

SEANAD ÉIREANN

—
Dé Céadaoin, 16 Samhain 2005.
Wednesday, 16 November 2005.
 —

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

—
Paidir.
Prayer.
 —

Business of Seanad.

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

The need for the Minister for Health and Children to outline the financial and manpower assistance which the Health Service Executive will be providing for the new radiotherapy unit at Limerick Regional Hospital and if those who attend for radiotherapy treatment as public patients will receive appropriate financial assistance from the Health Service Executive.

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

The need for the Minister for Health and Children working in partnership with Irish hospitals to initiate urgently a scheme sponsoring as many doctors as possible who are working in Irish hospitals, originally from the Kashmir region, to be allowed travel in the next couple of weeks to the region to assist in the relief efforts there following the recent earthquake.

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

The need for the Minister for the Environment, Heritage and Local Government to clarify the response on the Government's initiative for the disposal of surplus land for Departments and Government agencies in County Galway for affordable housing.

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

The need for the Minister for Health and Children to indicate the up-to-date position in regard to the planning, financing and construction of new facilities at St. Brendan's Hospital, Loughrea, County Galway, following her visit to the hospital earlier this year.

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

Order of Business.

Ms O'Rourke: The Order of Business is Nos. 1, 2 and 19, motion 25. No. 1, Social Welfare Consolidation Bill 2005 — Report and Final Stages, to be taken on the conclusion of the Order of Business and to conclude not later than 1 p.m.; No. 2, Railway Safety Bill 2001 — Committee Stage, to be taken at 2 p.m. until 5 p.m.; and No. 19, motion 25, to be taken at 5 p.m. until 7 p.m. There will be a sos from 1 p.m. to 2 p.m.

Mr. B. Hayes: It is only a matter of time before innocent bystanders are shot in Dublin as a result of the ongoing gangland feuding that is taking place in this city. I know this matter was raised yesterday by Senators McCarthy, Finucane and others. We need to debate the matter today. I propose an amendment to the Order of Business that, following the conclusion of No. 1, we take statements on the upsurge of gangland killings on the streets of Dublin. This bloodletting must stop.

We all saw the response of the State following the murder of Veronica Guerin some years ago. Unprecedented new laws were put in place. The gangs were closed down. They went out of business and fled. However, new more amoral younger vicious thugs have taken their place. The Government and specifically the Minister for Justice, Equality and Law Reform must respond to this crisis.

Last night in Clontarf on a busy road where pedestrians and motorists go by on a second-by-second basis a killing took place. In my constituency two nights ago two men were shot in a car in the middle of a quiet housing estate. We must take action. Specifically, a new offence of membership of a criminal gang must be put into statute law to give extra protection to the Garda and close down these gangs. I ask that the Government considers the matter.

On a separate matter, the House needs to debate at the earliest possible time the controversy that surrounds the latest appointment of Mr. McSweeney by the Government. He was the original scientific adviser to the Government, a post that was filled without interview and without open invitation to other interested parties. He was plucked from another job and now we discover that because of a question over his qualifications, the Government has given him another job. We need to debate this matter. This shows gross Government incompetence at the highest level. This matter needs to be debated urgently.

Mr. Norris: I wish to raise a matter that affects innocent bystanders. It is a matter I and other Senators have raised at the Joint Committee on Foreign Affairs repeatedly over the past few months but it has been confirmed today, namely, the admission by the United States authorities that it has been using napalm and white phosphorous in the bombing of cities like Falluja. This is chemical warfare. It is a very serious international war crime that had been previously denied by the United States. The operation is called "Shake and Bake". That is an extraordinary way to describe the fate of human beings, including civilians.

We also learn today that 170 people have been discovered in conditions of great distress in the basement of the security Ministry in Baghdad. Once again, I and others have drawn attention to this in recent months. If we here in Dublin knew about these atrocities how is it that the American authorities pose as being surprised about it? This Administration has defended the use of torture, has outsourced torture and a plane which in the past has been used for this purpose has passed through Shannon Airport. There has been no investigation by the Irish authorities. If anybody wants to know more about this I suggest they look at a website and a video called, Falluja: The Hidden Massacre.

These atrocities have been committed with silence and complicity because of the utter lack of journalistic objectivity due to the embedding of reporters in Iraq. We must now protest. On foot of this evidence, which is acknowledged and has now been admitted, a serious war crime has been committed. I ask that the Leader would urge the Government to protest to the American authorities in the name of humanity.

Mr. Ryan: In the place where I occasionally work, if somebody claims to have a PhD, we check it out properly. We are able to distinguish between real PhDs and pretend PhDs. I have worked there for almost 30 years and we have never recruited somebody who did not have a real PhD. We manage that fairly well, as does every other institute of technology and university in the country.

In the Cork Institute of Technology, or in any other institute of technology, we would not put somebody in charge of research who did not have a proper PhD, yet we have put somebody in charge of research in a Department who has apparently bought a PhD. It is a gross insult to all the people who are trying to build up the research profile of this country and it is another cop-out.

The last insult we in the education sector had to suffer was that a person who was deemed unfit to run the Department of Health and Children was put in charge of higher education. I find all of this rather peculiar. It is a classic case of

Ireland, the country where nobody is accountable for anything.

I second Senator Brian Hayes's amendment to the Order of Business. When I was involved in independent politics in the 1980s, one could not go to a meeting at which there were four people which had anything to do with Northern Ireland without at least as many members of the Special Branch being there to watch who was there and to make sure nothing happened. I have not been able to get any explanation as to why the resources that were correctly available then to deal with subversive organisations are not available now to deal with criminal gangs about whom people are at this stage genuinely terrified.

Mr. B. Hayes: Hear, hear.

Mr. Ryan: Everybody apparently knows these people. It appears that every crime journalist can name all of these people. Either we will not give our police force sufficient resources or we do not have the will to give the same attention to the movement of these people that was correctly given to people who were even suspected of having connections with the Provisional IRA.

Could we have a debate at some stage on the property boom in this country, in particular on the impact it is having on people's ability to find somewhere to live? What prompts me to make this call is a remark attributed to the founder of the Progressive Democrats on the day of its great birthday party. I wish them a happy birthday.

Mr. McCarthy: When they are 21 next year they will get the key of the door.

Mr. B. Hayes: Was that the former Minister, Mr. McCreevy, by any chance?

An Cathaoirleach: Senator Ryan should be allowed to speak without interruption.

Mr. Ryan: That is a story for another day. The founding leader said that people were still investing enormous amounts of money in property which he described as, "the least efficient form of investment". Can somebody explain to me why the Progressive Democrats vigorously supported a reduction in capital gains tax which stimulated this "least efficient form of investment"?

Mr. Dardis: We were speaking about tax breaks.

An Cathaoirleach: Order, please.

Mr. Ryan: Can I ask for a debate on the property market which the Central Bank and all other commentators think poses the greatest risk to the future of the economy?

Mr. Brady: There is a direct link between the recent gangland murders and the drugs trade. It is generally accepted that a turf war is taking place for territory and markets. Given that almost one tonne of cannabis was seized yesterday beside the Phoenix Park worth many millions of euro, it is no surprise that this is happening. I agree that it is only a matter of time before some innocent person is killed in this war. I call for a debate on the drugs trade in general but also the link between the drugs trade and gun crime, which is a major issue. I also call for a debate on what measures we can take to combat this problem.

Mr. U. Burke: We have all become accustomed to hearing various Ministers using such terms in the course of their speeches as “rolling out” and “going forward”. These phrases might mean something but in this instance it is a total contradiction of what they are actually doing. Earlier this year, 1,522 national schools were without access to the National Educational Psychological Service. At the end of October this year, the number of national schools without this service had increased to 1,663. An additional 141 national schools had lost that service. This has happened under a Minister who frequently declared in the past, particularly around this time last year when we were debating the Education for Persons with Special Educational Needs Act, that special needs would be a priority during her tenure as Minister for Education and Science. The sad fact is that the most vulnerable in our education system are being denied a service.

Mr. B. Hayes: Hear, hear.

An Cathaoirleach: Is the Senator seeking a debate?

Mr. U. Burke: I am. I will finish on this point. Things are getting worse. We are told that recruitment will have to be subject to the availability of resources and the Government policy on public service numbers. What we can take from that is that we will get a worse service for those who are in greatest need in the education system. The Minister for Education and Science should come to the House to clearly indicate if she has a policy because, based on these figures, I do not believe that is the case.

Mr. Callanan: I support the call made by Senator Dardis last week for a debate on the world trade talks, which should take place by next week at the latest. On that subject, I compliment the Minister for Agriculture and Food on her announcement of grant aid for anaerobic digesters. It is something I have been referring to for some time. It is the way forward, particularly in regard to the nitrates directive but it will also be

of benefit in terms of energy generation given the problems with energy and fuel costs. I acknowledge the Minister’s judicious forward planning in this proposed development, which I welcome. I am glad she has taken it on board. The matter will come under the remit of three Departments and the Departments of the Environment, Heritage and Local Government, and Communications, Marine and Natural Resources will also be involved.

Dr. Henry: I support Senator Norris’s proposal that we ask the Government to protest at once about the use of white phosphorous in Iraq. All of us remember the pictures of children in Vietnam fleeing with dreadful burns on their bodies. If someone had been able to be in Falluja the day these dreadful weapons were used, I am sure we would have seen pictures such as those taken in Vietnam.

I also support the call from Senators Brian Hayes and Ryan for a debate on the lack of scrutiny of those who claim to have degrees which they do not have. I raised this issue during the debate on the Health and Social Care Professionals Bill 2004 because we were an early signatory to the Bologna Declaration whereby there is to be a reciprocation of standards of degrees in Europe and, indeed, elsewhere. Our degrees will be denigrated if we do not carefully address this issue. I hope we can have a debate on this issue in the near future.

An Cathaoirleach: Many Senators wish to speak but I will not be to accommodate all of them. I will try to accommodate those I cannot call today on tomorrow’s Order of Business.

Mr. Kitt: I support the call for a debate on Iraq, the use of chemical weapons and chemical warfare. I refer to a campaign which has been ongoing for some time in NUI, Galway. I understand there is still a compulsory Irish requirement on those applying for certain professorships in the college and that legislation is on the Dáil Order Paper. Will the Leader inquire as to whether the legislation could be taken as soon as possible because the requirement militates against NUI, Galway, recruiting personnel if they must be proficient in the Irish language? The legislation should be taken quickly in the Dáil and the Seanad. As I said, this campaign by NUI, Galway, has been ongoing for many years.

Mr. Browne: The drugs problem is not only confined to Dublin. Since the Westies gang was broken up in Dublin, Carlow has seen a very significant increase in the amount of drugs in the county and in violence. There was a shooting in Carlow approximately a year ago which was directly related to drugs. We should widen the debate to include the entire country.

[Mr. Browne.]

The Pdraig Nally case was discussed yesterday. It has raised the issue of the need for Travellers to face up to problems within their community. There is a strong connection between the drugs trade and some Travellers, including in Carlow, and we should have a debate on that issue. If we want equality, we should not be afraid to ask the hard questions. It is time for the Traveller community to face up to its responsibilities and that the leadership of that community took on the minority therein who are very involved in the drugs trade.

Mr. Ross: I do not share the hypnotic effect a PhD seems to have on most Members of this House. I suspect that if I had discovered Mr. McSweeney did not have a PhD, I would have promoted him rather than seen to it that he lost his job. I do not really understand this great fascination that the guy should or should not have a PhD if he is qualified for the job.

Mr. Ryan: He claimed to have one.

Mr. Ross: If he did not have one, it is even better.

An Cathaoirleach: Does Senator Ross have a question on the Order of Business? PhD qualifications are not appropriate to the Order of Business.

Mr. Ryan: We will get Senator Ross an honorary degree from the NUI.

Mr. Ross: I support Senator Ryan's call for a debate on the property market which has two very serious aspects. The first is that the construction industry is a pillar of the boom in the economy—

Mr. Ryan: And of Fianna Fáil.

Mr. Ross: —and of Fianna Fáil. It would be very relevant to any debate on the economy if we debated the construction industry. The other aspect might be closer to Senator Ryan's heart than to many others in this House. That is not a patronising remark about members of the Labour Party. While most of us in this House are well enough off to own our own homes, the property boom is having an appalling social effect on those who cannot get on the property ladder. It is time this House, particularly the Fianna Fáil side, recognised that property has more purposes than pure profit. It also has a purpose in housing people who cannot afford to put down the first deposit to get them on that ladder.

Mr. Daly: I support Senator Callanan's compliments to the Minister for Agriculture and Food. Since we are on the subject, perhaps we could ask

the Minister to outline the consequences of the single payment, especially for smaller farmers. Members will be aware that since the single payment came into operation, there has been a serious erosion of the incomes of many small farmers. There are also indications that a large number of farmers will leave agriculture in the next few years. It is an opportune time for the Minister to come to the House so that we can discuss the consequences of the single payment for small farmers, in particular, whose incomes are being seriously eroded because of the new system.

Mr. Bradford: I support the request by Senators Callanan and Daly for a discussion on the WTO round which would be appropriate. If at all possible, will the Leader include in that necessary dialogue an urgent debate on the future of the sugar industry? We touched on this issue previously but the next round of dialogue between Ministers and the Commission on the future of the sugar industry will take place next week. As we know, the current proposals, if implemented, will not simply damage but will wipe out the sugar industry which is a vital national industry. It will be the first time in the history of the EU that a single policy decision taken in Brussels will wipe out an entire industry. If at all possible, could we have statements tomorrow in advance of next week's talks? We are talking about a vital national industry living on a knife-edge. We must express our support for the Minister as she enters further negotiations next week.

Ms Feeney: I recognise the need for a debate on gangland crime but there is an onus on us as politicians not to interfere too much with the valuable work being carried out by the Garda Síochána. I listened to Paul Williams on Pat Kenny's radio programme this morning and his view was that the Opposition parties would be better served if they did not jump up and down each time an issue arises.

An Cathaoirleach: Is the Senator calling for a debate?

Ms Feeney: Yes.

Mr. Ryan: Job sharing with the *Sunday World*.

Ms Feeney: Those sentiments should be borne in mind when we have that debate.

Ms Terry: I support Senator Brian Hayes's call for a debate on the latest and 18th gangland murder. It is only a matter of time before an innocent bystander is killed as a result of getting caught up in the crossfire. Last night's killing took place across the road from a pub outside which people

were standing smoking, as they must. It is a miracle nobody else was killed. It is shocking to think that nearly every criminal involved in the drugs trade has a machine gun. When they go about their work, they bring their machine guns with them and they are willing, ready and able to use them at any time.

