision. It should have the capacity to make decisions on the run.

I was glad to hear the Minister's reference to decentralisation, which could be quite unwise in this case. As an investigative office, the ombudsman commission should be placed as near as possible to the location from which the bulk of one's business will emanate. If one examines the demographics of this country, one will be given an indication of from where the bulk of the commission's business will come. I am glad that the Minister is prepared to keep that in mind.

I would like to discuss the reference in the Bill to Oireachtas committees. While we cannot include a specific requirement in the Bill, it is desirable that the Joint Committee on Justice, Equality, Defence and Women's Rights should examine the operation of the ombudsman com-

mission at least once a year. The committee should debate and discuss the issues which are raised in the commission's report.

I am glad that the Bill makes provision for informal resolution and mediation, which should be encouraged. I am quite worried about one part of the Bill, however. I refer to the question of access to Garda stations. The Minister said that he will designate Garda stations where specific intelligence is held. I agree with his desire and duty to protect the intelligence of the State, but the difficulty is that stations that hold that sort of information are likely to be the stations where people are armed. These are the places where incidents can happen. Almost by definition, these are the places where many problems will arise. On the one hand, there is a need to preserve intelligence and, on the other, there is a need to preserve evidence if there has been a crime. One can see from the Morris tribunal report and other reports how forensically aware people can get rid of evidence of a crime.

It is important that whoever is investigating this matter — perhaps the ombudsman — has speedy access to information. He may be able to arrange that but it appears that the procedure is that one must apply and that if the Garda Commissioner says "No", one asks the Minister for an adjudication, it comes back and the Garda Commissioner can then ask for it to go before a judge. There must be some way to get round this problem. While it is important to protect security-sensitive information, it is also important to protect evidence. The Minister referred to people not reading files and so on, which is fine. It may be possible to find a *modus operandi* which would put a stop to that, but still would not stop people going in while the evidence is still hot. This aspect should be reconsidered. It will have to be dealt with by way of protocol and by designation of the people working for the ombudsman, or the ombudsman himself or herself, who would have that kind of access, because these people would need to have security clearance. One could not have everyone tramping around these sensitive places in hobnail boots.

Mr. Justice Morris appears to have established some sort of working relationship with the Garda Commissioner. This is my main concern. Otherwise the matter has moved on, for which I thank the Minister. The key issue is the appointment of an ombudsman who exudes independence and whom people will see both in his or her person and past activity as independent people.

Ms Tuffy: I want to raise a point of order. I understand that I should have spoken after Senator White.

An Cathaoirleach: I agree, but I did not see the Senator indicating.

Ms Tuffy: I indicated from the beginning.

An Cathaoirleach: I hope the Senator will accept that I did not see her.

Mr. B. Hayes: The Senator is correct.

An Cathaoirleach: I know she is correct, but I did not see her. I only call people who indicate they wish to speak. I trust she will accept that.

Ms Tuffy: I accept that but I felt I should point it out.

I am pleased the Minister has returned because the issue of the ombudsman is one of the fundamental issues in the Bill. I am not happy with the solution the Minister has put forward. While it is a step in the right direction, it is still a fudge. Senator White said one should be able to identify the person. It does not matter because it is still not an ombudsman. One can identify the chairperson of the Garda Síochána Complaints Board as Mr. Gordon A. Holmes but that does not make him an ombudsman. People said that one should appoint the right person. That is not how it should be. It is the office that should exude independence, not the person.

It is still a fudge and I am not happy about it. In bringing forward the new proposal that there will be a chairperson of the ombudsman commission, the Minister is responding to the second Morris tribunal report. One criticism in the report was directed at the Oireachtas. This related to the ombudsman commission. In tabling this amendment, the Minister is responding to that criticism. However, he is not doing what the criticism would require, which is to appoint an ombudsperson. It is still a commission, which is like trying to have it both ways. The amendment has many faults. I do not understand why the Minister will not allow for an ombudsman. If he is prepared to respond to the report of the Morris tribunal, why does he not go the whole way and do what is required, which is to provide for a single person ombudsman?

What is an ombudsman and where does the definition and concept come from? The definition of an ombudsman in the Oxford dictionary is an official, not some officials or a few officials. The definition incorporates an official appointed to investigate individual's complaints against bad or dishonest administrations, especially that of public authorities. It originated in Sweden where it entailed an official, not some officials, a commission or anything like that. The idea is that it is a legal representative or one individual who acts on behalf of the public. It is not a vague notion that people would like an ombudsman, it is because it is best practice. It is the best type of institution to do the type of job we require. Everyone refers to a good individual. The idea behind the concept of ombudsperson is an individual who has this type of authority. The point is that a single person has a popular authority behind them.

The whole argument for a single person ombudsman was encapsulated in the annual

[Ms Tuffy.]

report of the Garda Síochána Complaints Board when the chairman, Mr. Holmes, argued against a single individual. He said it would lead to a personality-based conflict with the gardaí. This is why we need a single person ombudsman. A single individual would have the popular authority to take on Garda management and have public backing when he or she must deal with the Minister and the Government.

Members said the buck would stop with that individual, which will not happen with a three person commission. The provision is seriously flawed because it is up to the three people how much authority they vest in the chairperson. They may or may not vest authority in that person. We have no idea. The individual concerned could be a great person, but the three persons might not give him or her the authority he or she needs. The decision is being left up to these people.

Another problem is that the three person commission would have to hold a meeting before they could have a vote. Instead of being able to make a decision on their own, and having all that authority vested in them, they must have a three person meeting. The biggest problem is that it is a majority vote. If two people make a different decision from the chairman, where will that leave the ombudsperson and that single individual who exudes all the authority? He or she will be left high and dry with no authority at all. I have examined the Minister's arguments and the more I examine them the more I believe he is wrong in not appointing a single person ombudsman. I hope the legislation will be reviewed and that we will introduce a single person ombudsman.

The Minister made the point that apart from the Northern Ireland region there are regions in England with bigger populations where there are decentralised police forces or different police authorities and which have commissions. However, there are also countries with much larger populations than the Republic of Ireland who have an office of a single-person ombudsman. Furthermore, as Senator Cummins has said, in other areas we basically put a single person ombudsman in the ombudsman's role. Ms Emily O'Reilly is a single person Ombudsman for the whole of the Republic of Ireland. The ombudsman in the North of Ireland has 123 staff and a budget of several million pounds. According to Gordon Holmes in the introduction to the annual report she has approximately 15 times the budget of the Garda Síochána Complaints Board. That is extraordinary for an ombudsman representing, as the Minister puts it, merely a region rather than a state.

Senator Cummins made the point that if the ombudsman goes on holiday somebody should be able to take over but every ombudsman goes on holidays. Emily O'Reilly goes on holiday but her staff keep the office running in her absence and she retains authority over the office. If the Minister went on holiday we would not look for a replacement while he was away. Under the proposed legislation the chairman can be replaced by another member which can lead to a lack of continuity.

The Minister made a comparison with the Supreme Court but the Supreme Court is not the same. An ombudsman is a representative like a barrister. People do not have three barristers acting for them.

Mr. M. McDowell: Very rarely.

Mr. B. Hayes: That is why they are so expensive.

Ms Tuffy: The whole point of such a role is that one person acts as one's advocate. The Garda Síochána Complaints Board has a chairperson but given that we have decided to set up a new institution we should go the whole way and have a single person as ombudsman.

I have been trying to find a copy of Senator Maurice Hayes's 1995 report. I have made the point before that the Ombudsman Act came into being in the UK in 1998 and was endorsed by the Patten Commission. The Minister seems to suggest that the Patten Commission gave rise to the creation of the ombudsman in the North. It endorsed it but did not actually provide for it.

As Senator Maurice Hayes has said the Bill goes some way to dealing with the issues but it does not go far enough. It is a fudge.

Mr. J. Walsh: I was here last night when Senator Higgins made his contribution. I was taken aback but was unfamiliar with the context in which the allegation was made. When a charge is laid against the most senior policeman in the country, which has now been rebutted by the Minister here, the Senator must back up what he said or come to the House to withdraw the statement. If, in the absence of that, a member of this House is required to make a formal complaint I would be prepared to do that. It was a serious allegation and needs to be clarified. The Minister has clarified his side and was quite right to put it on the record. It is now a matter requiring immediate attention from Senator Higgins.

Mr. B. Hayes: There is a procedure.

Mr. J. Walsh: If my opinion of Senator Higgins is correct he will voluntarily come to the House and withdraw the statement if there is no foundation for it. If it has foundation then it should be clarified expeditiously. In view of the senior position the police officer holds it is a matter that should not be treated lightly.

We have discussed many of the arguments for an individual ombudsman as against the triumvirate proposed in the legislation. While I have listened to the arguments for an individual ombudsman I do not find them compelling. A triumvirate has the advantage of being able to provide cover for absence if one is indisposed. More important, complaints require an adjudication to be made. The analogy of the general

Ombudsman with other single office holders does not hold water. It could equally be argued that the Supreme Court is not a single judge. It comprises a number of judges hearing a case together and coming to a consensus, often on a divided vote.

There is nothing wrong in principle with what is included in the Bill. I welcome as a step in the right direction the change that was made in the Dáil whereby a chairman will be accountable for the functioning of the office. In light of the latest Morris tribunal report I empathise with the points made by Senator Maurice Hayes on access to all parts of the Garda station, which was discussed here on Committee and Report Stages. That is an area that needs to be monitored as this rolls out, to ensure that evidence and information germane to a proper investigation of a complaint is not lost or set aside as happened in instances highlighted in the Morris tribunal. We should err on the side of caution in that regard. If for the security reasons that have been advanced, which appear to be valid, full access is not granted, it is imperative that what might be perceived as a lacuna in the structure of the system does not thwart the effectiveness of an investigation. It should be monitored and, in the light of experience, refined if necessary.

Mr. Coonan: I share the concerns of other speakers on the proposal for a three man ombudsman commission but I am not going to rehash what has been said already. Senator Tuffy caused me to consider what would happen if there was a vote among the three people. Does it mean that if two of the three disagree agree with the chairperson that would be, in effect, a vote of no confidence? Would the chairperson have to resign? This is just one potential complication in this Bill.

The Minister is bringing forward this Bill in haste as a result of the Morris report. I ask the Minister for clarification of the mechanisms he is proposing to build into the Bill with regard to the ombudsman commission and the Garda inspectorate. Will they have retrospective powers? Can they look back on past wrongs that have been committed? We all want to restore confidence in the Garda Síochána. I refer as an example to what is know as the Shergar affair and the sworn inquiry that followed it. A member of the Garda Síochána, garda 17714H, was dismissed, in my view unfairly. Substantial information about that was given to the Minister in January 2004, some 17 months ago. It was given to him by one of his colleagues at my request and I am disappointed that nothing has happened since. Will what he is setting up now deal with situations like that? There was a sworn inquiry, in which a bogus witness was used and perjured evidence given. It is a serious issue. We need to deal with problems like this if we are to restore confidence in the Garda Síochána. Adequate Garda evidence, in a chief superintendent's report, has been sitting there for some time. This man has lost his job and all respect. This matter needs to be addressed. The mechanism proposed by the Minister cannot deal with such cases. Another worrying trend is that at least one senior garda was involved in this affair, the Kerry babies case, the Abbeylara shooting and the Donegal scandal. These are serious issues and I would like to know whether the Minister's proposed mechanism will address similar issues. The garda involved in this case has suffered since 1992 when he was suspended. The request to which I refer has been with the Minister since January 2004 but nothing has happened. Will the Minister do something now?

Dr. Mansergh: I would like to address a single issue. Much of the undertone in the debate is that the very effective Northern Ireland model should operate here. That is open to debate but the way the argument to date has completely ignored significant cultural, historical and political differences between the North and the South. A large part of the community in the North did not, and does not, have confidence in or support the police in the administration of justice and so on, which is not the case in this jurisdiction. A further problem in the North is that the junior Minister in this area is assumed to be lined up with or under the thumb of the so-called securocrats and is not seen as impartial. The ombudsman office was set up because of the particular difficulties. Perhaps it will change but no local politician or set of politicians has control, responsibility or accountability for justice and security in the North.

Following weeks and months of intense debate about various issues in the Minister's brief and, chiefly, events in Donegal, the Government and the Minister are directly responsibly and accountable for overall policy and correcting serious defects that emerge in the administration of justice and policing in the State. The Northern system does not have anybody comparable to the Minister. I refer to a comparison, which is not valid. Do we want the Minister and the Government to be accountable for policing generally, as opposed to individual decisions, and to have responsibility for correcting serious scandals that emerge in particular areas? People are not comparing like with like. Nobody has stated a desire to seriously diminish the responsibility of the Minister for the state of policing and the improvement thereof in our system. The balance is different because there is not a political vacuum here similar to Northern Ireland. While recent events have shaken confidence in the way the Garda operated in Donegal, nonetheless, overall there is a higher level of confidence here in the police than in the North.

I agree with my party spokesperson, Senator Jim Walsh, regarding another comparison. Is it valid to compare the ombudsman function relating to police to the regular Ombudsman or Information Commissioner? Without diminishing the seriousness of the matters with which the Ombudsman, Ms O'Reilly, deals, the police ombudsman will have serious and critical issues

[Dr. Mansergh.]

to address. I prefer to examine substance over presentation because substance is more important. The Special Criminal Court comprises three judges. We have had single judge tribunals but I do not think that they have always operated effectively. There is a case for somebody in the position of ombudsman to have colleagues with whom he or she can discuss issues.

Reference was made to the question of people voting and non-voting. In the vast majority of cases, issues are thrashed out for as long as it takes and a collegial decision is taken as is the case with Government. The notion of open differences undermining confidence in the office has no bearing on reality. Where critical decisions must be taken, which may affect public confidence in the Garda in a particular area or generally, the maximum consultation and considered decision making will take place. I would prefer that the ombudsman should not be a lonely decision maker who must make decisions on his or her own. Two other people should be appointed with whom he or she can consult.

Ms White: What about the Attorney General?

Dr. Mansergh: That is generally the practice in the judicial process. Quasi-judicial decisions are made by at least three persons rather than one.

Mr. M. McDowell: I do not wish to criticise the model adopted in Northern Ireland but, for instance, the equivalent body for the Royal Canadian Mounted Police comprises three persons while in Britain a significant number of members make up its equivalent commission. This issue is one of practicality. The House should consider a few of the features of the legislation, one of which is that the ombudsman commission can delegate its functions to any of its members. If, for instance, an investigation takes up significant time and resources, one member of the commission can have that function delegated to him or her while the others deal with the day-to-day correspondence with the office. If a member is on holidays or is hospitalised, continuity will be provided. Somebody will be available that afternoon to decide whether a specific police station should be searched or whether a person should be arrested. He or she will not operate under a general mandate of the ombudsman.

One can argue the toss on this but a strong argument has been made, which was repeated by Senator Tuffy, that an identifiable person should be appointed as a figurehead of the service but I regret that the service will have a substantial volume of business. It will not be one in which the individual will have a hands-on approach to every matter. With a 14,000 strong force — which will soon be in place — the ombudsman commission will have a significant volume of business with which to deal. There is nothing to be lost and everything to be gained by providing a flexible model of three people capable of exercising the role of ombudsman and delegating to themselves, or in certain other respects, to their officers any of their functions.

One can draw analogies, as Senator Mansergh said, between the Special Criminal Court and the Diplock courts. Are we happier that there are three people in the former rather than one? Most people would be, although I note some members of Sinn Féin said recently they are happier with the Diplock courts than with the Special Criminal Court. One takes one's choice.

In the Court of Criminal Appeal, for instance, to take a judicial model, there are three people but only one judgment is pronounced. Frequently the media reports it as a judgment of the presiding judge because he or she delivers the judgment. That is not so — it is a three-person decision in which the presiding judge may be in a minority but if so is obliged to deliver the judgment without disclosing that fact. That is how that system works.

There are three Revenue Commissioners and three Commissioners of Public Works, one can talk about commissions until one is blue in the face. Sometimes one person is made a commissioner such as the Information Commissioner, sometimes three people are made commissioners. There is no golden rule that states only one person can function in this way. For example, if we had a significant volume of business for the Ombudsman and the Information Commissioner, I could well imagine those jobs being carried out by a multi-person commission.

This is not a point of high principle. There is much argumentation on each side. Are the Canadians wrong to have a three-person body for the Royal Canadian Mounted Police? Is that inferior to what has happened in Northern Ireland?

Ms White: It could well be.

Mr. M. McDowell: It could well be but maybe not. If three people had been selected in Northern Ireland and I said I wanted one I would have been beaten around these Houses for doing the opposite of what I am now doing.

I have listened carefully to the debate and have substantially amended the proposal. There is an argument for involving more than one person. I also believe there is an argument for having a person who is visibly identified with the process. The compromise we have is a good one on that front.

The question was asked whether this is to be a retrospective body with power to investigate the disappearance of Shergar and so on. The ombudsman commission, generally speaking, will not go back over history. The bulk of complaints will be contemporary, rather than retrospective and there is a strict time limit which can be extended in certain circumstances provided for in the legislation. There are provisions in section 102(4) and 102(5) which would, in certain circumstances, allow investigations that are not time lim-

ited and, in principle, would allow retrospective investigations.

I need a police force functioning to the highest possible standards. I am somewhat mystified at times by the amount of exhumation of grievances in Northern Ireland going back over ten, 15 or 20 years. This is a one-sided process because it is claimed almost insatiably that some issues should be retrospectively investigated to find out whether there was collusion with policemen.

The process agreed in Weston Park exists and I am not trying to go behind it. It is ironic, however, to put it mildly, that nobody will ever investigate the incident in which ten or 11 Protestant workers were removed from a bus and machine-gunned at Kingsmills. No one will ever ask who did that. No one will ever hold an inquiry and demand the truth.

Ms White: Eddie Fullerton.

Mr. M. McDowell: The Eddie Fullerton issue is a live one.

Ms White: Is the Minister dealing with that?

Mr. M. McDowell: I make the point to Senator White in particular, that there are many things which apparently it would be rude and against the thrust of the peace process even to mention, which are never to be investigated in Northern Ireland.

Take the case of the poor girl in Derry who was shot and whose parents were told by the Provisional IRA that it was the British Army who killed her, knowing that was a lie. It maintained that lie for decades. Nobody will ever ask which among the Provisional IRA commanders in Derry and which elected representatives there were party to that gross deception. They will walk clean away from it, they hope, by simply saying now, many years later, they were lying through their teeth all the time. We have to put up with that kind of thing.

I am not going to embed a process of retrospection into this ombudsman process. It is not the function of this process to act as a roving tribunal of inquiry into every *cause célèbre* of the Garda Síochána over the past 25 years. I could do that, and were I to match the amount of retrospection in which Nuala O'Loan engages, and if the Garda Síochána were to engage in the kind of retrospective operation in which Sir Hugh Orde is now engaged, I could pour massive resources into numerous issues.

Mr. Cummins: How far back will the commission go?

Mr. B. Hayes: Six months.

Mr. M. McDowell: The question we must ask in those circumstances is whether that would be an appropriate use of Garda resources. There are people whose homes are under attack today and will be tomorrow, people who want to walk the streets in safety today and plots to commit crime which require the activities and intelligence of skilled detectives to be applied today in surveillance. Am I to draw all these forces into various offices and ask them to engage in historical research? The people would be of the general view that, with the exception of matters such as the subject of the Morris tribunal, this should be a contemporaneous process.

The two exceptions provided for in section 102 should be used judiciously, if at all. Otherwise, there will be an endless torrent of people saying they were assaulted 30 years ago in a Garda station, or whatever. We cannot have that and have a proper——

Mr. Coonan: What about the wrong done to the individual garda?

Mr. M. McDowell: I cannot comment on an individual case in this House. I do not want to be deflected into doing that. There are many individual cases, many of which are current and known but I cannot in the course of this debate comment on their merits or demerits because that is not what we are doing here.

Mr. Coonan: There are still senior members of the Garda management there.

Ms White: What forum is there for asking about dead cases?

Mr. M. McDowell: There are many fora for doing so but the purpose of this ombudsman commission is to deal with contemporary complaints in general and only in exceptional cases will it be employed on a retrospective basis. It is open to the ombudsman commission, if it appears to it to be desirable in the public interest to do so, without receiving a complaint, to investigate any matter which appears to indicate that a member of the Garda Síochána may have committed an offence or behaved in a manner which would justify disciplinary proceedings.