An Cathaoirleach: There will be a debate.

Ms Terry: The Minister for Justice, Equality and Law Reform has said he will provide additional resources for the Garda Síochána, which I welcome. However, it is a little late for him to say at this stage that he will give it additional resources, which have been needed for many years.

Dr. Mansergh: I support the call for a debate on affordable housing. I note from Senator Ryan's references to capital gains tax that there is still disagreement on what level of capital gains tax should be levied on the pot at the end of the rainbow.

Mr. Browne: What about the Hanly report?

Mr. B. Hayes: There is a lot of disagreement on the Government side also.

Mr. Browne: What is the status of the Hanly report?

An Cathaoirleach: Does the Senator have a question?

Dr. Mansergh: Yes. Performing artists have concerns that the copyright laws should be observed. Will parties who use songs without obtaining permission pay appropriate financial reparations?

Mr. B. Hayes: Send in the clowns.

An Cathaoirleach: Order, please.

Mr. J. Phelan: I join with Senator Brian Hayes and others who have requested a debate on gangland crime. The situation has become worse since last evening.

I agree with Senators who have raised the issue of agriculture. I have been seeking a debate on the WTO talks for over a month, so perhaps we could have such a debate in the near future. I am glad to see that some Fianna Fáil Senators appear to have found their tongues on this matter. The talks are vital to the future of agriculture in this country. Yesterday, a report was published which outlined the fact that the number of full-time farmers will drop from 40,000 to 10,000. That is a startling statistic. It would be useful to include in the

debate the broader question of the future of Irish agriculture.

Mr. Mooney: Will the Leader arrange for a debate on performing artists? The Minister for Social and Family Affairs should attend the House for such a debate. According to recent newspaper reports, performing artists who are out of work must present themselves for work. In many cases they have to undertake work other than theatrical or other work related to their profession. As a result they do not receive social welfare payments and cannot progress in their chosen area of endeavour. In the context of tax exemptions for artists and writers, and the creation of Aosdána, those in the theatrical profession should be allowed to pursue their vocation without having to go before inspectors who will deny them social welfare payments unless they undertake work other than that which they have been trained to do.

Mr. McCarthy: I wish to add my voice to the calls for a debate on crime. The situation is becoming more dangerous by the day. Last night, we saw another horrible example of the state of lawlessness in this country.

My second point concerns health, but I feel like a Fianna Fáil Senator raising issues such as crime and health, which concern Departments headed by Progressive Democrats Ministers.

An Cathaoirleach: The Senator should stick to the Order of Business.

Mr. McCarthy: It used to be said that an apple a day keeps the doctor away. Could we get a box of apples delivered to the Cabinet table, for example, and keep Fianna Fáil and the Progressive Democrats out of Government Buildings?

An Cathaoirleach: That is not an issue for the Order of Business.

Mr. Coghlan: Sadly, Senator Brian Hayes's remarks on gangland crime are all too accurate. As he said, a new offence of membership of a criminal gang needs to be created. The ability of these dying wasps to sting is still all too deadly.

An Cathaoirleach: Does the Senator have a question?

Mr. Coghlan: I do. Has Operation Anvil been dropped or has it lapsed? If so, is it being revived and do gardaí have full confidence in it? Something is wrong and I look forward to hearing the Leader's response on this issue. I fully support Senator Brian Hayes's request for a debate on crime.

Ms O'Meara: I support the calls for a debate on the WTO talks. It would be important for us

[Ms O'Meara.]

to have such a debate in the House. Will the Leader schedule time for a debate on class sizes, specifically in primary schools? The INTO is currently running a campaign, which will be coming to every constituency, on the Government's commitment that all children under nine years of age will be in classes of no more than 20. The commitment has not been honoured, however, and it does not appear that it will be. All over the country children are in classes of over 30, some in the high 30s. The situation is unacceptable, so I ask the Leader to schedule a debate on that matter as soon as possible.

Mr. O'Toole: I support the call by Senator Brian Hayes for a debate on crime. It is important to put certain matters on the record. You will recall, a Chathaoirleach, that some years ago I spoke at length about the murder of Mr. Brian Fitzgerald in Limerick. I said then that it was a turning point, so it is important to put on the record the extraordinarily good work the Garda Síochána is doing there. The force has cracked that particular murder case, with the confession yesterday and the arrest in Amsterdam. It would be useful to have the same tactics applied in the Dublin area. That is what Senator Brian Hayes is seeking.

On a separate matter, if any other country, apart from the United States, had used the weaponry that we now know was used by the US army in Iraq, there would be an outcry from Washington.

Mr. Ryan: Hear, hear.

Mr. O'Toole: It is appalling and we need to express our displeasure about it at this stage. I support the point raised by Senator Norris on that issue.

Ms O'Rourke: Senator Brian Hayes raised the issue of crime in Dublin and he proposed an amendment to the Order of Business that the House should debate the matter after we have dealt with the Social Welfare Consolidation Bill. I also wish we could have such a debate, but I have no guarantee that the Minister for Justice, Equality and Law Reform, Deputy Michael McDowell, is waiting for a call from me to attend this House. How could I? I am quite sure he is heavily engaged in something.

Mr. J. Phelan: Not fighting crime.

Mr. Ryan: He is on radio shows.

An Cathaoirleach: Order, please

Ms O'Rourke: I sit here like a demure woman while other Senators talk, but the minute I open my mouth they all leap up.

Mr. Cummins: Call in Donie.

An Cathaoirleach: The Leader without interruption.

Ms O'Rourke: Thank you, a Chathaoirleach. I hope to be able to schedule a debate on that matter next week, but I cannot race out and get a Minister today.

The Senator also sought a debate concerning the Government's scientific advisor, Mr. McSweeney. It would be a good issue for an Adjournment debate because it is about one focused point. I understand that Mr. McSweeney's primary degrees are excellent qualifications and that he is highly regarded in that way. There is no doubt, however, that the matter of his PhD is unfortunate. It would be a good item for an Adjournment debate.

Senator Norris referred to the fact that the United States has owned up quite breezily and in a cavalier fashion to the use of chemical warfare. It is quite amazing when we all know the damage chemicals can do to people. The US army has used them in the bombing of Falluja. The term used for this weapon was "shake and bake", but just imagine talking about people in that fashion. The Senator said the Government should protest directly to the United States on its use of such weaponry and he also referred to the use of Shannon Airport by US aeroplanes.

Senator Ryan said that Cork Institute of Technology would never fail to ascertain the qualifications of a PhD applicant and would always check out the details. He also formally seconded Senator Brian Hayes's amendment to the Order of Business. In addition, he sought a debate on the property boom. I understand from the Deputy Leader that the remark was made in the context that property is the least efficient form of investment.

Mr. Ryan: Why are we encouraging it?

Ms O'Rourke: The remark was made in the context of the many coastal developments that have occurred as a result of tax breaks.

Senator Brady spoke about the turf war over drugs, which is what this upsurge in violence is about. He sought a debate on the drugs trade in general.

I agree with what Senator Ulick Burke said about the terms "rolling out" and "going forward" because they do not mean anything.

Mr. Dardis: I would not go into that space.

Ms O'Rourke: It is better not to do so.

Mr. McCarthy: Is it a game of Twister?

Ms O'Rourke: There are 1,633 schools without access to psychological services. The Senator wants the Minister for Education and Science to come to the House for a debate on services for those with special needs.

Senator Callanan wants a debate on the World Trade Organisation and a general debate on agriculture. He had a word of praise too for the Minister for Agriculture and Food.

Senator Henry protested at the use of chemical weapons in Iraq. She also mentioned the lack of scrutiny and the standardisation of degrees. Senator Kitt spoke too about the use of chemical weapons in Iraq. Referring to the NUIG debate on compulsory Irish for qualifications, he said Irish is a working language.

Senator Browne called for a debate on drug abuse and the drugs trade in general. He also said that some Travellers need to face up to hard facts within their communities.

Senator Ross is not a bit impressed by PhDs, whether real or false. He introduced a note of common sense to this matter. He asked for a debate on the construction industry, saying that the property boom has had an appalling effect on those who seek metaphorically to get a foot on the property ladder.

Senator Daly wants a debate on agriculture, particularly in view of the recent report. Senator Bradford also wants a debate on the World Trade Organisation in respect of the sugar industry and the important dialogue on that topic in Brussels this week and next.

Senator Feeney wants a debate on gangland murders and Senator Terry spoke about the danger they pose for innocent bystanders. There are now more gardaí than there were during the height of the trouble in 1995 to 1996.

Mr. B. Hayes: There are twice as many killings.

Ms Feeney: What about poor Veronica Guerin? She died on Fine Gael's watch.

Ms O'Rourke: Senator Mansergh wants a debate on affordable housing. He asked whether the capital gains tax division between the partners in the rainbow coalition has been sorted out. I do not think so.

Mr. Ryan: That is really relevant to the Order of Business.

Mr. Dardis: It is just as relevant as the issues Senator Ryan raises.

Ms O'Rourke: Any matter raised by any Member is relevant. It is quite elitist to say that one Senator's matter is more important than another's. I hate the attitude that one person's

point is more important than that of someone else.

Senator John Paul Phelan has sought a debate on agriculture and the World Trade Organisation for some time. We will try to arrange that for next week. Senator Mooney mentioned the negative aspects of the social welfare system for those in the theatrical profession who want to receive welfare but do not get a sympathetic hearing from the Department of Social and Family Affairs.

Senator McCarthy asked for an apple for the Cabinet to keep the Progressive Democrats and the Labour Party out.

Mr. McCarthy: I said it was to keep out the Progressive Democrats and Fianna Fáil.

Ms O'Rourke: There are so many potential couplings arranged now that one does not know where one is. It is very amorous.

Mr. B. Hayes: The Leader saw the future.

Dr. Mansergh: In the words of Shakespeare, "let copulation thrive".

Ms O'Rourke: Potential couplings are very exciting.

Senator Coghlan mentioned the status of the new offence proposed by Senator Brian Hayes. There he is — I thought he had gone, excuse me.

Mr. Coghlan: I would never deliberately be discourteous to the Leader.

Ms O'Rourke: I know the Senator would not. He asked about the status of Operation Anvil. I asked that question yesterday. It is alive and working.

Senator O'Meara asked for a debate on the World Trade Organisation. She also mentioned class sizes. Hopefully, the coming budget will underline the commitment to a class of 20 for children under the age of nine. That is in the joint Government statement.

Senator O'Toole called for a debate on crime and in so doing he praised the recent extraordinary work of the gardaí. That should be noted. There is no point in everyone banging away and giving out about them. I thank the Senator for his comment.

An Cathaoirleach: Senator Brian Hayes has proposed an amendment to the Order of Business: "That statements on the upsurge in gangland killings in Dublin be taken after No. 1."

Is the amendment being pressed?

Mr. B. Hayes: Yes.

Amendment put.

The Seanad divided: Tá, 19; Níl, 31.

Tá

Bradford, Paul.
Browne, Fergal.
Burke, Paddy.
Burke, Ulick.
Coghlan, Paul.
Cummins, Maurice.
Feighan, Frank.
Hayes, Brian.
Hayes, Maurice.
Henry, Mary.

McCarthy, Michael.
Norris, David.
O'Meara, Kathleen.
O'Toole, Joe.
Phelan, John.
Ross, Shane.
Ryan, Brendan.
Terry, Sheila.
Tuffy, Joanna.

Níl

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

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

Tellers: Tá, Senators U. Burke and Cummins; Níl, Senators Dardis and Moylan.

Amendment declared lost.

Question, "That the Order of Business be agreed to", put and declared carried.

European Evidence Warrant: Motion.

Ms O'Rourke: 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:

a proposal for a Council Framework Decision on the European Evidence Warrant for obtaining objects, in documents and data for use in proceedings in criminal matters, a copy of which measure was laid before Seanad Éireann on 9 November 2005.

Question put and agreed to.

Social Welfare Consolidation Bill 2005: Report and Final Stages.

Bill received for final consideration.

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

Minister for Social and Family Affairs (Mr. S. Brennan): I thank the Seanad for passing this legislation. The Senators opposite conducted a

good debate on Second Stage and I accepted a number of the issues they raised. I hope to reflect as many of them as I can by means of the budget or in subsequent legislation.

I remind the House of the unique nature of this legislation. The last consolidation legislation was enacted in 1993 and the Bill before us, which with 364 sections is the largest to date, puts the legislation of the past 12 years in a single accessible document. Since the passing of the Social Welfare (Consolidation) Act 1993, 18 social welfare Acts have been passed by the Oireachtas and it is important that these Acts are put in an accessible format.

In response to requests by Members, we intend to publish a guide to this Bill which will express the contents of the legislation in lay person's language. That will prove useful to Deputies, Senators, councillors and the general public because it will specifically address the consolidation of earlier legislation.

I acknowledge the work of my officials with regard to legal services and advice on this legislation. It is clear from the size of the Bill that a significant effort was devoted to it. We are indebted to the people who addressed the many technical and legal aspects of this legislation over the past number of years. Although it was not the most glamorous work in the legislative calendar, it was important. I also thank staff of the Bills Office and the Seanad. This legislation is unique and I am grateful to the House for its prompt passage.

Ms Terry: I too want to thank staff for their work on this consolidation Bill. It was a major undertaking and I appreciate the tedious work they endured while drafting the legislation. It is important that past Acts have been consolidated into one document and the fact that this was not done since 1993 indicates the level of work involved. I also welcome the publication of any documents that would make the social welfare code more accessible and easy to understand. It will also help Members to provide information to the public.

While I want the Minister to implement a number of measures in the upcoming budget, I wish to highlight the qualified adult allowance. I ask him to improve the lot of people in receipt of that allowance, many of whom are women, who have fallen into poverty after retirement. A commitment was made in Sustaining Progress to increase the non-contributory payment and I hope the Minister will make the necessary provisions in the budget. That would be welcome and would assist many people.

By paying child dependant allowance directly to the qualified adults concerned, the recipients would be given a sense of independence. The fact that few people have opted for direct payments does not imply that many do not want to avail of this system because difficulties may arise within relationships when people choose direct payments. It would be more helpful if such a payment system is made mandatory.

The Government should meet the commitments it made on child benefit. Many families believe it has fallen behind and that benefits should be increased beyond the promises of the programme for Government.

I thank the Cathaoirleach and the Minister for bringing this Bill forward. I am happy to support it but I ask the Minister to consider the issues I have raised.

Mr. McCarthy: I thank the Minister, Deputy Brennan, and his officials for drafting this legislation. It is important that Acts are consolidated and that a layman's guide is published. As the legislation does not stop here but will be received by a wider audience on conclusion of the parliamentary process, its language should be user friendly and understandable.