There is not on the face of section 102(4) a time limit of any kind. The commission is an independent body. If it comes across a matter outside its time limits it can examine and decide on the matter but that is not something in which I would lightly engage. Section 102(5) states:

> The Minister may, if he or she considers it desirable in the public interest to do so, request the Ombudsman Commission to investigate any matter that appears to the Minister to indicate that a member of the Garda Síochána may have done anything referred to in *subsection (4)*, and the Commission shall investigate the matter.

Mr. Cummins: The Minister is dealing with section 102 as passed by the Dáil. The documents before us are those passed by the Seanad, to which section 102 does not refer.

Mr. M. McDowell: I am sorry.

Mr. B. Hayes: We can only refer to the amendments as passed by the Seanad.

Mr. J. Walsh: That is correct.

Mr. M. McDowell: It is section 94 in the Senators' documents but this is not of my doing. The procedure of this House is not imposed by me. Senator Tuffy mentioned resources, which will be a significant issue. The present scale of the Garda Síochána Complaints Board would not be justifiable as an indicator of what will happen when the ombudsman commission is put in place.

The complaints board has a budget of €1.2 million whereas the equivalent ombudsman in Northern Ireland has a budget of £6.5 million sterling, €9 million. The multiplier here is seven or eight, not 15 as suggested by Senator Tuffy but whichever figure is used, there is a remarkable disparity between them. I ask the House to remember that the number of staff in Northern Ireland grew over a formative period on a stepped basis from 40 or 50 to its present number. I do not wish to create an expectation that there will be numerous people immediately sitting at desks waiting for telephones to ring, as that would not be practical. I must ensure the implementation process begins with a solid commitment of resources and an understanding that these resources will be increased so as to adequately discharge the functions of the ombudsman commission over a number of years. One cannot just click one's fingers to produce an agency operating at full capacity on day one. It will take a succession of years to reach an acceptable plateau. Senators Maurice Hayes and Jim Walsh mentioned the designation of Garda stations. This will be addressed in group 12 so I will reserve my fire.

An Leas-Chathaoirleach: We move to group 5 on Garda accountability and the Morris report, the subject matter of amendments Nos. 52 to 55, inclusive.

Mr. M. McDowell: The four amendments in this group comprise a core set of provisions in the Bill. As I said during the Dáil debate on the Morris reports recently, the findings of the tribunal are profoundly disturbing and shocking at times and call for a strong, effective response from the Government. Notwithstanding that a relatively small number of gardaí were involved in what Mr. Justice Morris uncovered in County Donegal, there is no escaping the inevitable conclusion that the management systems and culture currently in place within an Garda Síochána are wholly outdated and inadequate. They have failed to discern the truth in so far as the events in County Donegal are concerned and there is no escaping the reality that there is a compelling case for a radical and wide-ranging reform of the management of an Garda Síochána. I am determined to see this objective achieved through the enactment of the Bill and the speedy implementation of its provisions, especially so in the areas we are now discussing.

I referred to the establishment of a special implementation group under the chairmanship of Senator Maurice Hayes. It will oversee all measures that are required by way of administrative and other actions to put the provisions of the Bill into effect as quickly as possible after it passes through the legislative process. My nightmare is that, having produced this Bill, nothing would then happen or a slow administrative process would take effect, in which I would be constantly reminded by well-meaning officials that there is much work to be done. The Department and its Secretary General were very anxious to put in place a real incentive to ensure the Bill comes into operation as quickly as possible. I thank Senator Maurice Hayes for agreeing to be one of our auditors and to hold the whip to us.

The amendments before the House in this grouping represent a full and head-on response to some of the recommendations contained in the first and second Morris reports. In paragraph 9.36 of the second Morris report, the tribunal reiterates the entire "Duty to Account" section on recommendations in chapter 13 of its first report. The tribunal noted that the Garda Síochána discipline regulations do not make it a breach of discipline to fail to account for duties. It also noted that a statutory compulsion that results in an admission of criminal liability is ruled out as an involuntary statement in any subsequent proceedings. The tribunal observed that there can be no good reason a member of an Garda Síochána should not account for his or her duties. The tribunal took the view that it is of fundamental importance that all members of an Garda Síochána of whatever rank must be obliged to immediately account truthfully for their duties and that a failure to answer or an answer that is less than truthful should be regarded as a major breach of discipline inviting dismissal. This is a point with which I agree completely.

The tribunal's recommendation in this respect was the creation of a special offence of failure to account for duty, that it should be a dismissal offence and that a failure to account truthfully and immediately in respect of duties should result in immediate suspension. As I said in the Dáil, I agree with the clear view of the tribunal that gardaí should be required to account for their actions on duty without delay, procrastination or the need for applications to court. The tribunal made it clear that the existing Garda disciplinary mechanisms were totally inadequate to the task of establishing straightforward facts concerning the whereabouts and actions of individual members of the force. It is essential, therefore, that there should be a clear duty on every garda to account without delay.

It was always my intention to provide for such a duty in the disciplinary regulations, which would be made under the Bill and for which the

Bill already provides. Having reflected further on the matter and having taken into consideration the strong language used by Mr. Justice Morris in his report, I have decided to place such a duty on an express statutory footing by way of inclusion in the Bill itself through an amendment introduced on Report Stage. I make no apologies for the lateness of the hour, so to speak. It was too important a matter to leave for another day and must be dealt with in this Bill now. I consulted in detail with the Attorney General and his staff on the new provision and I am sure it is as tight as we can make it, having proper regard to constitutional and European convention on human rights considerations. I agree with the tribunal that this duty, vigorously implemented, should obviate the need for more involved investigations in many cases and should greatly assist the internal management of an Garda Síochána.

The purpose of the amendment is to give direct and immediate effect to the recommendations of the tribunal concerning the Garda duty to account. The new provision means that every member of the force except the Commissioner for obvious reasons, when required to do so by a member of higher rank, must account for his or her action or inaction while on duty. The provision cannot be applied to the Garda Commissioner as there is no higher officer within the force to whom the Commissioner can be made to account. However, I am still alert to the tribunal's comments about the Department of Justice, Equality and Law Reform in paragraph 13.96 of its first report, where it states that in line with its statutory oversight role in respect of an Garda Síochána, the Department must be empowered by knowledge. The report also indicated that the Department had become isolated from the force.

Senators might recall that my immediate response to this point was to introduce new provisions in the Bill for the establishment of an independent Garda inspectorate, the main function of which is to ensure the Minister and the Department will have objective information on matters relevant to the functioning of the force in line with the aims of this Bill to make better provisions in respect of an Garda Síochána. This was done during the passage of the Bill through the Seanad in 2004. Having reflected on the matter, I decided to go further on the tribunal's recommendation in paragraph 13.96 by extending the duty to account requirements proposed in respect of an Garda Síochána to the Garda Commissioner also. As can be seen in the amendment I introduced on Report Stage, this will be achieved by way of the Garda Commissioner being required to account fully to the Government through the Secretary General of the Department of Justice, Equality and Law Reform for any aspect of his or her functions.

I do not wish to examine the matter too deeply in this House. There has been a good deal of mischief-making about this new provision. Considerable time was devoted to it in the other House and the allegation was made that the amendment would enable me as Minister to see any Garda file I wished, on any occasion, for good purpose or bad. I have made my position clear on this issue and do not propose to go into the matter again unless I must. I stand over this scrupulously fair and reasonable provision which is designed for the purposes of a sovereign Government and its duty, through the Minister for Justice, Equality and Law Reform, to account fully to the Oireachtas for the Garda Síochána.

I ask Members to imagine the scandal if the Minister of the day were to be challenged in the Dáil by an Opposition spokesperson or Government backbencher claiming that a file indicating significant malpractice or whatever on the part of a particular person or body was in the possession of the Garda Síochána. Imagine how wrong it would be if the Minister was obliged to admit to the House that he or she had inquired about the matter but was refused access to the files. How could this possibly be right? How can there be documents to which the Government, operating through its most senior public servant in the area of security, could not have access if such was required for the purpose of accountability?

Some will argue that I might use this power to discover the status of a Garda investigation into a cousin of mine, for example. This would be a clear abuse. To do so, however, I would first have to persuade the Secretary General of my Department to collaborate with such an abuse. Second, both he and I would immediately be exposed to the prospect of being swept out of office if the Garda Commissioner chose to write and publish a letter to the Taoiseach or to lift a telephone to a journalist. We would pay the ultimate price for abusing this power.

The alternative view in this matter is that the Government should not, in the last analysis, be master in its own house and have the power, through a responsible public servant, to access Garda files when such access is required. If such access is not possible then the Government is not in charge and there is no effective civilian oversight of the police force. The Garda cannot ultimately have secrets from the democratically elected Government of an independent Irish State. There cannot be a power to refuse information of this type.

The deletion of the original provision in section 40 was consequent on the insertion of the new accountability provisions in section 5. I reintroduced the provisions in section 40 in modified form in the new section 37. In its original form, section 40 required the Garda Commissioner to keep the Minister fully informed about significant developments in policing and security matters. This implemented a recommendation in the report on performance and accountability.

This section also contained a statutory basis for a submission of a report by the Commissioner on a policing or security matter as might be required by the Minister for Justice, Equality and Law Reform. In line with other changes relating to accountability, however, I am proposing some

[Mr. M. McDowell.]

additions to the original section 40 to strengthen it significantly in the light of the second report of the Morris tribunal.

These amendments provide a power which replaces a broadly analogous narrower power which exists, somewhat obscurely, under the Dublin Police Act 1924 for the Minister to appoint a person to carry out a special inquiry into any aspects of Garda administration, practice or procedure which is giving rise to public concern. There may be circumstances, notwithstanding the detailed powers and functions of the ombudsman commission and the new inspectorate and the powers of the Minister for Justice, Equality and Law Reform to request these bodies to act where a specific issue comes within their particular remits, where an issue could require a speedy and relatively informal inquiry by an expert to establish facts with regard to any aspect of the administration, practice or procedure of the Garda Síochána. That is the purpose behind the provisions set out in amendment No. 55.

Mr. Cummins: There is no doubt that we need accountability within all ranks of the Garda. The second report of the Morris tribunal unearthed a murky side in regard to the activities of some members of the force, a side most of us did not perhaps believe existed prior to this. The report made us aware of instances of gross incompetence, corruption, personal vendettas and the destruction of lives and livelihoods. It also demonstrated the great disrespect shown to the late Richie Barron and the search for the truth surrounding his untimely and undignified death.

We had the unedifying sight of senior gardaí who may have believed they were above the law and who, by their activities, eroded the pride and the confidence the public had in the force. We must have accountability if we are to address the recommendations of Mr. Justice Morris. I am concerned, however, that due process and natural justice must be seen to apply at all times. Amendment No. 52 provides for a new section 35 which stipulates that where a member of the Garda fails to account for any act done or omission made while on duty, he or she may be informed by a member of higher rank that such failure may lead to dismissal.

I agree there is a duty to account for one's actions but I ask whether this is another charter for bullying within the force. If, for instance, a higher ranking garda has a grudge against a more junior member of the force, could the former resort to use of this section to remove his or her colleague? Are there any safeguards in place to prevent such an eventuality and does the Minister believe any such safeguards are necessary?

Industrial relations difficulties may accrue as a result of this section and the Minister has mentioned that he is getting advice from the Attorney General in this regard. However, a question remains in regard to constitutionality in that gardaí may lose their livelihood in a summary fashion under the provisions of this section. I would never condone wrongdoing but due process and fairness must apply.

Amendment No. 54 relates to the duties of the Garda Commissioner to provide information to the Minister. Given the obvious concerns that have been raised at the Morris tribunal and the revelations that the Garda authorities did not hand over files when requested to do so by the Attorney General, will the Minister confirm that he will maintain authority over the Garda Síochána? He has given some assurances in this regard but I ask him to clarify them. Will he guarantee to the House that where the Department of Justice, Equality and Lw Reform requires files or records — for example, in cases where it is the contracting authority — that this information will be provided and that such provision will be retrospective?

I ask this in view of the concerns relating to the contract for the supply of video interviewing recording systems. Will the Minister instruct the Garda authorities to provide his Department with all the files and records the Garda authorities hold in regard to the awarding of this contract, including all the information and correspondence in regard to the valuation of the three systems that were offered? EU legislation states that information relating to the selection of successful tenders should be provided within 15 days. It is now more than four years since the Department of Justice, Equality and Law Reform sough this information and it has been thwarted at every step. Will this legislation allow the Minister to acquire these documents? If not, what is the reason for this?

The Minister observed that it would be a disgrace if he could not access documents in the possession of the Garda. Will this be the case in regard to this disgraceful matter, which has been raised at meetings of the Committee of Public Accounts? I ask the Minister to reaffirm his earlier statement in regard to this. It is a pertinent point that the Minister for Justice, Equality and Law Reform, as the leading law enforcer for the State, should have access to the documents he or she requires from the Garda.

Mr. J. Walsh: I broadly support the thrust of this new chapter.

Under section 35(1), a garda must account for any act done or omission made while on duty when directed to do so by an officer of higher rank. While I understand this may not cover informers, I am concerned because the Morris report addressed that area at considerable length. I am not sure that I agree with all the conclusions it made. In general, where gardaí are involved with informers, they will require a lot of discretion and confidentiality. In terms of the fight against paramilitaries and organised crime, an informer, who may face the sanction of death upon discovery, would be slow to co-operate unless absolute trust existed within the system. That would entail confidentiality. I cannot con-

ceive of a situation where an informer would be happy to co-operate with a garda if he or she felt that anybody up the line could access the information or that his or her identity could be disclosed. We need to be careful that, because of the abuse in Donegal, we do not go the other way by creating problems in getting information and in policing effectively, which this is ultimately about. The Minister might state whether actions taken on foot of information from an informer might have implications in terms of this section.

With regard to the Secretary General securing documents, that is a far-reaching provision and I presume it will be reviewed in light of experience. I support it with caveats because, having sat through the hearings on the Dublin-Monaghan bombings, I did not accept the proposition put forward by the then Ministers and senior Department officials that the Department was so removed from what was happening in the Garda that it could not determine whether the investigation was continuing. That is ludicrous. I welcome the change but note that this will facilitate any future hearings by the Joint Committee on Justice, Equality, Defence and Women's Rights or any other Oireachtas committee, in that the Department will not be able to hide behind such a situation or claim that information is not in its possession. I see implications in this for the Department. Positive and negative elements exist. It will need to be examined in light of experience.

I have a further question regarding section 42(7) which states: "Any information, document or thing provided by a member of the Garda Síochána in accordance with a requirement under *subsection (4)* is not admissible in any criminal proceedings against the member and this shall be explained to the member in ordinary language by the appointed person". I wonder whether this may compromise any subsequent prosecution. If somebody committed a criminal offence and the document could otherwise be secured through the investigation, I would hate to think that this provision could thwart the effective prosecution of the case. Somebody could escape the full rigours of the law when he or she should have been brought to account by the courts. I have concerns on this and the Minister might comment.

Ms Tuffy: I appreciate the Minister's reasons for bringing forward the new section 35. It refers to one of the recommendations of the Morris report. However, I agree with the concerns expressed by Senators. We will have to examine how it works. We should have had more time to consider these amendments. While I am aware that much debate was held on this matter, the House could have sat longer and held further discussions with Garda representative associations, among others, before passing this legislation. We should review this in the future.

I have concerns about the way in which a member of the Garda Síochána is affected by this provision in terms of rights to appeal. I did not have a chance to review the legislation but I presume that an appeal may be made by means of disciplinary proceedings. Many issues arise in this area. While I see its necessity and that rights are impacted upon in terms of the Garda, we should in the future determine whether it needs to be amended. The Labour Party proposal for a commission on policing was a good idea for that reason. Many issues could be investigated and vested interests consulted on policing in light of the latest Morris report. I do not agree that this would lead to delays. During the debate on the motion brought by the Labour Party last week, I said that the Patten commission in the North did not delay reforms such as the Ombudsman Act 1998. That was enacted before the Patten commission reported. Reforms could be made now and a commission established which could do more. We should consider an independent Garda authority.

The logic of the Minister's argument in terms of section 36 is that he already has access. If that is the case, why do we need this provision? If not, what gap is it filling in the legislation as it stands? The Minister said he should have the access as described in the provision. If that is true, surely we already have it in our legislation. The Minister might comment on that point.

New section 38 concerns general issues of accountability in terms of inquiries by the Minister into aspects of administration practice or procedure. One reason for this is that he would want to overview policing strategy and administration. It does not necessarily mean that he would hold an inquiry on the basis of wrongdoing. It may be held simply to investigate these issues in general terms. I repeat that an independent policing authority should be established.

The Minister is attempting to imply that this would remove matters from his remit as well as from that of the Oireachtas. That is not the case because, in the case of police authorities in other countries, the relevant Minister retains overall authority. I remember a dispute with an authority in the UK over the dismissal of a senior official, where the Minister there had a say in the matter. The establishment of a policing authority does not remove all decision-making powers from the Minister. The Minister would possess an overseeing role in terms of our police force.

The Minister remarked, in the context of the Northern Ireland authority, that we want these practices because they exist in Northern Ireland. That is not true. We want them because Northern Ireland represents a positive model. It is not that Northern Ireland was a society which required these practices or, as the Minister would imply, that it is unique. Northern Ireland followed the practice common to other policing regions of the UK since the introduction of the 1964 police Act, which established the policing authorities for the various police forces there. Problems in terms of accountability were identified by the Morris tribunal. The way to address the homogenous nature of the Garda Síochána in an open and

[Ms Tuffy.]

accountable way is to have an independent police authority which holds public meetings and issues reports. The Minister would still have an overall role in terms of the police force.

I do not understand why the Minister is so strongly against the idea of an independent policing authority. He is clinging to his role in policing. That is incorrect. He needs to be brave, let go of his role and radically reform the structures in our police force. The independent police authority is the way to do that. A policing commission could initially examine all of the different possibilities and models of how to set up a policing authority and what it would do.

I stated last week that neither Ireland nor Northern Ireland are unique in having a crisis in policing. A lack of confidence and need for reform similar to that in Northern Ireland has occurred in police forces all over the world. The response of Northern Ireland in bringing in new structures shows its maturity. That we are not willing to go as far shows we are not as mature as a society.

Dr. M. Hayes: I will not bore the Minister as he knows my views on the police authority and I know his. It is not quite a draw as the Minister won. This series of amendments is of major importance and goes to the heart of the problem of policing a democratic society. It is important that the Minister has introduced them. I have some comments to make.

I was astounded when reading the Morris tribunal report to find that people could claim they did not have a responsibility to account to an employer for what they did on an employer's time as I would have thought that was implicit in any contract of employment. It is important the Minister has dealt with that.

I see the rest of this as a re-balancing of the relationships. Most police services and societies have the following problem. It would be entirely improper if any politician interfered in day to day policing or decide who should be arrested or charged, as one cannot have a spy in the camp inhibiting or second guessing the people doing that job. However, one cannot imagine that anybody is independent in the way that some chief constables I have known suggest. They describe decisions as operational because they have operational independence. I argue this point, as everything can be described as operational except saying "hello" to the Minister. That is why we spent so much time trying to hammer out that point in the Patten report. We clearly came to the conclusion that people must be accountable within frameworks and against plans and protocols. The Minister has gone a long way down that road.

I am glad the Minister introduced the possibility of having an inquiry by one person for situations where less than a full-blown inquiry is required. That might be a useful buffer at times between the politician and the documents. I am concerned about this but I accept the Minister's reassurances and am happy with similar reassurances from the Department. I am sure the Minister must develop protocols and directives on this and it might be better to make it clear that documents are not requested on a whim. Such requests are as a consequence of a serious concern of managerial deficiency in the police force, in response to a matter of public concern or to a question asked in the Oireachtas that the Minister account for matters.

Senator Walsh's concerns on informants can be dealt with in the same way. That a proper methodology and protocol for dealing with informants is also necessary comes from the Morris report. Its existence is crucial as it is a highly dangerous and difficult area. There is no question of a person of garda rank having to account to just anybody. Presumably it is spelled out that certain people are entitled to ask that particular question and not other questions. This tightens up the situation considerably. It is necessary in this day and age to assert there is no instrument, body or agency of the State which has untrammelled freedom to do what it wants on its time without being accountable through the Minister to the Oireachtas.

Mr. B. Hayes: Without detaining the House for too long I wish to refer to a number of points. Amendment No. 52 is crucial. I also was not aware that members of the Garda Síochána did not have to account for their actions. It shocked most members of the public when this came out from the Morris tribunal report. Senator Maurice Hayes is also right to state the entire objective of this is to challenge independent fiefdoms that might exist within some parts of the force and to ensure that an essential ingredient must be that the duty of members of the Garda Síochána includes accounting for themselves.