One of my constituents suffered severe depression and was urged by his family to seek social welfare payments. Last July, he applied for disability benefit but was refused, after which he applied for disability allowance. The person in question required a great deal of encouragement to conquer his illness, which has affected him for a number of years. His suffering has become more acute since the beginning of this year and, as a result, he has to rely on his family for support. However, his second application was also rejected.

Great courage was required of that individual to visit the social welfare inspector and his doctor, who were not understanding of his disposition, to say the least. I am personally involved in this case, which is now being dealt with by the appeals officer in D'Olier House. It is a sad day when somebody who suffers from such an illness finds the doors of the system closed in his or her face. I have been in contact with the Department of Social and Family Affairs and have received acknowledgements on the matter. The future is bleak for those with this illness but no humane person would allow such a situation to develop. I am aware that the Department is large and deals with many applications but I am concerned that similar difficulties may be inflicted on other people who lack self-confidence.

Thankfully, a medical review of my constituent revealed that he had recovered slightly from his eight months of psychological torment. However, it is unfortunate that, because of bureaucracy, his case was not processed. Checks and balances must exist to ensure that social welfare fraud is investigated and that perpetrators are prosecuted but his case was genuine. I have requested an oral hearing so that I may also attend in order to put forward a plea on behalf of my constituent. From a policy point of view, this situation should not be allowed to recur because it is not at all uplifting for the people concerned.

I thank the Minister for attending the House and his officials for their work on the Bill, which must have required the burning of a lot of midnight oil.

Ms Cox: On behalf of this side of the House I thank the Minister and his officials for all their work on this legislation. I also acknowledge the fine contributions made during all the debates on this issue, much of which the Minister has taken on board. While he always seems to listen to what is said in this House he does not always do everything we ask. At least he listens and makes some amendments and improvements.

The Department of Social and Family Affairs touches all of us from the minute a child is born to the time of one's death, whether for birth certificates, death certificates, social welfare—

Mr. McCarthy: Is the Senator including an insurance policy?

Ms Cox: I certainly am not. It is an all-invasive Department in terms of the lives of everybody in the country. A consolidation Bill such as the one before the House makes life much easier for all involved, whether as an employer to ensure one is providing the correct rights and entitlements under maternity protection, adoption leave, carer's benefit and so on or in any other capacity. It is a fine piece of work. We look forward with great interest to the layman's guide to the legis-

[Ms Cox.]

lation because those of us who are laymen, and that is where I count myself, often find it difficult to read through the legislation and understand everything.

It is important in the future that the Minister consider the necessity of translating the legislation into other languages. We will find more and more that many of those coming into the social welfare offices throughout the country are EU nationals for whom English is not their mother tongue. There is a huge number of Polish people in Galway and Leitrim and there may be many Africans. Perhaps this is an area in which we can set the standard in regard to how we frame our information. I thank the Minister for his contribution and that of his officials to this legislation.

Question put and agreed to.

Sitting suspended at 11.45 a.m. and resumed at 2 p.m.

Railway Safety Bill 2001: Committee Stage.

Sections 1 and 2 agreed to.

SECTION 3.

Government amendment No. 1:

In page 12, lines 11 and 12, to delete “or 84” and substitute “, 84 or 92”.

Minister of State at the Department of Transport (Mr. Calley): This is a technical amendment to include in section 3 a reference to the commencement order provision in section 92.

Acting Chairman (Ms O’Meara): I ask the Minister of State to stand while addressing the House.

Mr. Calley: I apologise. It is normal practice to provide that commencement orders do not need to be confirmed by a resolution of each House of the Oireachtas.

Amendment agreed to.

Section 3, as amended, agreed to.

SECTION 4.

Government amendment No. 2:

In page 12, between lines 26 and 27, to insert the following new subsection:

“(4) This Act does not apply to fairground equipment which has been granted a valid certificate of safety in accordance with section 239 of the Planning and Development Act 2000, unless, in the opinion of the

Commission, it is appropriate to apply it in the interest of the safety of persons.”.

Mr. Calley: This amendment relates to certain miniature railways operating in fairground type situations. It is self-explanatory and gives discretion to the commission to apply the provisions of the Bill where it feels that the risk involved in the operation of such a miniature railway is more akin to general railway risk than to that of a funfair ride.

Amendment agreed to.

Section 4, as amended, agreed to.

Sections 5 to 7, inclusive, agreed to.

SECTION 8.

Acting Chairman: As amendments Nos. 3 and 29 are consequential on amendment No. 51, they may be discussed together, by agreement.

Government amendment No. 3:

In page 13, subsection (1), to delete lines 6 and 7 and substitute the following:

”body to be known as, in the Irish language, An Coimisiún Sábháilteachta Iarnróid, or in the English language, the Railway Safety Commission, in this Act referred”.

Mr. Calley: This amendment addresses a proposal made on Report Stage in the Dáil to place the Irish language version of the names of the commission and the advisory council before the English versions.

Amendment agreed to.

Section 8, as amended, agreed to.

Section 9 agreed to.

SECTION 10.

Government amendment No. 4:

In page 13, subsection (3), lines 29 to 42, to delete paragraphs (a), (b) and (c) and substitute the following:

“(a) enter into agreements or make arrangements with any Minister of the Government, or any other person for that Minister or person to perform on behalf of the Commission (with or without payment) any of its functions; and

(b) enter into agreements or make arrangements with any Minister of the Government or the Health and Safety Authority for the Commission to perform on behalf of that Minister or that Authority

(with or without payment) such functions as may appropriately be performed by it in connection with its functions under this Act.

(4) The Commission shall have all such powers as are necessary or expedient for the performance of its functions under *subsection (3)(b)*.”.

Mr. Callely: The purpose of this amendment is to update section 10 of the Bill in light of the enactment of the Safety, Health and Welfare at Work Act 2005. This required updating the reference to the Health and Safety Authority arising from the 2005 Act. We are deleting the paragraph referring to making an agency agreement. The agency agreement concept in the Health and Safety Act 1989 is not repeated in the 2005 Act. I have also added a new subsection giving the commission legal power to perform any functions it takes on from the HAS or any other such body. Legal advice suggested this was necessary and similar provision is made in the Safety, Health and Welfare at Work Act 2005.

Amendment agreed to.

Section 10, as amended, agreed to.

Sections 11 to 13, inclusive, agreed to.

SECTION 14.

Acting Chairman: Amendments Nos. 5 and 20 are related and may be discussed together, by agreement.

Government amendment No. 5:

In page 16, subsection (9), line 31, to delete “Civil Service and Local Appointments Commissioners” and substitute “Public Appointments Service”.

Mr. Callely: This matter was raised by a number of Members, including Senator Paddy Burke. I am pleased to move this amendment to delete the references to the Civil Service and Local Appointments Commissioners. The Public Appointments Service is now the appropriate body to select candidates for appointment as commissioners or staff of the commission.

Mr. P. Burke: I am delighted the Minister of State has agreed to amend the Bill in this regard.

Amendment agreed to.

Section 14, as amended, agreed to.

Sections 15 to 26, inclusive, agreed to.

SECTION 27.

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

Mr. P. Burke: Under what circumstances would the commission need to borrow?

Mr. Callely: The Senator has made a good point. I am led to believe this is an all-inclusive provision rather than an actual set target. The commission is being given the provision to borrow. While we would not be *au fait* with the circumstances that may arise in the future, this gives it the safety net should it be required.

Mr. P. Burke: I am not clear on what the Minister of State has said. Provision is made for grants to the commission or for levies to be introduced. Could the Minister of State envisage circumstances in which the commission would need to borrow? I ask him to give the House an example?

Mr. Callely: I would like to think the provision would never need to be utilised and that the Houses of the Oireachtas and any other body would be able to react sufficiently quickly to a commission request thereby avoiding the need for such borrowing. For example, an inquiry could take place at a time when, for one reason or another, the commission’s budget was exhausted. We know the bureaucratic system. If the commission had to go through a system prior to an approval, it might be in a position where we would want it to borrow to ensure the inquiry would have continuity and could make a seamless investigation. Those are the circumstances in which I would envisage the need to borrow.

Question put and agreed to.

Sections 28 to 30, inclusive, agreed to.

SECTION 31.

Mr. P. Burke: I move amendment No. 6:

In page 26, between lines 14 and 15, to insert the following new subsection:

“(4) The Minister shall supply to one or both Houses of the Oireachtas such information regarding the performance of the Commission’s functions as may from time to time be required by a member of either House.”.

I spoke on Second Stage about the issue of the commission being accountable to the Dáil. With the Health Service Executive and the National Roads Authority the line Minister can pass the buck. The proposed railway safety commission is another instance where the buck can be passed and where the Minister does not appear to have any real accountability. If there is to be accountability, the commission must be accountable,

[Mr. P. Burke.]

whether by way of parliamentary questions to the Dáil or through an Adjournment debate in the Seanad. Time and again Adjournment debates we have requested concerning the NRA or the HSE have been ruled out. I suggest this amendment in the hope that the Minister of State will accept or amend it. There should be some form of accountability to the Houses of the Oireachtas.

Mr. Callely: I thank Senator Burke for proposing this amendment because it teases out this issue on which I know other Members also have concerns. The issue is tied to Senator Burke's inquiries re his previous amendment relating to appointments to the commission.

On the matter of the provision of information to the Houses, I draw the Senator's attention to the fact that this Bill includes a range of provisions dealing with the commission's accountability and the provision of information. Section 28 of the Bill requires publication of the annual reports and accounts of the commission while section 28(5) requires the commission to provide information to the Minister of the day with regard to the performance of its functions. Section 31 makes the commission accountable to committees of the Oireachtas. In addition, there are established parliamentary procedures to allow questions to be put to the Minister and allow motions to be tabled on matters that fall within the area of responsibility. The combined arrangements provide Members with a broad range of information.

I acknowledge that when we have a separate authority, in this case the commission, carrying out its duty, a question asked by a Member of the Minister of the day on the subject of the authority's daily responsibilities and duties, including by way of parliamentary question, is often referred to the authority in question. I acknowledge this ambiguity regarding a satisfactory level of response on such issues. However, the amendment tabled by Senator Burke regarding the performance of the commission's function is adequately catered for in the Bill as published.

I am reluctant to depart from procedures that have a precedent and have been tried and tested. I acknowledge there is an issue relating to day-to-day activity, as pointed out by Senators Paddy Burke, Dooley and Wilson after Second Stage. There is an issue in that regard, but we need to separate that issue from what we intend the commission to do.

Mr. P. Burke: I thank the Minister of State for his outline of the case. However, annual reports are issued at the rate of a dime a dozen, all glossy magazines that, no doubt, are well put together but read by nobody. Oireachtas Members are accountable to the public and need to get information, but the only real way they can get it is

either through a parliamentary question or an Adjournment debate. However, their questions or debates are ruled out, as we have seen with regard to the NRA and the HSE, on the basis that the Minister does not have direct involvement in the running of such bodies. This commission will be the third such body. This, therefore, is a golden opportunity to amend the Bill in a way that will provide that Members can make such commissions accountable through the relevant Minister.

My amendment may need some adjustment, as the Minister of State outlined and I urge him to amend it between now and Report Stage. I will consider submitting a revised amendment on Report Stage if he does not accept my amendment today. All Members, including those on the Government side, feel strongly on the issue of information, accountability and getting answers to questions by way of parliamentary questions and Adjournment debates. I urge the Minister of State to have another look at the issue. If he does not accept my amendment now I ask him to consider it between now and Report Stage.

Mr. Dooley: I ask the Minister of State to consider this amendment. Senator Burke is genuine in his effort to resolve the issue. Many of us recognise there is a problem with regard to accountability of various State agencies. It would be helpful if the Minister of State had another look at the issue. If he cannot do it on Committee Stage, perhaps something can be done for Report Stage.

Mr. Callely: I thank Senators Dooley and Paddy Burke for their comments. I acknowledge Members experience difficulties in this area and I recall having difficulty and being frustrated when tabling parliamentary questions in the past. However, perhaps this Bill is not the place to try and change what we clearly acknowledge and recognise as a bigger issue.

I draw to the Senators' attention that the Bill includes a range of established provisions. If we say we are not satisfied with the clearly established provisions, perhaps the Committee on Procedure and Privileges or another Oireachtas committee should examine them. The House will appreciate that in introducing the Railway Safety Bill, I am merely dealing with established precedent. The Bill includes such provisions. As Senator Paddy Burke said, section 28 requires the publication of the annual reports and accounts of the proposed railway safety commission. I reiterate that this issue may need to be teased out further. Perhaps it would be appropriate for the Committee on Procedure and Privileges to examine how best to address the matter.

The Minister of the day is responsible for deciding on the policy issues to be dealt with by any authority of this nature that is established

under legislation. In this instance, the relevant Minister will be responsible for the policy issues relating to the proposed commission. Therefore, he or she will be responsible for responding to any questions asked about policy. The commission that will be established by the Houses will have day to day responsibility for its operational aspects. That is not to say it will not be answerable — of course it will have to be answerable. Under the current structures, those involved with the commission who have day to day operational responsibility will be answerable to an Oireachtas committee. I suppose this is a change we have witnessed since we put in place new structures in the Oireachtas. I hope I have clarified the position in respect of information and accountability.

In light of what I have said, I ask Senator Paddy Burke to consider withdrawing amendment No. 6 at this stage. I assure the Senator that I will ask my departmental officials to contact him in advance of Report Stage to ascertain whether there is any other way of giving him some clarity in this regard. I appreciate this is a bigger issue that relates to bodies other than the proposed commission. It is an issue that affects every other authority that is established by the Houses of the Oireachtas. I have referred the Senator to the Committee on Procedure and Privileges for that reason.

Mr. P. Burke: I thank the Minister of State for his response. I will withdraw amendment No. 6 in line with his comments.

Amendment, by leave, withdrawn.

Section 31 agreed to.

Sections 32 to 42, inclusive, agreed to.

SECTION 43.

Government amendment No. 7:

In page 33, subsection (5), line 43, to delete “7” and substitute “21”.

Mr. Callely: This is simply a technical amendment to change a reference in section 43(5) from “7 days” to “21 days”, in line with a similar amendment that was made to section 42(6) on Report Stage in the Dáil.

Amendment agreed to.

Section 43, as amended, agreed to.

Sections 44 to 50, inclusive, agreed to.

SECTION 51.

Acting Chairman: Amendment No. 8 is a Government amendment. As amendments Nos. 9 and 12 are cognate and amendments Nos. 10 and

11 are related, amendments Nos. 8 to 12, inclusive, may be discussed together, by agreement.