I have a question on the use of the phrase "higher ranks". The new section 35, at subsection (1), states: "A member of the Garda Síochána shall, when directed to do so by a member of a higher rank, account for any act done or omission made by the member while on duty". To take the Donegal situation, if I were an ordinary member of the force returning to the station late at night, how realistic is it that a sergeant or inspector in a local station will ask me, an officer he meets every day, to account for my whereabouts and actions during the previous three or four hours? The collegiality of the force is as it is.

Would it be more sensible to specify a higher rank of superintendent or deputy superintendent from another district? Realistically, people will not pose the difficult questions within a station because people who work together every day feel a personal commitment to each other. I ask the Minister to outline his rationale behind the phraseology of "higher rank". Why did he not specify a higher rank from another district as a means of ensuring that this information would be obtained when someone was asked to account for their activities?

With regard to amendment No. 53, it is shocking that a free Government of this State would regularly not get information on highly sensitive matters of public concern from the senior office-holder in the force. I read the comments the Minister made in the other House last Friday week when he informed the public of the time lag and delay before his Department received a full report from the Garda Síochána. It is not good enough in any democracy that a political master, responsible to the House for the actions of the force in a general policy sense, must prise information from the force. I accept the Minister's best motives with regard to amendment No. 53 but it is shocking that it needs to be put into legislation in the first place.

I have one question on amendment No. 54 on the duty of the Garda Commissioner to provide information to the Minister. What happens if a complaint is made either to the ombudsman commission or the inspectorate whereby information is flowing from the Garda Síochána to both of those bodies and the Minister also wants that information? Would the Minister be precluded from obtaining that information already sent to the ombudsman commission or inspectorate? I pose that question because it appears that situation would be conflictual if it were to emerge.

On amendment No. 55, I welcome that the Minister is updating what I understand is a part in the 1922 Dublin Metropolitan Police Act. There is a substantial power in this new section, which goes back to something Senator Coonan mentioned earlier. As I understand it, previous grievances can now be examined by this person the Minister can appoint. That is important because there are substantial grievances persons may want inquired into in a way that is outlined in amendment No. 55. I ask the Minister to clarify that. For example, subsection (9) of the new section states that the section applies even if the matter considered by the Minister to be of public concern arose before the passing of this Act. It is clear that it is the Minister's decision. It is clear also that questions could be put to him in the other House as to the reason he has or has not decided to ask this special investigator, as it were, to investigate that cause of concern. That is important because we can at least say to the public at large that even if the ombudsman commission cannot examine every issue retrospectively, and I understand what the Minister is trying to do here, there is a mechanism in place to examine past grievances and some political control as to how we can do that. That is important.

Dr. Mansergh: Clearly these are extremely important sections. The situation we have in a democratic society is of vital importance. Do we have, as the Queen is alleged to have said across the water, powers at work in this country of which we know nothing, in other words, the security authorities operate, to a degree, independently of any control? I have certainly had the feeling in regard to some of the matters and security controversies that have been at issue in Northern Ireland and in Anglo-Irish relations, and perhaps this is naivety on my part, that the Government across the water does not have a full handle on all aspects to do with security.

We are talking about our State here, however, and it is very important that if necessary the Minister and the Government — obviously one is only talking about exceptionally grave situations of one kind or another — are capable of getting all the information in the possession of gardaí and that there are not reserved areas, so to speak, into which even the Minister or any other authorised officer like the Attorney General, are not permitted to inquire. That is a very important principle.

Obviously one might be concerned about whether this power could be open to abuse but I would like to think that we had developed to a stage in this country where abuse, of which the Minister gave one theoretical example in his opening statement, would be so fraught with risk that people would not entertain it. One is talking about two people — the Minister and the Secretary General of the Department. It is very important that such a power not be delegated to some middle ranking or junior officer in the Department of Justice, Equality and Law Reform. We all understand that in most instances the Garda Síochána must have a large degree of discretion and operational freedom and not have any kind of second guessing mechanism but I do not believe that is proposed.

The one comment I would like to make is about the question of a Garda authority, in other words, the suggestion that the powers proposed to be given to the Minister effectively would be under a Garda authority. I am not convinced of that. I have had opportunities, as a member of the British-Irish Interparliamentary Body, to meet the policing authority in Northern Ireland and in many respects it is like a board of a company where all the directors are non-executive. I am not satisfied that they are an adequate substitute. I am not criticising the situation in Northern Ireland. There is a particular history, political situation and culture there. It is a perfectly valid choice and I know they operate with them in England but the Minister and the Government have a democratic legitimacy way beyond that of any appointed authority of the great and the good. Therefore, I support what is before us but it is of major importance that it be clearly stated because there has been some degree of ambiguity about this. Going back to my time as a special adviser, there would have been some doubt in my mind as to how far the power of the Minister for Justice extended. Could such Ministers in principle, if they had a valid reason to do it, know everything that they needed to know? I was not always convinced that was the case. We have had instances where that was not the case *vis-à-vis* the Minister of the day and the Attorney General. I support these sections.

Mr. P. Burke: I welcome the Bill. Under section 14, the Garda Commissioner can appoint a number of members to the rank of sergeant and inspector as he sees fit. Under this ground-breaking legislation, there will not be any changes in the current Garda ranks. There is a considerable number of retired members of the force of various ranks who are on different pensions but in many semi-State and State bodies — Telecom Éireann a number of years ago being a prime example — when the ranks are changed the people concerned lose out on their pensions. I would like clarification regarding the ranks within the Garda Síochána and an assurance from the Minister that retired members will not lose out on their pensions, that their pensions will grow at the same level as the rank at which they retired and that there will not be any loss to them in that regard.

Mr. M. McDowell: On the last point, there is no intention to change the pyramid of ranks in the Garda Síochána Bill. The current ranks are Commissioner, Deputy Commissioners, Assistant Commissioners, chief superintendents, superintendents, inspectors, sergeants and gardaí, and there will be reserve gardaí as well if that comes into operation. Those are the only ranks which exist, just in case anybody is of the view that I am proposing to bring in some new variety of commandants, majors and so on for pension purposes. I assure the Senator that will not happen.

I do not want to detain the House overly long on these issues but it is of major importance to me that there should be accountability in principle. It is either a strength or a weakness that having been Attorney General in circumstances where I was not actually given material which I considered to be vital for two functions, first, to advise the Minister of the day and, second, to conduct civil litigation on behalf of the State, that lesson was not lost on me. Without unduly widening the debate I want to put on the record of the House that my predecessor as Minister, Deputy O'Donoghue, at all times wanted access to the same information and was deeply frustrated he could not find out the truth of the Donegal allegations that were accumulating at the time. It is absolutely untrue to suggest he was anxious not to have an inquiry. On the contrary, he was pressing the Attorney General at the time for a way to establish the truth of the Donegal allegations.

The problem was — it remained a problem until we changed the law — that a public tribunal of inquiry necessarily would have completely pulled the rug from under the raft of prosecutions which the Director of Public Prosecutions was apparently contemplating at that time. One could not have a debate in the Dáil and Seanad to establish a tribunal of inquiry and a process of public examination of witnesses if the people charged with misbehaviour in the form of criminal offences were to have a fair trial in the courts. What we eventually did was to change the law to enable a tribunal which was in this difficulty to conduct part of its proceedings in private so the obstacle was taken away from the creation of the Morris tribunal, which is what happened.

I defy anybody to state that, for an Attorney General faced with the proposition that people have the right to due process in regard to their trials, there was an overriding right of the State to sweep that away and compel them to provide all the information which would rip away their rights as accused persons under our system of criminal justice. It was, as the then Minister, Deputy O'Donoghue, informed the Dáil at the time, a matter which deeply frustrated him. Nonetheless, he was obliged to uphold due process and not to embark on an inquiry which would have run into the sands.

The solution was to change the law. However, the underlying feature of all that was — a point on which there is controversy at present — that there was enough information in the possession of the Minister or the Attorney General to know that something was seriously wrong in Donegal. Of course there was. However, the issue was what could legally be done about it. The then Minister, Deputy O'Donoghue, wanted to have a parliamentary inquiry or a tribunal of inquiry. I, as Attorney General, said I accepted a tribunal of inquiry was the preferable way to go forward but asked about the pending criminal prosecutions. That was the issue with which I was faced.

Central to all of that was a right on Deputy O'Donoghue's part to see where the truth lay as best he could between all the various allegations. He had to make a policy decision on these issues. From the point of view of the Attorney General at the time, to try to work out how to defend these civil proceedings and to give decent legal advice to the Minister of the day, it was essential to see all the records. It was wrong, although it was argued in good faith — I am not impugning anybody's honesty — that the members of the Government, who were accountable to the Dáil, were kept away from knowing in extreme detail what the conflicting accounts were and what the situation was on the ground in Donegal by virtue of the fact there was a view that once a file went to the DPP, it could not be disclosed to any other party. That was an extraordinary situation but, unfortunately, that was a view held in good faith at the time. It had to be challenged over a protracted period to change matters.

It is claimed I should have been aware there was some major problem in Donegal. I accept that. Everyone was aware there was a major problem in Donegal. However, the issue was what was to be done about it within the law and while upholding constitutional values. Some people wave around Commissioner Noel Conroy's 37-page abstract on those issues. That abstract did not come to a conclusion and did not reflect any conclusion on the part of Superintendent Carty as to whether there had or had not been a murder in the case of Richie Barron. Instead, it

flagged the proposition that further inquiries were ongoing into that issue.

One could not even be sure on that issue. Given the conflicting statements on either side of the issue, it was by no means clear a tribunal of inquiry was appropriate in the circumstances, especially when it would pull the rug from under the criminal prosecutions which that report apparently recommended should be brought against a number of people, including members of the Garda Síochána.

I am conscious that the powers in the Bill seem very strong, and that in malign hands they could be abused. However, there is the equal possibility that wrongdoing could be concealed if these powers did not exist. Every request by the Secretary General of the Department of Justice, Equality and Law Reform to see any scrap of paper from the Garda Síochána is potentially the subject matter of a parliamentary question, and the Minister is obliged to answer as to whether he has in fact invoked these powers. I do not know whether in every particular case the Minister might say it is not in the public interest that the exact nature of his inquiry was made, if it was a security related issue. However, at least he is accountable to Dáil Éireann in the form of a parliamentary question if he does invoke these powers. If his Secretary General were to use these powers, the Secretary General would be accountable in the form of a question put to his Minister.