Government amendment No. 8:

In page 43, line 39, to delete “accident” and substitute “occurrence”.

Mr. Callely: I hope this group of straightforward amendments, which has been suggested by the Office of the Chief Parliamentary Counsel to improve or correct the text of the Bill, can be approved without delay.

Amendment agreed to.

Government amendment No. 9:

In page 44, paragraph (d), line 3, to delete “accident” and substitute “occurrence”.

Amendment agreed to.

Government amendment No. 10:

In page 44, paragraph (d), line 7, to delete “are” and substitute “is”.

Amendment agreed to.

Government amendment No. 11:

In page 44, paragraph (d), lines 7 and 8, to delete “the Commission or”.

Amendment agreed to.

Government amendment No. 12:

In page 44, line 9, to delete “accident” and substitute “occurrence”.

Amendment agreed to.

Section 51, as amended, agreed to.

SECTION 52.

Acting Chairman: Amendment No. 13 is a Government amendment. As amendments Nos. 14 to 18, inclusive, are cognate and amendment No. 42 is related, amendments Nos. 13 to 18, inclusive, and amendment No. 42 may be discussed together, by agreement.

Government amendment No. 13:

In page 44, subsection (1), lines 15 and 16, to delete “Commission” and substitute “Investigation Unit”.

Mr. Callely: I would like to take this opportunity to thank the Members of the House, particularly Senators Wilson and Paddy Burke, for bringing some issues relating to this Bill to my

[Mr. Callely.]

attention. Although a number of similar amendments were made on Report Stage in the Dáil, the amendments in the group before the House were not identified until the Bill came to the Seanad. I thank the Senators in question and I hope the amendments will be approved quickly.

Mr. Wilson: I thank the Minister of State.

Amendment agreed to.

Government amendment No. 14:

In page 44, subsection (1), line 16, to delete “Commission” and substitute “Investigation Unit”.

Amendment agreed to.

Government amendment No. 15:

In page 44, subsection (1), lines 21 and 22, to delete “Commission” and substitute “Investigation Unit”.

Amendment agreed to.

Government amendment No. 16:

In page 44, subsection (1), line 23, to delete “Commission” and substitute “Investigation Unit”.

Amendment agreed to.

Government amendment No. 17:

In page 44, subsection (2), line 28, to delete “Commission” and substitute “Investigation Unit”.

Amendment agreed to.

Government amendment No. 18:

In page 44, subsection (2), line 31, to delete “Commission” and substitute “Investigation Unit”.

Amendment agreed to.

Section 52, as amended, agreed to.

SECTION 53.

Mr. P. Burke: I move amendment No. 19:

In page 44, between lines 46 and 47, to insert the following new subsection:

“(3) Where a member of staff of a railway undertaking furnishes relevant information to the Commission or an inspector—

(a) following a railway incident,

(b) which, in the opinion of the person, may lead to a railway incident,

the person shall not be subject to disciplinary or any other action by the railway undertaking.”.

I have proposed this amendment to try to avoid lapses in safety standards and to ensure that any such lapses are not swept under the carpet. People who act as whistleblowers by reporting accidents or lapses which could cause accidents should not have any fear of being punished or disciplined for reporting such breaches in safety standards. The employees of railway undertakings might be afraid of being disciplined or punished if they report lapses in safety standards. This amendment has been tabled to try to prevent such people from being disciplined or punished in any way.

Mr. Callely: I thank Senator Paddy Burke for tabling this amendment, which has given me an opportunity to revisit sections 53 and 54 of the Bill. My officials and I discussed at length the issue of the reporting of risk by the staff of railway undertakings and contractors. I draw the Senator’s attention to section 54(3) of the Bill, which is important. The section states:

Where a member of staff of a railway undertaking or other person working under a contract of services with a railway undertaking informs the Commission of his or her opinion in accordance with subsection (2), he or she shall not be disciplined, be held to be in breach of contract or in any other way disadvantaged for the fact that he or she has informed the Commission.

I hope the final part of that section, in particular, satisfies Senator Burke.

Mr. P. Burke: I welcome the Minister of State’s remarks and I withdraw the amendment.

Amendment, by leave, withdrawn.

Section 53 agreed to.

Sections 54 and 55 agreed to.

SECTION 56.

Government amendment No. 20:

In page 48, subsection (2), lines 2 and 3, to delete “Civil Service and Local Appointments Commissioners” and substitute “Public Appointments Service”.

Amendment agreed to.

Government amendment No. 21:

In page 48, between lines 23 and 24, to insert the following new subsections:

“(7) Notwithstanding *subsection (2)*, where the Chief Investigator is unavailable or unable to perform his or her functions, or where the position of Chief Investigator is vacant, the Minister may engage a person (‘temporary chief investigator’) who, in his or her opinion, is suitably qualified to perform the functions of Chief Investigator to perform those functions during such unavailability, inability or vacancy.

(8) A temporary chief investigator shall be appointed as an inspector by the Commission and shall have all the powers of Chief Investigator under this Part.

(9) The cost of engaging a temporary chief investigator shall form part of the expenses of the Commission.”.

Mr. Callely: This amendment will allow the Minister to appoint a suitably qualified consultant to act as and carry out the functions of the chief investigator if the person holding that position is absent for a prolonged period of time, through ill health or otherwise. If the post of chief investigator is vacant at any point, this section will provide for the recruitment of a permanent replacement.

Amendment agreed to.

Section 56, as amended, agreed to.

Section 57 agreed to.

SECTION 58.

Acting Chairman: Amendments Nos. 22 and 23 are related and may be discussed together, by agreement.

Government amendment No. 22:

In page 49, lines 22 to 27, to delete subsection (6) and substitute the following new subsections:

“(6) Where an investigation under this section relates to an international service, the Investigation Unit shall notify the relevant competent authority in the other state and shall invite that competent authority to nominate a person to participate in the investigation and share the results.

(7) Where an investigation under this section relates to an international service and the railway incident concerned took place on or close to the border with another state, the Investigation Unit shall agree with the competent authority in the other state for either it or the other competent authority to investigate the incident, or to carry out a joint investigation.”.

The purpose of these amendments is to reflect the requirements of the EU railway safety directive regarding railway accidents involving cross-border services. This issue has been raised by the House and these amendments will, hopefully, be welcomed by it.

Amendment agreed to.

Government amendment No. 23:

In page 49, subsection (9), line 35, to delete “or (7)”.

Amendment agreed to.

Section 58, as amended, agreed to.

Sections 59 to 68, inclusive, agreed to.

SECTION 69.

Mr. P. Burke: I move amendment No. 24:

In page 55, between lines 38 and 39, to insert the following new paragraphs:

“(b) requirements for the maintenance and inspection of railway infrastructure, rail track, permanent way and rolling stock,

(c) the maximum carrying capacity for both passenger and freight trains,

(d) the maximum hours of work and the minimum hours of rest for safety critical staff,”.

Section 69 is very detailed and covers a considerable number of areas relating to safety. This amendment deals with the number of passengers and freight capacity that can be carried. These are issues which should be set out. The amendment also covers the setting aside of time for rest breaks for staff.

Mr. Callely: I appreciate the Senator’s perspective on this issue and I hope my response will satisfy him. Telling railway undertakings how often they should inspect and maintain their infrastructure and trains would be a very prescriptive approach. These undertakings are best placed to know how frequently such inspections and maintenance should be carried out. If we did prescribe these measures but were seen to under-prescribe, we could find ourselves wanting and the same would be true if we were seen to over-prescribe.

I support Senator Paddy Burke’s view regarding the maximum carrying capacity. I draw his attention to section 69(c) of the Bill, which empowers the railway safety commission to make regulations restricting the number of passengers who are allowed to stand on trains. I hope this measure will be helpful.

[Mr. Callely.]

With regard to hours of work and rest breaks, I expect railway undertakings to demonstrate in their safety cases that the working patterns of their safety critical staff do not contribute to an increased risk on railways.

Mr. P. Burke: I welcome the Minister of State's comments because his Department is the expert on this matter. There are problems with overcapacity, particularly on some passenger trains. I am glad he pointed out that he believes it is covered in section 69(c). If the Minister of State is happy with it, I am satisfied.

Iarnród Éireann appears to be moving out of the freight business. Does this Bill have sufficient provisions to cover a greater use of the rail network for freight purposes if rail freight takes off in the private sector and as more money is invested in the rail infrastructure?

Mr. Callely: We might be found wanting with regard to freight because it is not covered in the same fashion as passenger numbers are dealt with in section 69(c), which is concerned exclusively with passenger numbers. A rolling stock car will have one seat for one passenger or multiples of such. The railway safety commission can make regulations restricting the number of people standing in rolling stock cars, which will lead to the maximum carrying capacity because passengers will be identified as those sitting and standing.

I understand that freight is not covered in the same detail. Restrictions on carrying capacity in road freight transport are in place and the railway safety commission is capable of imposing similar restrictions in rail freight transport.

Amendment, by leave, withdrawn.

Mr. P. Burke: I move amendment No. 25:

In page 56, between lines 12 and 13, to insert the following new paragraph:

“(h) requirements to avoid accidental obstruction of railway infrastructure by road vehicles by establishing-

(i) criteria for the apportionment of responsibility and cost of improvements to be made at locations where roads meet, cross or run close to railways,

(ii) guidelines on enhanced risk assessments and physical measures to reduce risk of vehicles accidentally leaving the road and obstructing railway infrastructure,

(iii) reporting mechanisms to identify relevant information on incidents involving vehicles, which obstruct railway infrastructure.”.

Could the Minister of State give us his opinion on this amendment?

Mr. Callely: The Senator raised some valid points regarding this issue on Second Stage. I gave an undertaking to address the matter and progress has been made. Could the Senator inform me later on whether he has received the relevant information from my officials? Section 23 of the Transport Act 1971 provides for the apportioning of the costs of upgrading works at a level crossing between the railway undertaking and the local authority. Section 113 of this Bill makes provisions regarding the responsibility of any person carrying out works on a public road near a railway.

Section 113(4) of this Bill gives the railway safety commission the power to prepare and publish guidelines on works on public roads that may affect the safety of railway infrastructure. Section 69(g) of the Bill gives the commission power to make regulations concerning the reporting of the different classes of railway incidents. If the Senator is satisfied with these provisions, he might consider withdrawing his amendment.

Mr. P. Burke: We might find ourselves dealing with level crossings in a different section of the Bill — possibly section 128. If a car, lorry or tractor broke down on a level crossing and an accident occurred, would the railway safety commission have the power to decide which party was responsible for it? It could be a case of a barrier or a signal not working or a gate being improperly opened or closed. Will there be an investigation into who was responsible?

Mr. Callely: The case of someone maliciously blocking railway infrastructure is covered in section 118 of the Bill. Opening and closing gates, breakdowns and other safety issues are matters for the railway undertaking. I hope this clarifies the position.

Amendment, by leave, withdrawn.

Government amendment No. 26:

In page 56, between lines 20 and 21, to insert the following new subsections:

“(2) Regulations made by the Commission under *subsection (1)* shall not be for the purpose of giving effect to an act adopted by an institution of the European Communities.

(3) The Minister may make regulations for the purpose of giving effect to an act adopted by an institution of the European Communities in relation to railway safety.

(4) Regulations under *subsection (3)* may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the

regulations (including provisions repealing, amending or applying, with or without modification, other law, exclusive of this Act).”.

Mr. Callely: This straightforward amendment gives the Minister power to transpose a European directive on railway safety international law through regulations made under this Bill rather than using the European Community Act 1972.

Amendment agreed to.

Section 69, as amended, agreed to.

Sections 70 to 72, inclusive, agreed to.

SECTION 73.

Government amendment No. 27:

In page 57, between lines 31 and 32, to insert the following new subsection:

“(2) Each commissioner shall, on his or her appointment, be deemed to be an inspector for the purposes of this Act.”.

Mr. Callely: This amendment corrects an oversight brought to my attention by Members of this House. Senator Wilson drew my attention to the fact that there was no mechanism for a commissioner to be appointed as an inspector. This amendment corrects this oversight by providing for a commissioner to automatically become an inspector on appointment.

Amendment agreed to.

Section 73, as amended, agreed to.

Sections 74 to 76, inclusive, agreed to.

SECTION 77.

Mr. P. Burke: I move amendment No. 28:

In page 63, between lines 33 and 34, to insert the following new subsection:

“(7) A railway undertaking shall not use commercial considerations as a cause for not complying with *section 36*.”.

This minor amendment is self-explanatory. We have already dealt with section 36 and I hope the Minister of State will be able to accept this amendment.

Mr. Callely: I can see good reasons to accept this and I thank Senator Burke for tabling this amendment. I tabled two amendments on Report Stage in response to concerns raised on Committee Stage to address the balance between commercial and safety considerations. A happy medium must be struck. We would like to ensure

that the railway undertaking would ensure the safety of persons in the operation of its railway in so far as is reasonably practicable. I draw the attention of Senator Burke to section 36, which indicates it is a matter for a judge and jury to decide what is reasonable to expect a railway undertaking to do to ensure safety in particular circumstances. I am not in a position to give a safety guarantee on anything we do. As a society we decide what is reasonable risk on a daily basis. We must accept some degree of risk exists and there is a wide consensus on the level of risk that is intolerable. Section 36 requires a railway undertaking to manage risk in accordance with societal expectations. I draw the attention of Senator Burke to sections 36, 77(5) and 78(6), which I am led to believe represent the most reasonable approach to this issue. I look forward to Senator Burke’s response.

Mr. P. Burke: As the Minister of State has stated, we cannot have a situation where commercial interests override the safety issue. If the Minister of State believes my amendment is covered in the sections to which he refers I am prepared to withdraw the amendment. The amendment is technical and a minor adjustment and the Minister of State could accept the amendment without interfering with the Bill.

Dr. Mansergh: In the current state of affairs, where we have a State railway, an improvement notice for safety considerations has enormous weight. I do not see how a railway concern could refuse to implement measures because of commercial considerations. If we had a privatised railway, God forbid, the danger might be very real. I do not object to the idea that certain freight companies might run freight across the railway to the extent that Iarnród Éireann is unwilling to do so. I refer primarily to passenger privatised railway. In the case of a State company, a public accountable authority, there would have to be an overwhelming practical or technical reason it would not comply with regulations.

Mr. Callely: I thank Senators Mansergh and Burke for their contributions. It is well established that industries, particularly transport service industries, have developed well-established techniques to assess public user expectations of what is tolerable.

Amendment, by leave, withdrawn.

Section 77 agreed to.

Sections 78 to 81, inclusive, agreed to.

SECTION 82.