The other point that must be borne in mind is that anybody who thought anything wrong or bad was afoot would be in a perfect position to avail of the constitutional privilege of going to a member of the Opposition or another member of the Government parties to tell him or her this was a matter which must be raised because the Minister or Secretary General of the day was abusing his or her power. The result for the abuser would be catastrophic if it were found to be an abuse.

I agree with Senator Maurice Hayes and other speakers that the inquiry process provided for in the Bill is very useful. There are occasions when, for example, in regard to the management of informers, it would be better to have a buffer between the Minister and the issues dealt with. For example, if it was alleged that an informer was extremely badly handled with grave public prejudice arising, it might be desirable that, as happened in the case of Shane Murphy, senior counsel, an independent lawyer would be brought in to examine the issue and report on it, rather than having the Minister of the day say "Let me at those files. I will look at this and make my decision on it". In those circumstances, I presume the Secretary General would tell the Minister he was not willing to exercise his power in this regard and that he would suggest to the Minister to appoint an intermediary to protect himself or the State by putting an independent person between the Minister and the investigation.

I take the point made by Senator Jim Walsh about informers generally. Informers are a classic case of an area where a Minister should not inquire. I would never dream of asking the Commissioner, as matters stand, to tell me who his informers were in this or that organisation. I presume he would laugh at me if I was to casually ask him for a list of his informers. However, in the last analysis, there could come a point where it would be relevant whether an informer did or did not exist. I need only point to the recent experience in regard to the allegations made by Sergeant White to Nuala O'Loan, which led to the appointment of a three-person commission headed by the former Secretary to the Government, Dermot Nally, which investigated issues relating to the activities of an informer.

This demonstrates there are occasions when the Government must be in a position to find out what an informer did or did not do. It is an example in which Nuala O'Loan was given what appeared to her to be evidence which at the very least required a response, and the Irish State was in a position to appoint a three-person body to look into that issue. It would have been wrong for the Minister of the day to deal with the matter because he would have been tainted politically by it. It might be argued he was trying to cover up or would not like to hear bad news, if there was bad news at the end of the investigation. There is a great argument for having a three-person commission. They can make inquiries and advise the Minister on whether the claim is credible. These are important powers. The accountability of the Government to the Parliament is all-important. Senator Maurice Hayes and I have decided to declare a truce on the subject of an independent police authority. I have not yet seen a model that recommended itself to me.

I defend myself against the charge of trying to clasp particular ministerial powers to my bosom. If I were a member of the Opposition I would be much more worried if there were an independent policing authority. When confronted with the daily challenges to account for policing matters it would be easy for someone in my position to refer queries to the chair of the independent police authority. From the point of political convenience ignorance is sometimes bliss.

Many of the things that went wrong in Donegal were a result of the pendulum swinging away from the kind of micro-management that existed when Peter Berry was in the Department of Justice, to the isolation identified by Mr. Justice Morris. The pendulum must be brought back to the middle. If one is to be accountable to Dáil Éireann one must be knowledgeable. There is no point in pretending to be accountable if one does not know what is going on. Posing as a politically accountable person is useless if one abdicates one's function of finding out, in extreme circumstances, exactly what is going on.

Members of the Garda Síochána must be in a position to answer questions put by their superiors. Otherwise, discipline does not exist.

[Mr. M. McDowell.]

The Morris tribunal found that inquiries as to a garda's whereabouts were effectively met with unsatisfactory responses. These included the response that representative associations would be consulted before an answer was given, that lawyers would be consulted, or that the person would go on sick leave and not make himself or herself available for interview. I agree with Senator Brian Hayes that it was a shocking state of affairs but that was the truth. Mr. Justice Morris found that to be the case, where people could select what they wanted to tell their superiors after consulting with representative associations and lawyers, or consulting a doctor on whether one's heart would stand up to further interview. This culture is simply not acceptable.

I accept there is scope for bullying in these measures. There will be regulations to counter the exploitation of this and there will be protection for members to prevent them from being exploited by these provisions. In the final analysis, it cannot be the case that one can decide the extent to which one will be truthful to superiors when a legitimate inquiry is made. Neither is it acceptable if one decides one is to be the judge on whether it is a legitimate inquiry. These changes are important.

Mr. Justice Morris thought that I would rely on Circuit Court compulsion as the way to secure compliance with this obligation. It was not my intention to do so. I intended to do so by disciplinary regulations in any event but I am happy to dispel that suggestion by making this provision a core statutory part of this Bill. That is why Chapter 5 is so important.

Mr. Justice Morris's point was that if this ethos had been there we would not be in the position of having a tribunal. People would not dream of going to a pub if they knew that the next day they might be questioned on it, and that prevarication on the response would result in the loss of their job. People will not go to a pub if they know that their job is on the line. People might do so if they believe that prevarication was possible when confronted about misbehaviour of that kind.

If it applies to a matter as comparatively innocent as drinking on duty it certainly applies to planting explosives and fabricating bombs. These things would not have been considered if there was a belief that any form of prevarication could be fatal to a career in an Garda Síochána. I am conscious of the points Members have made on the potential for bullying. I accept that the disciplinary regulations must provide that this provision cannot be abused or used for bullying, and that bullying is a disciplinary offence.

Senator Brian Hayes suggested that only an external officer should be involved. Truthfulness must be an organic thing. One cannot have a situation where it is only the appearance of an external officer that encourages a garda to appreciate the seriousness of the situation and to be truthful. When a sergeant or an inspector asks if a garda was in a pub there must be a definite answer. Replying that one will talk to the Garda Representative Association or one's lawyers is not acceptable. That is what truthfulness involves.

Mr. B. Hayes: The question must be put by the sergeant.

Mr. M. McDowell: The sergeant must ask the question. If such questions could only be put by a neutral outsider, the member would hide behind a smokescreen of evasion and prevarication as long as the neutral outsider was not called in. We cannot have that culture in an Garda Síochána.

Acting Chairman (Dr. Henry): The House is due to adjourn at 10 p.m. Group 7 may be started in the two minutes that remain.

Mr. M. McDowell: Perhaps we should get going.

Mr. J. Walsh: I propose an amendment to the Order of Business, that the Minister be allowed finish his statement on group 7 of the amendments.

Acting Chairman: Is that agreed? Agreed.

Mr. M. McDowell: Chapter 3 of the Bill, which deals with the roles of the Minister and the Garda Commissioner, includes provisions which require the Garda Commissioner to prepare a strategy statement and an annual policing plan. In addition to those provisions, I decided to require the commissioner to prepare a three year review report that will review the efficiency and effectiveness of the management and deployment of resources available to the Garda Síochána during that three-year period. Provision is being made for the report to contain recommendations that the Garda Commissioner considers necessary for improving the management and deployment of resources. The commissioner must address himself to the question of the efficiency of the force, whether he is getting a bang for his buck.

As I indicated on Committee Stage in the Dáil, the number of attested members of the Garda Síochána will reach 14,000 in 2006. The number of fully graduated members will exceed 14,000 in late 2007 or early 2008. These will be historically high numbers for the Garda Síochána and I want to be sure that their deployment will be put to best effect and that any difficulties relating to the management and deployment of members, or any other resources for that matter, and any recommendations for improving the management and deployment of resources, will be brought to the attention of the Minister.

That is the reason for these provisions. I consider the submission of such a report every three years to be an essential reporting requirement when one considers the monetary costs associated with resourcing and equipping a modern police force. Provision is made for the Minister to lay these reports before the Houses of the Oireachtas

subject to the usual exclusions with regard to State security, commission of offences, possible prejudice to a criminal investigation or a risk to the safety of any person.

Following the publication of the first Morris tribunal report in 2004, the Garda Commissioner accepted its findings and requested Deputy Commissioner Fitzgerald to examine the report, review the findings of the tribunal and prepare a report on its implications for the Garda Síochána. In order to comprehensively consider the implications and recommendations of the tribunal's report, Deputy Commissioner Fitzgerald established nine working groups, one of which looked at a number of areas of discipline. Among other matters, this group looked at the question of maintaining high standards and developing professional standards in an Garda Síochána. Among its recommendations, it suggested that consideration be given to changing the title of the discipline section, the complaints section, internal affairs and human resource management to a professional standards unit.

Whatever about changing the title of the internal administrative area within the Garda Síochána, I regard the establishment of a dedicated and highly motivated professional standards unit as a core requirement for the Garda Síochána at the present time. It is not good enough to impose this from the outside by the inspectorate; it is essential that the structures of the Garda Síochána internalise the requirement for high professional standards. In light of the findings in the Morris tribunal report, there is much work to be done. I see such a unit contributing significantly to the efforts of the Garda Commissioner in restoring and promoting a positive image of the force.

A police standards unit is now a feature of the policing landscape in the UK where it was established by the Home Office in 2001. This unit forms a vital part of the British Government's police reform agenda. The focus of the unit's activities is to measure and improve police performance in different command units and to examine the underlying causes of performance variations and identify and disseminate good practice, supporting those who need assistance.

10 o'clock

There is no doubt in my mind of the need for a similar unit here. The new unit will be under the direction of a chief superintendent and its focus will be on improving all aspects of Garda operational, administrative and management performance, sponsoring, promoting and disseminating proven excellent national and international practice. I will also provide for the Garda Commissioner to submit a report to the Minister by 31 March each year outlining the activities of the professional standards unit in the preceding year.

With regard to what Senator Tuffy said, there is no reason why there should not be an external review of all these issues also. The fact that my proposal for this is on an internal basis does not mean the suggestion made by the Labour Party is a bad idea. I am not excluding it, but I was not prepared to delay all reform until it reported in 18 months time, because that would have had us slap up against an election. In those circumstances, the process of Garda reform would have been fatally undermined.

With regard to amendments Nos. 56 to 63, inclusive, in the course of the debate on Committee Stage and in response to points made by the Labour Party justice spokesperson, I undertook to again examine the audit committee provisions of the Bill. Deputy Costello was concerned that the section seemed to give too much control to the Garda Commissioner. The Chairman of the select committee also observed that there could be a problem with the independence of the audit committee if it was appointed by the Garda Commissioner. I looked at the position again and satisfied myself that these provisions as originally drafted were entirely conventional.