Government amendment No. 29:

In page 66, subsection (1), to delete lines 46 and 47 and substitute the following:

“to be known as, in the Irish language, An Chomhairle Sábháilteachta Iarnróid, or in the English language, the Railway Safety Advisory Council, and in this Act”.

Amendment agreed to.

Section 82, as amended, agreed to.

Sections 83 to 88, inclusive, agreed to.

SECTION 89.

Question proposed: “That section 89 stand part of the Bill.”

Mr. P. Burke: This section deals with testing for drugs. Does this cover breath testing train drivers? I am sure the section covers testing for drink and drugs. I welcomed this section on Second Stage as we have seen the drug scene grow throughout the country.

Mr. Wilson: I agree with Senator Burke, who referred to breath testing drivers for alcohol. I do not think any level of alcohol should be permitted by people who drive trains or any form of public transport. There is no safe limit and we should implement a system of zero tolerance of this.

Dr. Mansergh: I agree with the sentiments of my colleagues. I read somewhere — and perhaps the Minister of State will confirm this — that the trade unions in question are happy with this provision, which in a sense is very much in the interest of their members.

Mr. Callely: It is important to draw the attention of Members to my comments on this matter on Second Stage. I went into it in some detail and I will not go over the ground I covered other than to draw attention to Parts 9 and 10, which set out the detailed regime for the testing of safety-critical workers. In particular, Part 10 includes provision for breath testing and for blood and urine tests following a breath test. To answer the question posed directly, Part 10 makes provision for this.

I take the point raised by the other Members on the importance of safety and compliance with the legislation in terms of intoxication at any level.

Dr. Mansergh: Has this matter been discussed with and agreed by the trade unions?

Mr. Callely: The Senator might have read in today's edition of *The Irish Times* of a drink-driving case which has been challenged. Regarding this issue, we are conscious of sensitivities. I

understand there have been discussions at different levels involving management, staff and unions. On the Government side, these proposals were considered by the Attorney General, as I said on Second Stage. We are satisfied with the provisions contained in the section.

Question put and agreed to.

Sections 90 to 101, inclusive, agreed to.

SECTION 102.

Government amendment No. 30:

In page 82, line 25, to delete “Act” and substitute “section”.

Mr. Callely: The need for this amendment was brought to my attention by Members, as in some sections there was an incorrect reference to subsections. This is a technical amendment.

Amendment agreed to.

Section 102, as amended, agreed to.

Sections 103 to 106, inclusive, agreed to.

SECTION 107.

Government amendment No. 31:

In page 84, subsection (4)(b), line 45 after “him” to insert “or her”.

Mr. Callely: I cannot thank the House enough, especially Senator Wilson, for bringing to my attention a number of areas where technical amendments were required. On this section, the Leader of the House brought to my attention, at my cost, that there was an omission in regard to the female gender in line 45. I am happy to correct that, not only for the Leader but for everybody concerned.

Amendment agreed to.

Section 107, as amended, agreed to.

Sections 108 to 110, inclusive, agreed to.

SECTION 111.

Acting Chairman: Amendment No. 32 is a Government amendment and amendment No. 33 is related. Amendments Nos. 32 and 33 may be taken together by agreement.

Government amendment No. 32:

In page 86, lines 13 to 21, to delete subsection (3) and substitute the following:

“(3) A person who contravenes *subsection (1) or (2)* is guilty of an offence and is liable—

(a) on conviction on indictment to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years, or to both, or

(b) on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.”.

Mr. Callely: This amendment relates to section 111(3). On the advice of Parliamentary Counsel, I decided to rebalance the penalties for offences, thereby increasing the maximum financial penalty and reducing the maximum prison term. These are more appropriate penalties, as now stated. I am sure the Members will agree that this will give the system useful and appropriate flexibility.

Amendment agreed to.

Government amendment No. 33:

In page 86, between lines 31 and 32, to insert the following new subsection:

“(5)Where, when a person is tried on indictment or summarily for a offence under this section, the jury, or, in the case of a summary trial the District Court, is of the opinion that he or she was not guilty of an offence under this section but was guilty of an offence under *section 110*, the jury or court may find him or her guilty of an offence under *section 110* and he or she may be sentenced accordingly.”.

Amendment agreed to.

Section 111, as amended, agreed to.

Sections 112 and 113 agreed to.

SECTION 114.

Government amendment No. 34:

In page 89, line 9, to delete “€3,000” and substitute “€5,000”.

Mr. Callely: This amendment proposes to increase a financial penalty from €3,000 to €5,000, with which I hope the House will agree.

Amendment agreed to.

Section 114, as amended, agreed to.

SECTION 115.

Acting Chairman: Amendment No. 35 is a Government amendment, amendments Nos. 37 and 38 are cognate and amendments Nos. 39 and

40 are related. Therefore, amendments Nos. 35 and 37 to 40, inclusive, may be taken together by agreement.

Government amendment No. 35:

In page 89, lines 14 to 21, to delete *subsection (2)*.

Mr. Callely: These amendments relate to Part 12 which provides for serious offences by passengers and members of the public on a train or a railway property. On the advice of Parliamentary Counsel, I propose a number of changes. First, for reasons of tidiness, I propose to delete the penalty provisions of sections 115, 116 and 118 and insert a new penalty section. Second, I propose to update the penalty for a summary offence in line with the recent increase in District Court limits. Third, I propose to rebalance the penalties for offences, thereby increasing the maximum financial penalty and reducing the maximum prison term. A technical change is made to section 119(c) which should more correctly refer to “this Part” rather than “Part 12”.

Amendment agreed to.

Section 115, as amended, agreed to.

NEW SECTION.

Government amendment No. 36:

In page 89, before section 116, to insert the following new section:

“116.—(1) A person who causes a hazard or risk to persons by accidentally or negligently causing any structure, vehicle, or other matter or thing to come to lie on railway infrastructure, or to overhang or protrude into the operational area above or adjacent to railway infrastructure, shall immediately notify the railway undertaking concerned or a member of the Garda Síochána.

(2) A person who, without reasonable excuse, contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 3 months, or to both.”.

Mr. Callely: This amendment proposes a new section providing for a new offence. The new section requires a person to immediately report any hazard to railway safety which he or she causes through some accidental or negligent act. I have in mind an incident in Selby in the UK some years ago where a Land Rover left the road and came to rest on the railway. This caused a rail incident. Other incidents have happened here in recent years where trucks have dislodged

[Mr. Callely.]

material off the side parapet of a bridge causing it to fall onto the railway line below. In such instances, this section will require the person responsible to immediately report the incident to ensure rail traffic is stopped to avoid an accident. A person will be guilty if he or she fails, without a reasonable excuse, to report the incident. I hope this amendment will be helpful.

Dr. Mansergh: For this amended clause to become effective, the relevant people, particularly in the haulage industry, will have to be properly notified of their duty in this regard, and this clause could be integrated into various road safety literature and instructions.

Mr. Callely: I fully accept that point. What we require is good road behaviour, but also awareness and education in this context is fundamental. I accept it will be hard to police this provision. We are talking about awareness, education and co-operation.

Amendment agreed to.

SECTION 116.

Government amendment No. 37:

In page 89, lines 24 to 31, to delete subsection (2).

Amendment agreed to.

Section 116, as amended, agreed to.

Section 117 agreed to.

SECTION 118.

Government amendment No. 38:

In page 90, lines 5 to 12, to delete subsection (2).

Amendment agreed to.

Section 118, as amended, agreed to.

NEW SECTION.

Government amendment No. 39:

In page 90, before section 119, to insert the following new section:

“119.—A person guilty of an offence under section 115, 116 or 118 is liable—

(a) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years or to both,

(b) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 3 months, or to both.”.

Amendment agreed to.

SECTION 119.

Government amendment No. 40:

In page 90, line 19, to delete “Part 12” and substitute “this Part”.

Amendment agreed to.

Section 119, as amended, agreed to.

Sections 120 to 122, inclusive, agreed to.

SECTION 123.

Government amendment No. 41:

In page 91, subsection (1), lines 26 to 35, to delete paragraph (e) and substitute the following new paragraph:

“(e) in any case where the Commission considers that the immediate giving of the notice, notification or direction is required, by sending it, by means of a facsimile machine or electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender’s—

(i) facsimile machine generates a message confirming successful transmission of the total number of pages of the notice, or

(ii) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail.”.

Mr. Callely: I am delighted to be in the House to move this amendment because at the rate technology is going maybe in a couple of years’ time I will be pushing buttons to move amendments. This is not quite going that far. It is a technical amendment to accommodate the commission to send by urgent notification to the railway undertakings, communication by e-mail as opposed to fax which is becoming obsolete. I hope it will be agreed to as it is only a technical amendment.

Amendment agreed to.

Section 123, as amended, agreed to.

SECTION 124.

Acting Chairman (Dr. Henry): Amendment

No. 42 has already been discussed with amendment No. 13.

Government amendment No. 42:

In page 91, subsection (1), line 41, after “The” to insert “Investigation Unit, the”.

Amendment agreed to.

Section 124, as amended, agreed to.

Sections 125 to 127, inclusive, agreed to.

NEW SECTION.

Government amendment No. 43:

In page 96, before section 128, to insert the following new section:

“128.—(1) This section comes into operation on such day or days as the Minister may by order or orders appoint and different days may be so appointed for the coming into operation of different subsections.

(2) The Transport Act 1964 is amended by substituting for section 5(2) (inserted by section 3 of the Transport Act 1985) the following:

‘(2) The aggregate at any one time of borrowings under this section which have not been repaid shall not exceed €600,000,000.’.

(3) The State Guarantees (Transport) Act 1962 is amended by substituting for section 2(2) (inserted by section 4 of the Transport Act 1985) the following:

‘(2) The Minister shall not so exercise the powers conferred by subsection (1) of this section or by section 4(1) of the Transport Act 1974, that the amount, or the aggregate amount, of principal which he or she may at any one time be liable to pay pursuant to a guarantee or guarantees under this section or section 4 of the Transport Act 1974 (or under both those sections), and for the time being in force, together with the amount of principal (if any) which he or she has previously paid pursuant to any such guarantees and which has not been repaid, exceeds €600,000,000.’.

Mr. Callely: This amendment is necessary to accommodate CIE to increase the level of guaranteed borrowing power from a restricted £317 million which has been in place for over 20 years to €600 million. This increased borrowing limit will facilitate the speedier progression and management of projects by ensuring there would be an adequate cashflow facility available to the CIE group of companies, particularly in light of the fact that the current borrowing limit has been

in place for 20 years. We are all enthusiastic in this House about the fundamental role CIE will play in the new ten-year transport framework that we have rolled out under Transport 21.

Dr. Mansergh: I welcome the amendment and I fully share the Minister of State’s appreciation of its importance. It is one illustration that the Government is serious about the Transport 21 programme which will require a large amount of investment. As a straw in the wind I saw an advertisement in a newspaper yesterday to do with a public consultation on the extension of the Luas line at Cherrywood. Within a month’s time we will have the new railway timetable which will contain substantial progress which is of great interest to people in Tipperary on the hourly Cork-Dublin railway service. We are talking about a vastly increased undertaking where traffic will be way above the levels of 20 years ago so it is entirely appropriate that the strait-jacket that was in place in the 1980s would be removed.

Mr. P. Burke: I welcome the amendment. With regard to the old borrowing limit, did CIE always borrow to the limit? Was it in excess of its borrowing limit or was the limit ever reached?

Mr. Callely: Due to regulations CIE was never able to exceed the borrowing limit. It managed to work in accordance with it.

Mr. P. Burke: That is a typical civil servant’s answer.

Mr. Callely: I am determined that CIE and its group of companies will play a pivotal role in the roll out of Transport 21 and that we would give them all the necessary tools to ensure they will be able to match our ambitious transport plans and not be handicapped by a low borrowing limit. As Senator Mansergh and I stated, this cap has been in place for over 20 years and it is high time we put a more appropriate figure in place.

Dr. Mansergh: In regard to the point raised by Senator Burke, if one goes back to the financing of the DART in the 1980s and 1990s, CIE was forced by various Governments to borrow and the Department of Transport through the Department of Finance helped with the interest payments. The enormous contrast between those days and today is that CIE got no capital moneys from the Government until 1997, although it got some from the EU in the early 1990s. The £317 million was expected to take the full weight of whatever capital developments that were undertaken, the principal one being the DART at that time. Thankfully, Government support to CIE and other public transport bodies is in the range of €400 million to €500 million. We look forward

[Dr. Mansergh.]

to seeing what the exact figure is in the Book of Estimates tomorrow.

Amendment agreed to.

Acting Chairman: Amendment No. 44 in the name of Senator Burke is ruled out of order because it involves a potential charge on the Revenue.

Amendment No. 44 not moved.

SECTION 128.

Government amendment No. 45:

In page 96, line 25, to delete “inserted” and substitute “as amended”.

Mr. Callely: This is a straightforward drafting amendment. It is more correct to say, in section 25(1) of the Transport Act 1971 “as amended” by the Transport Act 1987 rather than “inserted”.

Amendment agreed to.

Question proposed: “That section 128, as amended, stand part of the Bill.”

Mr. P. Burke: On the section, I am not happy that my amendment was ruled out of order because of its financial implications and I will consider resubmitting it on Report Stage. The Minister of State might also consider the matter in the meantime. I made a point on Second Stage about unmanned level crossings, of which there are quite a number in my own county around Claremorris and Castlebar where a fatality occurred. With the growth in housing in rural areas, especially around large provincial towns like Castlebar, Ballina and so on, most vehicles, including lorries and tractors and trailers have become larger, heavier and longer. The Sligo line will be fully automated by the end of 2005 or early 2006 but the Castlebar, Westport and Ballina line is not supposed to be fully automated until 2008. A number of other lines throughout the country are no doubt in a similar position.

I thank the Minister of State for agreeing to examine the railway line between Ballina, Castlebar and Westport and stating that he would hope the automation of those unmanned level crossings would take place by early 2006. While I welcome what the Minister of State has said, my amendment would not be specific to an area and its intention is to promote safety. The amendment may have been ruled out of order because of the financial implications of its call for a shorter time-scale than the estimated ten to 15 years for the completion of the automation process. I am particularly concerned about the Westport and Ballina line.

It is very important unmanned level crossings are automated because accidents are waiting to happen at them. We are lucky many more tragedies have not occurred. It is gravely important this issue is addressed. I hope the Minister of State will consider amending this section on Report Stage.

Dr. Mansergh: I have sympathy with the spirit, although not necessarily with the letter, of the amendment. There is not only the safety consideration but there is also the delay involved where there are many manned level crossings. There is a particular section of line, which is the initial part of the famous western rail corridor between Limerick and Ennis, on which there is a large number of manned level crossings, particularly in the vicinity of Limerick city. That means a train moving through the outskirts of Limerick city goes exceptionally slowly. The total journey takes approximately 45 or 50 minutes and the reason for the length of time it takes is primarily due to the number of manned level crossings. I have known a train to virtually stop until somebody has opened the level crossing.

Obviously, safety is the paramount consideration but there are also considerations regarding efficiency and speed. Eight passenger trains travel in each direction on that line and there may be some freight traffic from further north as well. That demonstrates sufficient frequency. Maximum elimination of manned level crossings should be incorporated into the rail safety programme. Apart from anything else, there must be considerable manpower or womanpower costs associated with maintaining those level crossings which are not terribly efficient in this day and age.

Even on the main Dublin to Waterford line outside Waterford city, there is a manned level crossing on the N9, the upgrading of which was announced yesterday. Each time one closes the barriers on a manned level crossing, one adds two to five minutes to the journey time. It is not only a cost for the railway undertaking. If one is talking about the main route outside Waterford city, one is talking about substantial delays for everyone. It is an issue which should be accorded proper and due importance.

Mr. Callely: I thank Senator Paddy Burke for dwelling on this point which he made quite forcefully on Second Stage. I indicated we would give certain undertakings in regard to the issues he brought to our attention. I understand amendment No. 44 was ruled out of order because it would give rise to a significant charge on the Exchequer. Section (2)(ii) of Senator Paddy Burke’s amendment probably resulted in that ruling.

On Second Stage, Senators Paddy Burke and Wilson raised the issue of level crossings. Ensur-

ing the safe use of all level crossings on the railway network is of paramount importance to me, my Department and Iarnród Éireann. The level of concern is reflected in the programme of work undertaken by Iarnród Éireann since 1999 when the Leader of this House secured funding. A significant level of funding has been approved by this Government.

Between 1999 and 2003, approximately 700 level crossings have been upgraded or closed. That is a significant amount of work. It is worth noting that since 1999 to date, over €800 million in Exchequer funding has been spent on railway safety which is significant. Sadly this type of expenditure is probably not as visible as that spent in other areas. It is, however, crucial and it is right moneys are spent in this way. There is also a commitment that by the end of 2013, moneys spent on safety will exceed €1.4 billion. That gives the House a measure of the commitment of this Government to railway safety.

Question put and agreed to.

Sections 129 to 132, inclusive, agreed to.

NEW SECTIONS.

Government amendment No. 46:

In page 107, after line 14, but in Part 16, to insert the following new section:

“133.—Section 40 of the Transport (Railway Infrastructure) Act 2001 is amended by substituting for paragraph (iv) of subsection (1)(b) the following:

‘(iv) stating that the Minister will consider any submissions in relation to the proposed order or in relation to the likely effects on the environment of the proposed railway works which are submitted in writing to him or her by any person not later than 30 days after the end of the period specified in the notice referred to in subparagraph (ii), and’.”.

Mr. Callely: This is a straightforward technical amendment. An anomaly exists in regard to subsections (1) and (3). One states a Minister can make an order in regard to 14 days while the other refers to a submission period of 30 days. I seek to correct that anomaly.

Amendment agreed to.

Acting Chairman: Amendments Nos. 47, 48 and 52 form a composite proposal and they may be discussed together. Is that agreed? Agreed.

Government amendment No. 47:

In page 107, after line 14, to insert the following new section:

“PART 17

ROAD TRAFFIC — BRIDGE STRIKES

133. — The Road Traffic Acts 1961 to 2004 and this Part may be cited together as the Road Traffic Acts 1961 to 2005 and shall be construed together as one.”.

Mr. Callely: There is a genuine concern regarding the following issue which is why this new Part 17 will form part of the Road Traffic Acts. The main reason for the amendment is to address the very serious risk to railways from bridge strikes by vehicles. Iarnród Éireann and the road authorities have become increasingly concerned about the number of bridge strikes by vehicles. In 2001, 99 bridges were struck by vehicles; in 2002, 136 were struck; in 2003, 122 were struck; and in 2004, 123 were struck. I understand the provisional figure for 2005 suggests the trend continues to increase.

We have been lucky in regard to these bridge strikes in that we really only have had one serious strike in the history of the State which occurred in Wexford some years ago. Senator Mansergh referred to the DART. If a vehicle struck a bridge with a DART carriage on it, there could be very serious consequences. We are deeply concerned about this issue and, therefore, I propose the inclusion of this amendment.

Mr. P. Burke: The Minister of State proposes to insert a new section for, I have no doubt, very good reasons. However, this area will open up the issue of control between local authorities and Iarnród Éireann. For a long time local authorities and Iarnród Éireann have been slow to cooperate. The buck has been passed back and forth from one to the other. This situation has bedevilled railway works, including widening level crossings and improving bridges. In addition, each side blamed the other for the delays.

In the case of this amendment — which, I presume, refers to lorries hitting bridges or level crossings and thus putting the railway line out of action — if damage is done to a railway bridge, will it be the responsibility of the local authority, Iarnród Éireann or both to put it right? Will we revert to square one where the matter goes back and forth from one group of solicitors to another? I have witnessed delays in many small projects which would have improved the lives of many people. For example, minor adjustments could have been made to level crossings but Iarnród Éireann ruled them out on safety or legal grounds so local authorities could not carry out the work or *vice versa*. One side was always blaming the other. I hope that in this case we will not have a

[Mr. P. Burke.]

similar situation concerning works that must be carried out. The Minister of State should be more specific as regards this amendment, stating by whom such works will be carried out, so that the local authority or Iarnród Éireann will be responsible for them, rather than both having that responsibility.

Dr. Mansergh: This is a serious matter, given the increase in lorry heights and the rise in the number of lorries generally. Far too often, one hears reports of lorries striking parapets or bridges. The legislation should convey a clear message that people who cause such damage carelessly or wantonly will face serious financial consequences. The prosecuting authorities need to be rigorous in this regard. One has the impression that people have been prepared to forgive mistakes in the past, but we have had enough of it now because there are dangerous implications for safety. I presume that road bridges are the responsibility of local authorities, while rail bridges are the responsibility of Iarnród Éireann. Clearly they must co-operate and in most instances they do so. In County Tipperary, there are many signs warning of dangerous bridges ahead, particularly on bends in the road.

The Minister of State said that the €1 billion plus to be spent on rail safety by 2013 is perhaps not fully appreciated. On the other hand, the entire programme of improvements could not take place unless that investment were made. It represents the foundation of the progress being made.

Mr. Callely: I concur with the points both Senators have made. We would not be able to place such a heavy dependence on our railways unless we had the safety issue under control. As regards vehicles striking bridges, Senator Mansergh made the point well; damaged road bridges are a matter for the relevant local authority, while Iarnród Éireann is responsible for rail bridges.

I am introducing two offences because I want to make such bridge strikes a serious offence. A person driving a vehicle that strikes a bridge will be guilty of an offence if there was a road sign indicating the height of the restricted bridge. The second offence relates to a failure to comply with a requirement to notify immediately the occurrence of a bridge strike, for obvious reasons.

In or around this time last year, following a normal inspection of our road bridge network, it was brought to the Department's attention that an abnormal load had struck the Rathcoole bridge leaving it in a dangerous condition. I do not know how many days elapsed before that incident was picked up by the inspectors but there could have been a serious incident as a result.

Senator Wilson brought to my attention the fact that some of the old stone and granite bridges may not meet the height requirements for new heavy goods vehicles. A number of HGVs have struck such bridges and are able to drive off, but other such vehicles can get caught underneath.

In addition to the provisions of the Bill, my Department will also be undertaking other measures because there are better ways of preventing bridge strikes than relying solely on road traffic signs. Earlier, I referred to technical developments in this regard, including the use of the GPS and Galileo systems. Hopefully, such systems will be fitted to vehicles to act as preventative measures.

I ask the House to approve this amendment in order to permit the two offences I cited to be inserted in the legislation. In addition, I am giving an undertaking to examine the other matters to which the Senators referred.

Mr. Wilson: I thank the Minister of State for his comments. Subsection (2) of the proposed new section states, "Where the height of a structure in a public place is indicated by means of a traffic sign...". Surely, however, it should be compulsory to indicate the height of a railway bridge. It should not be at Iarnród Éireann's discretion whether to display such signs. The signs should be displayed well in advance of bridges.

Mr. Callely: The road traffic legislation currently being drafted will take adequate account of and will make provision for the point Senator Wilson has drawn to my attention.

Amendment agreed to.

Acting Chairman (Dr. Henry): Amendment No. 48 has already been discussed with amendment No. 47.

Government amendment No. 48:

In page 107, after line 14, to insert the following new section:

"134.—(1) In this section 'structure' means—

(a) any bridge, viaduct, subway, tunnel, underpass, overpass, or flyover, and

(b) in relation to a railway any overbridge or underbridge,

in a public place.

(2) Where the height of a structure in a public place is indicated by means of a traffic sign, specified in regulations made under section 95(2) of the Road Traffic Act 1961, provided in accordance with those regulations on or in the vicinity of the structure, a person shall not drive or attempt to drive a mechanically propelled vehicle under the structure, where

the height of the vehicle, including its load, if any, measured from the ground to its highest point is equal to or exceeds the height indicated in the traffic sign, so as to strike the structure.

(3) A person who contravenes subsection (2) is guilty of an offence and is liable—

(a) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years, or to both, or

(b) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.

(4) Where a person driving a mechanically propelled vehicle referred to in *subsection (2)* strikes a structure where a traffic sign referred to in that subsection is provided and, whether or not any damage to the structure is apparent, where the person who owns or is in charge of or has use of the structure has provided in a conspicuous place a notice containing a telephone number to contact in the event of such a strike, he or she shall make such contact immediately after the occurrence of the strike. If the person is unable to make such contact immediately, he or she shall immediately notify a member of the Garda Síochána of the occurrence.

(5) A person who, without reasonable excuse, fails to comply with subsection (4) is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.”.

Amendment agreed to.

SCHEDULE 1.

Government amendment No. 49:

In page 108, column 3, line 33, after “51” to insert “, 55”.

Mr. Cally: This amendment repeals section 55 of the Transport Act 2001, which extends the drink driving provisions of the Road Traffic Act to tram drivers. Senators will be aware of the extensive provisions in Parts 9 and 10 of the Bill, to which I alluded earlier, dealing with drug and alcohol testing of safety critical railway workers. These provisions will apply to tram drivers also. It would not be legally appropriate to have two separate laws applying to the same issue. It is appropriate, therefore, that section 55 be repealed.

Amendment agreed to.

Schedule 1, as amended, agreed to.

SCHEDULE 2.

Government amendment No. 50:

In page 109, after line 19, to insert the following:

No. 14 of 1993	Roads Act 1993	Section 15A(a)
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Mr. Cally: This is a straightforward amendment which requires the consent of the Minister for the construction of a bridge over a railway.

Amendment agreed to.

Schedule 2, as amended, agreed to.

TITLE.

Government amendment No. 51:

In page 9, to delete lines 6 to 13, and substitute the following:

“OF A BODY TO BE KNOWN AS, IN THE IRISH LANGUAGE, AN COIMISIÚN SÁBHÁILTEACHTA IARNRÓID, OR IN THE ENGLISH LANGUAGE, THE RAILWAY SAFETY COMMISSION, TO DEFINE ITS FUNCTIONS, TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS, IN THE IRISH LANGUAGE, AN CHOMHAIRLE SÁBHÁILTEACHTA IARNRÓID, OR IN THE ENGLISH LANGUAGE, THE RAILWAY SAFETY ADVISORY COUNCIL, TO DEFINE ITS FUNCTIONS, TO”.

Amendment agreed to.

Government amendment No. 52:

In page 9, line 36, after “RAILWAYS,” to insert

“TO AMEND THE ROAD TRAFFIC ACTS 1961 TO 2004.”.

Amendment agreed to.

Title, as amended, agreed to.

Mr. Cally: I thank the Acting Chairman and the Members of the Seanad for their co-operation on Committee Stage of the Railway Safety Bill 2001 today. I appreciate the debate and the sessions in which we teased out the issues outside this House. We have strengthened the Bill that originally came before the House. It is now in better, stronger shape.

I thank all involved, including the support staff, most important, the officials from my Department, who have supported all Members of the

[Mr. Callely.]

House and ensured that we flushed and teased out the relevant issues. I pay tribute to Maurice Treacy, Mairéad Broderick and Damien Clarke and thank them one and all.

In respect of Report Stage to which I look forward, could the House accommodate this debate after 11.30 tomorrow morning? I will discuss this with the Leader of the House.

Mr. Wilson: My colleague, Senator Dooley, will probably speak at the conclusion of the debate tomorrow. I thank the Minister of State and his officials for the manner in which they conducted their business here on all Stages so far on the Railway Safety Bill. I thank my colleagues, Senators Paddy Burke, Mansergh and McDowell for their input into this debate on all Stages.

The Minister of State, Deputy Callely, is the most frequent ministerial attendee in the House this session. We will see him again tomorrow for the resumption of the debate on what has become commonly known as the “transport towards the show or club” Bill.

Bill reported with amendments.

Acting Chairman: When is it proposed to take Report Stage?

Mr. Wilson: Tomorrow.

Report Stage ordered for Thursday, 17 November 2005.

Sitting suspended at 3.05 p.m. and resumed at 5 p.m.

Juvenile Offenders: Motion.

Ms Tuffy: I move:

That Seanad Éireann calls on the Government to urgently implement the measures needed to effectively tackle juvenile crime and to prevent offending and re-offending by children and young people at risk of offending by ensuring appropriate measures including the following:

- the bringing into force of the remaining provisions of the Children Act 2001;
- a detailed plan with the deadline for implementation to be published immediately as to how the measures in the Children Act 2001 are to be implemented;
- proper ongoing and guaranteed funding and resources to be made available for the measures contained in the Act and in particular those aimed at preventing juvenile offending;
- increased use of community service orders and restorative justice schemes;

- proper funding and resources for the probation and welfare and social work services;
- rehabilitation of offenders legislation to be put in place; and
- long-term, ongoing and guaranteed investment in educational and work programmes specifically aimed at children and young persons at risk of involvement in juvenile crime.

I will begin with a description of a scene from a film which I am sure most people have seen. It is a very popular film called “The Shawshank Redemption”. A memorable scene from that film is often shown. It features the character Red, played by Morgan Freeman, being asked if he has been rehabilitated. He gives a very memorable speech which I always find very striking. He conjures up an image of when he was young, and says he would like to go back and talk sense to himself as a young kid, when he committed a particular crime all those years ago. He cannot do so, and now he is an older man.