However, following the publication of the second Morris tribunal report and, in particular, its recommendation on the need to strengthen the existing internal Garda audit section through the induction of officers from outside police forces, I have decided to change the method of appointment the audit committee which is to be established by the Bill. While the tribunal's recommendation is obviously a matter that will require further consideration in the context of the new provisions in the Bill allowing for the making of regulations governing the intake into the force of former members of outside police services, it appeared to me that in so far as the provision in the Bill for a specific audit committee is concerned, it was preferable to strengthen it in the following respects.

I substantially revised this section on Report Stage. First, while the Garda Commissioner will be required to establish the committee, all of its members, including a deputy Garda commissioner, will be appointed by the Minister. In the light of that change, I removed subsection (2)(*b*) which provided for one person to be nominated by the Minister. I also amended subsection (3) to provide for the Minister to designate the chairperson of the committee and I provided in subsection (4) for the members of the committee to hold office for a period to be determined by the Minister instead of the Garda Commissioner. Consequential amendments were made to subsections (4)(*a*) and (*b*) with the insertion in subsection (4)(*b*) that where members are removed from office it must be for stated reasons.

I amended subsection (6) to provide that members of the audit committee hold office on such terms and conditions as may be determined by the Minister with the consent of the Minister for Finance.

Debate adjourned.

Acting Chairman: When is it proposed to sit again?

Mr. J. Walsh: At 10.30 a.m. tomorrow.

Adjournment Matters.

State Property.

Ms Terry: I welcome the Minister of State to the House. I am sure he is familiar with the issue I have raised tonight, namely, the provision of adequate cemetery space in the Dublin 15 area. The Church of Ireland cemetery in Castleknock village is now closed in respect of those who wish to be buried in the Catholic section. We have an unusual position in Castleknock where the Church of Ireland welcomed all denominations. However, as a result of the closure of that cemetery, there is huge demand for an additional cemetery.

I raised the issue of land for a cemetery when I was a member of Fingal County Council and the then manager, William Soffe, was very sympathetic to the idea. I had hoped, if we both remained on the council, that we would have made further progress on it. Keeping in mind the cost of land in the Dublin 15 area, I have been trying to identify a site on which it would be possible to deliver. I am aware that there is surplus land at Farmleigh and as the land is in State ownership I expect the Minister would be supportive of providing it for such a facility for the people of the area.

I cannot see any other possible areas where we could acquire land for a cemetery for the area. Having regard to the current and forecasted population of the Dublin 15 area, there is significant need for the provision of a new cemetery. I appeal to the Minister of State, as a representative for the area, to support me in this cause. Representatives of all parties should come together to support this proposal.

I suggest that a meeting should be held with all religious leaders in the area in order to open discussion on my proposal. We should work together to secure a cemetery for the area. My belief is that the surplus lands at Farmleigh would be an ideal location for it and I count on the Minister of State as the person with power to bring about for the people of Dublin 15.

Minister of State at the Department of Health and Children (Mr. B. Lenihan): I do not have the power to bring the matter forward. It is the responsibility of Fingal County Council in the first instance. With regard to the ownership of Farmleigh, it is managed on behalf of the Government by the Minister of State at the Department of Finance, Deputy Parlon, who has responsibility for the Office of Public Works.

Ms Terry: It is regrettable that he could not be here tonight.

Mr. B. Lenihan: I am making this reply on his behalf. There is cemetery space in the Dublin 15 area in the ownership of the Church of Ireland at Clonsilla and there is also a cemetery in Mulhuddart.

It is important to note that there is no surplus land at Farmleigh. This is not the first time efforts have been made by public representatives in the Dublin 15 area to represent the situation otherwise.

Farmleigh was purchased by the OPW on behalf of the Government in June 1999. Following major refurbishment works, at great cost, the house and grounds were officially opened by the Taoiseach in July 2001. It is a tremendous facility to have at the disposal of this country. Substantial access to Farmleigh has been arranged for those living in the neighbourhood, elsewhere in Dublin and throughout the State. It has been approved by the Government as a premier State facility for Government meetings requiring residential accommodation. It is used as an official State guest house for visiting heads of State and other senior foreign dignitaries. It is also used for other State or cultural purposes for the benefit of the Irish people, in keeping with its standing. Structured public access consistent with security and other requirements is facilitated by the OPW.

I commend the OPW on the tremendous work it has done at Farmleigh, for example in improving the access to the estate. The OPW has provided space for markets during the winter and cultural events, such as orchestra performances, during the summer. The facilities at Farmleigh are a marvellous addition to the facilities which are available to the people of the west Dublin region, the people of Dublin generally and the people of Ireland. I do not doubt that the Government invested wisely and prudently in Farmleigh, notwithstanding the objections which were made to the proposal at the time.

It is important to note, consistent with the purposes for which the Government acquired Farmleigh, that there are no surplus lands at Farmleigh. The estate grounds are set out as gardens, grazing areas for animals and car parking spaces, all of which are intensively used in a manner that is consistent with the Government's policy. The grounds are required for press centres, catering and marquees on particular State occasions, such as the EU day of welcomes on 1 May 2004.

The OPW carried out major refurbishments to the house between 2000 and 2001. The house and its grounds provide a unique venue for the accommodation of visiting dignitaries. The President of Hungary, the Emperor and Empress of Japan and the President of Serbia and Montenegro have stayed at Farmleigh House this year. Farmleigh's role as a heritage property for the enjoyment and education of the public is central to its function. The OPW rejuvenated Farmleigh in preparation for this century by making it suitable for its contemporary functions while maintaining its historical and cultural ambience.

Farmleigh's cultural programme, which commences in July and runs until October of each year, consistently attracts an average of 125,000 visitors per annum. The focus of the summer programme is on using the grounds at Farmleigh for educational and recreational purposes. Nature and art classes take place and music is performed in the grounds. The cattle, horses and donkeys which graze in the fields can be enjoyed by all. It is expected that by the end of 2005, approximately 500,000 visits will have been made to Farmleigh since it reopened in July 2001.

I mentioned at the outset that many facilities are available for burials in the Dublin 15 area. I agree with Senator Terry that it is clear that the growth in population in that area will necessitate the development of further facilities. It is a good idea to establish an all-party group to lead the search for such a facility, although I am not sure that it requires a motion in this House. I do not doubt that it is important that such facilities are provided. I will be delighted to work with Senator Terry and others, including local authority officials, to ensure that such facilities can be secured. I regret to say that the acquisition of lands at Farmleigh for the development of a cemetery is a non-runner.

Ms Terry: The Minister of State's written reply did not refer in any way to the issue I raised, although he did make some personal remarks about the matter. I am very disappointed with the response I have received.

Mr. B. Lenihan: On a point of order, my response to Senator Terry consisted of the entire reply that I gave.

Ms Terry: The Minister of State added some personal words.

Mr. B. Lenihan: They were part of my reply.

Acting Chairman: We will not have any disputes at this hour of the evening. I must keep an orderly House.

Mr. B. Lenihan: The document that was distributed does not constitute my entire reply.

Acting Chairman: I remind the Minister of State that the Cathaoirleach left me in charge of the House.

Mr. B. Lenihan: The record of the House will reflect that I made remarks other than those which have been circulated.

Ms Terry: Will the contents of the Minister's script be published as his response?

Acting Chairman: The Cathaoirleach did not leave the Minister of State or Senator Terry in charge of the House. He left me in charge of it.

Ms Terry: I am sorry.

Mr. B. Lenihan: I apologise.

Swimming Pool Projects.

Mr. U. Burke: As I recognise what the Acting Chairman said during the previous Adjournment Matter, I will be orderly. I welcome the Minister of State, Deputy Brian Lenihan, and thank him for coming to the House to speak about this issue.

The swimming pool project in Loughrea has a long and difficult history. The action group initially established raised funds in difficult times, for example by organising small events, to assist the development of a swimming pool in Loughrea. A substantial amount of money was eventually gathered with a view to purchasing a site. The first proposed site, which was made available by Galway VEC, was beside the new vocational school. It was an appropriate site because it facilitated the use of the swimming pool facility by the two adjoining schools. However, the engineering personnel and the consultants who were in charge of the planning application decided, for one reason or another, that the site was unsuitable.

Some time passed before an alternative site, which was adjacent to one of the main residential areas in Loughrea, was provided by Galway County Council. When that site was on offer, a further housing development was planned on a site adjoining the proposed swimming pool site. The developer in question decided to support the swimming pool project by investing the necessary resources to provide top-of-the-range swimming facilities in Loughrea. The project has been bedevilled by queries, responses and delays for the last three years, however.

I ask the Minister of State to clarify the matter by indicating that the Government will provide the necessary funding to pursue the project with the developer in question, who has offered to provide some resources on a PPP basis. The only possible reason for further delays lies with the Department of Arts, Sport and Tourism. Like Galway County Council, which eventually played its part by providing a site, Loughrea Town Council fully supports this development. While the action group that did so much of the initial work to bring this project to its current stage continues to support the project, its patience will run out and it will get frustrated if there are further delays. Therefore, I ask the Minister of State to indicate clearly that the Department is willing to give the project the final go-ahead.

Mr. B. Lenihan: I will respond to the Senator on behalf of the Minister for Arts, Sport and Tourism, Deputy O'Donoghue. The Loughrea project is not the only swimming pool project under discussion at present. I do not have responsibility in this regard, but I will deal with this matter this evening because the Minister is abroad on business. While the project in question is not the most famous swimming pool project in the country, I thank Senator Ulick Burke for raising its current status on the Adjournment. I hope

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the reply I will give will be of some assistance to him. On behalf of the Minister, Deputy O'Donoghue, I propose to outline the current position of the local authority swimming pool programme and, specifically, the Loughrea swimming pool project.

As Senators are aware, the aim of the local authority swimming pool programme is to assist local authorities to provide new public swimming pools or refurbish existing swimming pools. Grants of up to €3.8 million are available for the refurbishment of existing pools or the provision of new pools, subject to the total grant not exceeding 80% of the eligible cost of the project or, in the case of projects located in areas which are designated as disadvantaged, 90% of the eligible cost. Support is available to meet the cost of swimming pools, toddler pools, saunas and steam rooms.

The closing date for the receipt of applications under the current swimming pool programme was 31 July 2000. Some 55 projects have been dealt with since then or are being dealt with at present. If a project is being undertaken by an organisation other than a local authority, it must be considered, supported and submitted by the relevant local authority. The local authority must be satisfied before it supports a project that the proposal is viable, that the balance of funding required to complete the project is available and that the project, when completed, will have a satisfactory level of public access.