That scene reminds me that one is almost a different person when young, when a child and a teenager, and also that childhood and youth are a key period when a person can start on the wrong path. If only society and people could intervene at that stage, the person could be prevented from taking the wrong path. He or she might take the right path in life and not become involved in crime.

This also brings home the reality of children’s rights legislation, which is very much based around the idea that children have unique rights and are uniquely vulnerable within the justice system. That is why we have set up the Children’s Court in this country.

In preparing for this debate I looked at a report by Dr. Ursula Kilkelly, a senior lecturer in law in UCC. Last May she launched a study called *The Children’s Court: A Children’s Rights Audit*. Her report set out to examine whether children’s rights were fully protected in the Children’s Court. Dr. Kilkelly analysed the extent to which the Children’s Court operates in line with international and national standards. Using international and Irish legislation, she set out the benchmarks against which the Children’s Court should be matched. They include the UN Convention on the Rights of the Child, UN rules, the European Convention on Human Rights, the case law of the European Court of Human Rights with regard to Article 6 and how it should be interpreted in terms of trials involving children, the European Convention on Human Rights Act 2003 and the Children Act 2001.

Dr. Kilkelly makes the point picked up by other commentators, namely, that there are gaps in the Children Act which may need to be looked at again. She says that the Act provides important

and detailed guidance to judges in the exercising of their sentencing functions as well as valuable direction regarding the environment where children are heard and how they can participate in criminal proceedings. She shows how the Act falls short of prescribing how the District Court has to be transformed into an age-appropriate environment in which young people have the right to participate in their own criminal proceedings.

I hope the Department will look at reviewing this legislation in light of Dr. Kilkelly's concerns. Mr. Geoffrey Shannon has meanwhile noted that New Zealand brought in a system which this country has tried to copy. New Zealand has found gaps in its system which we need to consider in terms of implementing our own legislation in the area.

The Children Act brings into force many of the UN and international standards with regard to how children are treated in the juvenile justice system.

The study she conducted is worthwhile and I hope the Department of Justice, Equality and Law Reform is considering how her recommendations can be implemented. Informal, flexible and private court procedures which are accessible to young people are part of the basic international principles of youth justice. Age-appropriate language should be adopted and specialised tribunals created in order to facilitate the young person's understanding of and participation in the process. Specially trained personnel should be employed and a professional code of conduct devised to regulate their work.

The study tested 50 Children's Court cases against certain benchmarks, one of which was the required attendance of a parent or guardian. It was found that parents were not present in 30% of cases, implying that the child attended court alone. Despite the fact that the vast majority of defendants were boys, there was no father figure in 60% of observed cases. Reasons given for non-attendance included illness, family issues and work commitments. However, it emerged that parents had not been notified in some cases, which, given that the law requires their attendance, is unacceptable. The study noted that the children whose parents were absent seemed especially isolated, vulnerable and distressed. It is obvious that parents should be present to provide support for the children involved.

Dr. Kilkelly noted different practices among courts in terms of permitting children to communicate with parents during proceedings. Such communications were explicitly prohibited in the Dublin Children's Court. Issues were also raised by Dr. Kilkelly with regard to bail conditions, which are important elements of the process. The lack of bail support was identified as a problem. She argued in the study that a child may not have the capacity to meet bail conditions or avoid further offences while on bail. It is important that

children are supported in meeting their bail conditions. Otherwise, they are set up to fail and become trapped in a cycle of repeat offending.

Section 96 of the Children Act provides that detention is used only as a sanction of last resort. That basic principle has been identified in the UN Convention on the Rights of the Child. Dr. Kilkelly's study found that detention is increasingly being applied and that custodial sentences made up 23% of the 115 cases that involved sanctions. No clear reason was given for courts' decisions to impose custodial sentences but they seemed to be prompted by a collection of circumstances. For a number of reasons, custody is not the best option for children and it is not an appropriate tool in terms of meaningful sanctions.

Our motion calls for much more to be done to implement the sanctions already available under Part 9 of the Children Act. If we really want to intervene, sanctions such as community service must be used. Not only has the Government been lacking in terms of bringing provisions into force, but it also failed to address the issue of making resources available to the probation and welfare service so that it can provide supports when sanctions are applied.

Many other issues are addressed in Dr. Kilkelly's report, including the manner in which judges treat defendants. Children's courts do not encourage children to exercise their right to participate. For example, judges are often bad at speaking directly to children and their families in appropriate language. This failure to communicate and engage with young people marginalises them further and does not help them to realise the consequences of their actions. This is an important report and I would like to hear the Minister of State's response to its recommendations.

The provision in the Children Act to raise the age of criminal responsibility from 7 to 12 years has not been brought into force. In *The Irish Times* last January, a spokesperson from the Department was reported to have said that there were no plans to commence the relevant section of the Act. She also claimed that the Minister for Justice, Equality and Law Reform and the Minister of State, Deputy Lenihan discussed the matter and agreed to review the provision because they had serious doubts about it. More recently, *The Irish Times* reported that the Government intends to increase the age to ten rather than 12. It is ridiculous that this provision has not been implemented. Why was it put in the Act if the Government appears to be doing a U-turn on it?

Mr. Ryan: It does nothing properly.

Ms Tuffy: This issue, which has existed for the past 30 years, concerns children's rights and their unique position within the justice system. Current policy is at odds with the opinion of the previous

[Ms Tuffy.]

Minister for Justice, Equality and Law Reform, Deputy O'Donoghue, who felt it contradictory to pass legislation which emphasised rehabilitation and deterrence over retribution if children aged between seven and 12 continued to be subject to prosecution. I would like to know the reason for the change in the Government's position. Does responsibility for the change lie with civil servants, the Minister or the Minister of State?

Ms O'Meara: I second the motion and offer it my full support. It is an important issue and I welcome the Minister of State here to discuss it. We are seeing a lot of him because many of the issues currently before the House concern children. This motion addresses the area of juvenile crime and the prevention of offences.

The Government's amendment to the motion refers to the balance between the rehabilitation of young offenders and the protection of communities. We know that the numbers of centres in which young offenders are held has increased but I ask the Minister of State to describe the rehabilitation programmes the Government is sponsoring and what exactly is in place for the rehabilitation of young offenders. Unless those types of programmes are put in place we are failing young people. When a young offender comes before the courts it is an indication of a serious failure of the system somewhere along the way. A child should not come before the courts for offending but when that happens there is something very wrong. We have let those children down and have failed them at some level. Children who come before the courts represent the most vulnerable section of the community because something has happened in their young lives which has led to this situation. It is likely they are not attending school and are very vulnerable. I am basing these assumptions on general common sense assumptions. If a child is appearing before the courts there must be some difficulty in the family because the vast majority of children are raised successfully and become full participating members of the community. However, there is a section for whom that is not happening. We need to examine whether that number is increasing and, if so, the pressures causing this. We must ascertain whether there are sufficient measures in place to ensure the number does not increase. For the families of those in that position we have to examine whether these children are getting the support they need.

Two weeks ago I noted a number of reports on the issue of children in care and the extent to which there has been a considerable increase in recent years. The breakdown of these statistics compiled by health authorities and published recently in one of the national newspapers paints a disturbing picture of neglect and, in some cases,

abuse of children. It shows that 4,984 children were admitted into State care in 2003.

Minister of State at the Department of Justice, Equality and Law Reform (Mr. B. Lenihan): That is not correct. They were in care and were not admitted to care in that year.

Ms O'Meara: So in 2003 that number was in care.

Mr. B. Lenihan: Yes. There have been some accurate statistics but also some inaccurate ones. The figure the Senator has quoted is correct for the total number in care at that time.

Ms O'Meara: I thank the Minister of State for that clarification. I take that point on board.

Mr. B. Lenihan: I do not blame the Senator because some of the reports are inaccurate.

Ms O'Meara: I am relying on information which was in the public domain.

Mr. B. Lenihan: I know that.

Ms O'Meara: The Minister of State would probably agree that the number of children in care, which obviously includes being admitted into care, has risen considerably during the past 15 years from 2,799 in 1989 to 5,517 in 2001. Clearly we are looking at a change in society. It must be taken into account that the number of unaccompanied minor asylum seekers coming into the country has increased from a few to a much larger number. Even taking that into account there is an increase in the number of children being admitted to and in care. Obviously one would be concerned about that because it points to a failure somewhere along the line. On the other hand it is important that we have the facility to take children into care. One of the notable elements of the report I read is that there is a regional variation. From a child's point of view, the issue of whether he or she is taken into care can depend on where he or she lives. Clearly that is not acceptable because there has to be a standard. Irrespective of where a child lives and the family of which he or she is a member, we need to know they have an equal opportunity for support.

Another element in the report about which I was concerned was the increase in the number of children in care. According to many professionals in the area it is a symptom of increasing pressure on families and underfunding of support services for those at risk. One would have thought in recent years, given the amount of media attention and public outrage in regard to stark cases of children in serious situations on the streets from homelessness to being found dead, that

would have led to sufficient funding for support services for those at risk but clearly that is not the case.

The waiting list for therapeutic services for families in need can often be up to a year. Unfortunately, we meet such families on a regular basis seeking the support they need. That they may have to wait up to a year for it is unacceptable. That issue needs to be addressed to ensure vulnerable children do not fall into a worse situation because of the failure of the system and the lack of funding.

I commend the motion and thank my colleague, Senator Tuffy, for tabling it and look forward to the debate.

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

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

“—recognises that the Children Act 2001 is a modern and progressive statute which provides a wide range of interventions for young offenders in line with its major principles of diversion, restorative justice and detention as a measure of last resort and:

- commends the Government on the measures taken to date to implement key provisions of the Children Act 2001 and notes with satisfaction the commitment to implement the remaining provisions of the Act in a co-ordinated manner and on a phased basis as envisaged at the time of its enactment;
- welcomes the additional staffing and other resources provided to the probation and welfare service in recent years to implement the Children Act 2001;
- acknowledges the significant progress made in implementing the Children Act 2001 through the establishment of the Special Residential Services Board and the development of the child protection and family support services in the health sector;
- notes the bringing into force of all the restorative justice provisions of the Children Act 2001 and welcomes the commitment of the Garda authorities and of the probation and welfare service to the effective implementation of these provisions;
- welcomes the current youth justice review and the consequent intention to restructure the youth justice system to improve the delivery of services in the area and to strike the right balance between the rehabilitation of young offenders and the essential protection of the community;
- commends the Government on the wide range of social inclusion measures put in

place to tackle such areas as crime, drugs misuse and educational disadvantage, which have a positive impact on children at risk of offending and on young offenders; and

- commends the Government’s decision in October 2004 to expand the strength of An Garda Síochána to 14,000 members to tackle crime generally in line with its commitment in An Agreed Programme for Government and congratulates the Minister and the Garda Commissioner for the significant progress to date in implementing the project plan to ensure that this target is achieved.”

I welcome the debate on this motion. Having listened to Senator Tuffy, I too saw “The Shawshank Redemption”. It is a popular film which gave an insight into the failure of the system to rehabilitate people at a younger age rather than have them incarcerated for life. I listened to the RTE crime correspondent, Mr. Paul Reynolds, on radio recently speaking about some of the more serious incidents that have occurred recently. He made the point that those involved in serious crime are now second and third generation families who have graduated from relatively minor crime to become some of the most serious criminals in society. That underlines the need to endeavour to arrest that type of behaviour at an early stage and breaking that generation cycle should be a main priority of our efforts in this regard. He said that when people graduate to serious crime it is a question of either catching them in the act or getting somebody into the witness protection system because of the sophistication of the crime lords. In all of this it is important to stress the important role and responsibilities of parents. Many of the difficulties encountered, not in all cases, are due to the lack of quality parenting which allows youngsters to get into positions where they develop and follow a career in crime, spending their life in and out of prison, rather than worthwhile work and have, perhaps, a much more fulfilling existence. As we have seen recently some lose their lives as a consequence of their involvement in crime.

In regard to the Children Act 2001, referred to in the motion and in the amendment, much of it has been implemented but some sections remain to be implemented. Senator Tuffy suggested raising the age of criminal responsibility from seven to 12 years. While that is obviously desirable it is still outstanding. We have to bear in mind that we have seen headline instances where serious crime was committed by people at a very young age. Obviously there has to be provision to ensure it is avoided, if at all possible, but if it happens that they are taken and held to account and that every effort is made to ensure when they are released from detention subsequently that they

[Mr. J. Walsh.]

will not recommit the crime. Rehabilitation has to be a major plank in all of this particularly in the juvenile area.

The Springboard initiative, which is very much part of the overall family support mechanisms that were introduced, has a very significant role to play. It offers a range of interventions, including individual work, group work, peer work, family work, advice and practical help. In this regard it has potential to provide education for juveniles in detention allowing them to develop skills.

However, we need to go further. I know that job placement is envisaged in some programmes and is a very important component. The first problem facing people leaving prison is how to reintegrate into society. Getting accommodation and obtaining a job are key in this regard. As part of that overall effort the Minister of State should consider giving tax or other employment benefit incentives to employers to encourage them to take on a number of juvenile offenders, thus giving them a chance. They would then be monitored by the juvenile liaison system to assist in reducing the number who re-offend.

We need an holistic approach. The Children Act envisages taking such an approach. Youth advocate programmes also address the protection of children. The family welfare conferences will now form part of the system and when they go to court a judge will have a range of options to try to ensure that the offender has an opportunity to participate fully in normal life. The community sanctions include day-centre orders, probation training or activities, intensive supervision, residential supervision, family support and restrictions on movement. Many of these have been implemented and some are awaiting implementation. They will assist youngsters who find themselves on the wrong path to find the right path in future.

I understand it is proposed that the child detention schools are to become the responsibility of the Department of Justice, Equality and Law Reform rather than the Department of Education and Science. It is important that the focus on education and acquiring skills should not be diluted by the transfer. The transfer could be beneficial if all the other interagency structures, which are being introduced, are integrated so that they all focus on the objective of achieving a better opportunity in life for those who unfortunately find themselves in such a situation. We also need to introduce parental responsibility and accountability into the system.

Ultimately the responsibility for children should rest with parents. If parents through negligence or lack of interest are seen to represent a strong contributory factor to youngsters going into crime, they should be required to pay a price. This would place an onus on parents to act

responsibly and ensure their children are brought up as good members of society. While this area needs some more attention, overall we are heading in the right direction and I know the Minister of State will be anxious to accelerate the implementation of all these provisions.

Mr. Cummins: I welcome the Minister of State to the House. I am very pleased to have the opportunity to speak on this debate which is a vital issue in terms of justice policy and attempts to address the growing problems of anti-social behaviour, under-age drinking and drug taking. These problems have become endemic in our society in recent years and we need to be strong in our resolve to deal with them.