Various stages must be completed before a decision can be made about the formal allocation of moneys under the programme. The four main stages in a swimming pool project are, in order of progress: feasibility study and preliminary report; contract document; tender; and construction. The technical adviser to the Department of Arts, Sport and Tourism is the Office of Public Works, which evaluates each stage of the project. Local authorities cannot proceed to the next stage of a project unless prior approval has been issued by the Department. Grant aid, which is allocated when tenders have been approved for the project, is capped at the time of the allocation.

I would like to put the proposed Loughrea swimming pool project in context. A feasibility report, representing the first stage in the development process, was submitted by Galway County Council for a swimming pool in Loughrea and was assessed as being in order from a technical perspective in 1999. Due to the limited funds available under the programme at that time, the council was advised that it could be some time before funding might be made available for the project. In 2001, the then Department of Tourism, Sport and Recreation gave approval for appointment of consultants for the preparation of the preliminary report.

However, in 2002, the Department was advised that a proposal involving an alternative site was being considered and that the process of appointing consultants for a preliminary report and design was underway. In 2004, Galway County Council submitted a tender proposal seeking a grant from the swimming pool programme for a project promoter by a private sector interest to construct a leisure centre, including a swimming pool, on a council site different from that initially recommended in the 1999 feasibility report. The private sector interest would provide a significant amount of funding towards the project and there would be some additional support from a local community grouping.

As already outlined, the normal procedure under the local authority swimming pool programme is that approval should first be sought at preliminary and contract document stages, before tenders are invited for a project. It is clear that this process was not followed by Galway County Council. Notwithstanding this, the Department of Arts, Sport and Tourism indicated to the council that it would be prepared to examine the proposal on its merits and this examination is under way. Issues such as the tender process, which has already taken place, public access, social inclusion and control and management of the pool must be carefully evaluated to ensure that the project fits properly within the local authority swimming pool programme. In this regard, Department officials are to meet soon with county council officials and members of the county development board to address these issues. On completion of this evaluation, the Minister can consider the matter further.

It will be of interest to the Senator to know that, overall, there are 55 projects in the pool programme. Since 2000, almost €49 million has been spent on public swimming pools and 17 projects have been completed. These include a new pool in Ballinasloe, County Galway, which was opened to the public in 2002. Some eight projects are at construction phase in Tuam, Ballyfermot, Drogheda, Jobstown, Youghal, Cobh, Letterkenny and Monaghan. The pool under construction in Tuam is due to open in the autumn, giving two new pools to County Galway in the past three years. The Galway East constituency has received two pools in the past three years.

Mr. U. Burke: What is the Minister of State saying?

Mr. B. Lenihan: I am saying the third cannot be too far away. Some 30 other applications are at various stages in the process, ten are at tender stage, 12 are at contract document stage and eight are at preliminary report stage. It can be seen, therefore, that significant progress is being made to implement the programme.

The Department of Arts, Sport and Tourism is carrying out an expenditure review on the swimming pool programme, which is expected to be completed later this year. This review will examine, among other things, how the programme has worked to-date, the benefits which have accrued to the areas where pools have been built, the levels of project completion and finance necessary

to bring the current programme to a close and any amendments which may be required to ensure effective and efficient delivery of the programme.

It is vital that the promotion of sport generally and the development of facilities, such as swimming pools, is carried out in a strategic and focused way, which means establishing priorities, avoiding overlaps and ensuring maximum public access to available facilities. The Government is anxious to ensure that the investment of taxpayers' money provides value for money by ensuring that attractive, viable facilities are built. The level of funding provided in 2005 by the Department of Arts, Sport and Tourism, at almost €62 million in respect of the sports capital programme, €34 million in respect of the Sports Council and €32 million under the local authority swimming pool programme, which is an increase of 82% on last year's swimming pool expenditure, indicates that the Government's commitment to sport, leisure and swimming is being sustained.

Accident and Emergency Services.

Mr. Browne: Last week, the Government made one of its most embarrassing mistakes in its eight year record, which is some achievement, when the Minister for Health and Children finally announced the €564 million capital programme for hospitals throughout the country. In the meantime, St. Luke's hospital, Kilkenny, was being praised at the Cabinet table for having managed its limited resources so well that there were no patients on trolleys. It was cited as a model hospital because of the way it liaises with its local GPs and uses its minor injuries and accident and emergency units and outpatients department. It is worth putting on the record that the accident and emergency unit in the hospital was formerly a laundry room and there is currently no fire exit. It was condemned in the health and safety audit.

There is no canteen for visitors in the hospital, which might sound a small matter, but it is a significant issue, particularly considering that St. Luke's hospital, Kilkenny, services an area from Carlow to south Kilkenny. As people must travel quite a distance to the hospital, there should be a canteen facility where patients could take a break when relatives visit them. These people could visit the canteen for a cup of tea or refreshments.

Last Wednesday, when the programme was finally announced, I went through the list three times only to find that St. Luke's hospital got nothing. I even checked with a Government Deputy to see did I miss something. To make matters worse, the day after announcing funding of €564 million, we learned that the Tánaiste was visiting the one hospital in the country that received nothing. It is worth noting that many hospitals received two or three allocations for different projects. I am not sure who is the Tánaiste's programme manager, but someone tried to make her look stupid. With friends like that, who needs enemies? The one hospital she visited the day after announcing a €564 million capital funding programme received nothing the previous day.

I must compliment the Tánaiste on visiting Kilkenny, because she displayed much bravery in doing so. Most Ministers would have found a reason not to visit the hospital. She was irate because of what happened and, as far as I am aware, she promised to upgrade the accident and emergency unit, the outpatients department and there is a possibility that a stroke unit will be established, even though this has not been clarified. I hope the Minister of State will clarify exactly what St. Luke's Hospital will receive.

This issue was a front page story today in the *Kilkenny People.* The editorial refers to a victory for St. Luke's and the editor speaks about the Minister, Deputy Harney, walking into a booby trap last week. The question must be asked, why was St. Luke's omitted in the first instance? We were lucky that by pure coincidence, the Tánaiste happened to be visiting St. Luke's the following day. The question remains, had the Tánaiste not been visiting St. Luke's, what would be the situation this week? It worked in her favour that she happened to be visiting the hospital that day.

It is my view that some official within the HSE, who had close ties to Waterford Regional Hospital, was doing his utmost to ensure that St. Luke's did not get its fair share of the cake. I have made a freedom of information request, which I will pursue further. I will name the individual in the House when I have proof.

The Minister, Deputy Harney, was very vague about the future of St. Luke's in terms of the Hanly report. As far as I understand, the accident and emergency unit in St. Luke's could be downgraded as a result of the Hanly report. Perhaps the Minister of State will clarify the situation tonight. He might also refer to the plan that consultants will come to Carlow and save patients travelling from Carlow to Kilkenny by increasing the outpatient clinics. I look forward to the Minister of State's reply, as do many other people in Carlow and Kilkenny.

Mr. B. Lenihan: I thank Senator Browne for raising this matter on the Adjournment. I am making this reply on behalf of the Tánaiste who was very impressed with the facilities at St. Luke's. She is very committed to the proper provision of hospital services in Kilkenny and Carlow. I thank the Senator for raising this matter because it provides the Minister with an opportunity to outline to the House her position on the matter.

The 2004 Act provided for the Health Service Executive, which was established on 1 January 2005, to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. This includes the bulk of the health capital programme. The question of new capital funding commitments for St. Luke's hospital,

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Kilkenny, will, therefore, have to be considered in this context.

The HSE service plan for 2005 was approved earlier in the year by the Tánaiste. She has recently indicated her agreement to the HSE to progress its capital programme. In assessing the needs for this year, the HSE had to take into account commitments carrying forward from last year before initiating new contractual commitments for individual projects in line with the overall funding resources available for this year and beyond. The Senator will be aware that a number of significant capital projects are at present under way in the south-east area. These are at various stages of planning or construction or have recently been completed. These include, for example, phases 1 and 2 of Our Lady's Hospital in Cashel; a unit for older persons in St. John's Hospital in Enniscorthy; an MRI unit in Waterford Regional hospital; extension and on-call accommodation in Wexford General Hospital; and a surgical department, radiology department, accident and emergency department, day ward, CSSD, ICU and ward upgrade in South Tipperary General Hospital.

A whole hospital brief was prepared in 2003 covering all the perceived deficiencies in the departments of St. Luke's Hospital. If carried out, the proposed major development on the site would have significant capital, revenue and staffing implications. It is important to remember when discussing the health service that capital expenditure often has serious staffing and expenditure implications.

The priorities within this brief must be established for any proposed first phase of development. These would probably cover, for example, the outpatients' department and the extension of the accident and emergency unit. Any interim capital proposal that might be put forward for the hospital would also be a matter for consideration in the first instance by the HSE under the multi-annual capital investment framework initiated by the Government.

I am pleased to inform the House that, arising from a recent visit by the Tánaiste to the hospital, she agreed to funding of €450,000 for St. Luke's relating to the appointment of a design team to progress a development control plan for the site, the completion of contract drawings for the outpatient department and development of services for a stroke unit. I hope that provides clarification for the Senator on matters he asked me to deal with.

Notwithstanding the above, it should be noted that the Kilkenny region has received significant health capital investment in recent years. Under the bed capacity review in 2002, an additional 52 beds were provided, with 28 at St. Luke's and 24 at Kilcreene. Together with the new medical admissions unit and with improved service protocols, this has greatly relieved pressure on the accident and emergency and ward accommodation at St. Luke's. This is a fact that the Senator fairly acknowledged. In addition, capital initiatives have been undertaken on the St. Luke's campus. These include a CT suite commissioned in 2000; a coronary care unit commissioned in 2001; a cardiac diagnostic unit commissioned in 2002; and an acute psychiatric unit commissioned in 2002.

Mr. Browne: Can the canteen issue be re-examined? It is a small matter that could make a major difference.

A problem exists within the HSE. Some in the HSE are claiming that the application went in before the final announcement, which makes no sense. Even in the Minister of State's reply it was stated that a whole hospital brief was prepared in 2003. This is an issue that should be examined, as somebody with close connections to the Waterford Regional Hospital has not moved on from that role and should remember he has a brief for the whole south east. The Tánaiste may be aware of this already.

Acting Chairman: I am sure the Minister of State will take note of the Senator's comments.

The Seanad adjourned at 10.35 p.m. until 10.30 a.m. on Thursday, 30 June 2005.