My party believes that the solution to juvenile crime lies in treating both the symptoms of crimes and the causes that drive young people and adults to behave in a manner that is not acceptable. It is no coincidence that the incidence of juvenile crime is higher in socially deprived sections of our society. The Government appears to have done little to address the widening gap between the "haves" and the "have-nots". While it is all very well to say that a rising tide lifts all boats, it is little comfort for those who have no boat at all.

The question of juvenile crime must be addressed with a varied arsenal, combining primarily the principles of restorative justice with proper juvenile liaison facilities, community policing and renewed investment in educational and sporting facilities for young people. Traditionally, when a crime is committed, irrespective of the victim, the State takes the action against the offender. The concept behind restorative justice focuses on crime as an act against another individual or community, rather than the State. In this way, the victim can play a major role in the criminal justice process, receiving some type of restitution from the offender.

While restorative justice takes many different forms, all systems have some aspects in common. Victims have an opportunity to express the full impact of the crime upon their lives, to receive answers to any lingering questions about the incident and to participate in holding the offender accountable for his or her actions. Offenders can tell their story of why the crime occurred and how it has affected their lives. They are given an opportunity to right the wrong they have perpetrated against the victim, to whatever degree possible, through some form of compensation or restitution. Types of compensation include, but are not limited to, money, community service in general, community service specific to the deed, self-education to prevent recidivism, and the expression of remorse.

My party has always stood for the duality of rights and responsibilities. Just as we fight for the rights of Irish citizens to enjoy freedom of expression and association, so too do we believe

that people who violate the rights of others and impede on their enjoyment or environment in whatever way, bear the responsibility to right that wrong where possible. However, as with all things, prevention remains better than cure and we must also enshrine systems and facilities that will remove disadvantage and the circumstances that may cause young people to break the law and to behave in such an anti-social fashion.

In the first instance, the areas that we all know to be marginalised and disadvantaged, in predominantly urban and suburban parts of Ireland, must be targeted for investment in facilities and programmes for young people. We know that investment in sporting facilities, support for social programmes and constructive community events divert young people from the sticky web of misdemeanour in which so many of them become entangled. If we know that these solutions are effective, we truly have no excuse not to implement them and use them to best effect in tackling anti-social behaviour and juvenile crime.

In tandem with this kind of targeted investment, the State must support effective programmes within our criminal justice system, not least of which is the network of juvenile liaison officers and community gardaí. Their mission is to reduce the rates of re-offending and, where possible, to nip crime and criminality in the bud. I pay tribute to the invaluable role the juvenile liaison system plays in keeping so many children on the straight and narrow.

I agree wholeheartedly with the wording of this motion calling for "proper, ongoing and guaranteed funding and resources to be made available for the measures contained in the Act and in particular those aimed at preventing juvenile offending." If we do not take the matter of juvenile crime in hand now, it will be more difficult in the coming years. It is galling that while many provisions and legislation already exist to implement progressive and compassionate initiatives to tackle juvenile crime, many of the key provisions in the legislation have not yet been put into force.

Four years ago, after a long and protracted process, the Oireachtas passed the Children Act, legislation that represents a triumph of co-operation between the various parties in this House and in the Dáil. The Act contains several forward-looking provisions that represent invaluable tools in the effort to build a better society for our children and our children's children. Unfortunately, many of its key provisions have not yet been put into force, whether for lack of resources or lack of imagination on the part of the Government.

The Children Act contains a range of measures including provisions to force parents to take responsibility for the actions of their children and for compulsory parenting courses. It is a gross waste of the time of the Oireachtas to have passed such an estimable Act only to ignore its

potential. It falls to the Minister for Justice, Equality and Law Reform to rectify this regrettable state of affairs, particularly when he and his Cabinet colleagues continue to tell us how much money the country has and how successful the economy is.

Juvenile crime is a massive and urgent problem. It did not emerge overnight. It has grown out of neglect of our society and our children. The trend we see today can only be reversed through investment and a desire to change on the part of those in political power. It is no longer enough for our Ministers to throw their hands in the air and decry the current situation; rather it is time that they, and all of us, took responsibility for doing something about it, now and in the future.

The Fine Gael Party has consulted the public at over 100 meetings nationwide on our proposals to tackle juvenile crime and anti-social behaviour. Crime is hurting our people, our neighbourhoods and our communities. Constructive proposals from a number of sources are now in the possession of the Minister, but the Government does not seem to have the commitment to resource and implement its own legislation, particularly the Children Act 2001.

The lack of resources does not wash anymore with the public when the public finances show such a significant surplus. The time for talking is long gone. We now need action and a willingness to tackle the problem of juvenile crime. The complacency and lack of urgency shown by this jaded Government inspire very little confidence.

Mr. B. Lenihan: It is a far cry from the guff we had to hear from Millstreet.

Mr. Cummins: The Minister of State might have learned something there if he listened properly.

Mr. B. Lenihan: The Senator should read what the Fine Gael spokesperson said about juvenile justice.

Mr. Cummins: If the Minister of State listened to it, he might have learned from it.

Mr. Minihan: I welcome the Minister of State to the House and compliment him on his approach to this issue. The Labour Party motion refers to measures to prevent children offending and re-offending and to how to help young people at risk of offending. If one looks at the range of actions that make up the work of the National Children's Office, it is obvious that truly helping children requires a broad approach. Many interventions are possible before a child ever reaches the stage where he or she becomes at risk of offending. Helping involves both a long-term and co-ordinated approach.

[Mr. Minihan.]

The National Children's Office was set up to drive the implementation of the ten-year national children's strategy and to co-ordinate policies and services for children at national and local levels, across many Departments and agencies. The Government recognises the cross-cutting, multifaceted and long-term approach needed to address the problem of juvenile crime. Through the National Children's Office and other initiatives it is working to address this issue.

Before discussing juvenile crime specifically, I want to talk about crime in general. I am glad that juvenile crime is distinguished from crime in general as it has particular causes and should elicit particular responses. The victims of crime are not concerned about the age of the perpetrator. They do not care whether the person who damaged their property or assaulted them is 13, 18 or 40 years of age. Who could blame them? The view of policymakers must be different.

Crime levels are never far from the minds of the public. The Minister for Justice, Equality and Law Reform has responded to the concerns of the public in many ways, for example, through the Criminal Justice (Public Order) Act 2003 and the Intoxicating Liquor Act 2003. The Garda Síochána was strengthened from 11,750 in 2002 to 12,227 by March last. The Government will continue to strengthen the force to an increased level of 14,000 gardaí. Legislation, resources and Garda numbers are just part of the broader approach required. However, this is not so evident in the Labour Party motion.

We must not overlook the importance of the personal responsibility of individuals, families and the community. When we start to abdicate our responsibilities to the State, the State's intervention must be in the enforcement of law and order. This ultimately leads to a "them and us" situation. Through education, for example, CSPE programmes, and awareness, we can instil in young people a sense of responsibility, not just for themselves but for the community in which they live. We can give them a sense of pride that will place a value on society. Simple programmes, such as litter awareness or the success of Tidy Towns projects, prove that this can be done. Individuals, families and communities all have a responsibility in combating juvenile crime. I take this opportunity to acknowledge the great support given by sporting organisations in providing facilities and a sense of purpose for young people.

There are particular contributory factors to juvenile crime and, therefore, particular responses are required. Part of that response will be legislative. The motion makes specific reference to the Children Act 2001 which is important, modern and progressive legislation. It recognises correctly that detention is a measure of last resort in addressing juvenile crime. Research has pointed to many factors that lead juveniles to

commit crime, namely, the environment in which they live, family, friend and peer influence, a strong adolescent desire for material possessions, fashion, money, etc.

Research also illustrates that at times these demands can be intensified by society, particularly societies such as ours that see increasingly high mobility, social change and materialism. Social changes can create anxiety and disillusion for adolescents, thereby contributing to juvenile crime. The Children Act thus provides for a broad range of interventions for young offenders, based on the central principles of diversion and restorative justice. We must welcome this approach and the approach of the Garda Síochána. When responding to juvenile crime, gardaí consider whether the offender might be included in the Garda juvenile diversion programme. I cannot overstate my support for and the importance of this scheme.

In certain circumstances, a juvenile who freely accepts responsibility for a criminal incident may be cautioned as an alternative to prosecution. At a time when commentary inaccurately suggests that we as a society are moving towards increasing criminalisation of children, the juvenile diversion programme is a valuable alternative to prosecution. I was delighted that the scheme was put on a statutory footing under the Children Act. While alternatives to prosecution are desirable, the youth diversion programme, as its name suggests, relates more to diverting young people away from crime by offering guidance and support to juveniles and their families, which is critical. The programme has proven to be extremely successful in doing that. I welcome the focus it places on local interventions. I understand that the Garda national juvenile office received almost 20,000 referrals, relating to more than 17,000 individuals, under the programme in 2003.

The motion before the House refers to many ways of addressing juvenile crime, including legislation, funding, resources and the probation and welfare service. I have focused on juvenile diversion and reducing recidivism. It is to be welcomed that the Government, its Departments and agencies and, in particular, the National Children's Office have taken positive steps in these areas. I accept that juvenile diversion programmes and projects are not appropriate in all instances. Given that detention is a measure of last resort in addressing juvenile crime, however, we must consider such approaches to an increased extent. Research shows that over 85% of those formally diverted from prosecution under these measures do not come to the attention of the Garda again by their 18th birthday. The diversion programme is just one strand in the overall approach to dealing with juvenile crime. That we need other ways of dealing with it is reflected clearly and realistically in the amendment, which I support.

Dr. Henry: I welcome the Minister of State and his continued interest in all issues relating to children. I compliment the Labour Party on proposing this motion on juvenile crime, which is an issue we neglect at our peril. It is frequently the case that young people who come before the courts as adults have been involved in crime for a considerable portion of their short lives. They may be involved in crime because they live in vulnerable circumstances or because they have some intrinsic problems. The Government amendment praises the work of the Special Residential Services Board, which was introduced under Part 11 of the Children Act 2001. I would like to highlight what the board says about its objectives on its website:

Children who are non-offending but who have severe emotional and behavioural problems have been coming before the courts and have been the focus of much public attention. There is an urgent need to develop the capacity of existing residential services to deal more effectively with the emotional and psychological needs of children who have suffered considerable trauma and who may be behaviourally challenging. This will require more investment in staff training. There is continuing public concern with regard to youth offending and a need to address systemically the origins, nature and consequences of youth crime. Significant additional resources are required to implement the Act, particularly by the juvenile justice system for the provision of facilities, a wide range of care and support services and for the implementation of community sanctions. In the long term, the most effective approach is to build on the prevention and early intervention mechanisms already developed to ensure that children in difficulty can be identified early and a range of family supports provided so that emerging problems are tackled before they escalate.

We all consider it to be important and essential that such resources and supports are put in place.

I remind the Minister of State, as I have reminded numerous Ministers, that this country suffers from a serious lack of child psychiatrists and child psychologists. According to the United Nations Convention on the Rights of the Child, which Ireland was one of the first countries to sign, children's mental health is a human right. However, some 2,000 children in this country are waiting to be seen by psychiatrists. It is estimated that 120 child psychiatrists are needed in this country, but we have just 45. As far as I know, we have no vacant places, unless some places have become available in recent weeks. As the Special Residential Services Board has pointed out, many Irish children have serious behavioural problems. That might be why many of them get involved in crime in the first place.

I would like to discuss the results of a recent survey conducted in Clonmel. I doubt that Clonmel is any different from any other urban or rural part of Ireland. The survey indicated that 20% of children either have behavioural problems or difficulties associated with mental illness, or will develop such problems before they reach adulthood. Such children, who suffer from depression, for example, or are at risk of suicide, are not getting the medical help they need. It is not good that people over the age of 16 are being inappropriately dealt with in adult institutions. People in their late teens may develop serious mental problems, such as schizophrenia, which can lead them to get involved in crime. The earlier one begins to offer treatment for such problems, the better. It is unfortunate that early diagnosis and treatment are being neglected.

We hear all the time that the psychological services available to the courts are totally inadequate. Children who are non-offenders are sent to detention units or, in some cases, to adult prisons or adult psychiatric services because not enough secure units are available for young people. I appreciate that it can be difficult to put such units in place, but we have to do so. I have been saying for ten years that just 20 beds — 14 in the west and six in Dublin — are available for psychiatrically ill children, but there has been no increase in the level of provision.

We have to consider the circumstances of children which lead to them coming before the courts. Every speaker so far has mentioned early intervention. I am sure the Minister will do likewise because it is a terribly important aspect of the matter. The National Educational Psychological Service badly needs to be expanded, particularly if it is trying to deal with conditions like attention deficit disorder. I am delighted that Senator Ormonde is present for this debate. We are aware that children who start to get into trouble in school often then start to get into trouble in the community. Problems in schools need to be addressed at a very early stage before they start to get worse.

Several Senators have spoken about the importance of games. The motion before the House mentions the need for "long-term, ongoing and guaranteed investment in educational and work programmes specifically aimed at children". Why is it not possible to ensure that games are taught on a broader basis in primary schools? I recently had the benefit of reading an article by Ms Mary O'Hanlon, who is the deputy principal of the Holy Family senior national school in River Valley in Swords. In the article, Ms O'Hanlon quoted from a report produced for the European Commission's year of education through sport in 2004. The report stated that lessons and games help children to learn "to repudiate violence and destructive behaviour; to live and make decisions with justice and honesty;

[Dr. Henry.]

to respect differences in gender, race, beliefs, etc., accepting others with their own characteristics and peculiarities; to be tolerant; and to acquire attitudes leading to integration and harmony”.

Although I was absolutely hopeless at games in school, I remember that they were a great diversion. My mother was a great believer in having us out playing all day because she reckoned that exhausted children do not get into trouble. We need to place a stronger emphasis on trying to get more primary school children involved in games. I am aware that the various sporting organisations are doing some good work. We need to ensure that the education of children does not just focus on getting them involved in games as a means of ensuring they become physically better — it is also a means of ensuring they develop emotionally and socially so that they are better able to integrate with society, which is very important.

Perhaps the Minister of State can speak later in this debate about the reporting of family law cases. Such reporting was not allowed for a long time, of course, because of the *in camera* rule. I had hoped for more reporting of such cases, on an anonymous basis, after a barrister was selected to produce such reports, with the agreement of those before the courts. Reports of family law cases might give us a better sense of the real difficulties encountered by some families and a better idea of how we might address such problems.

The Minister of State knows he has the support of all sides of the House in trying to do something about this issue. It was interesting to read the reports from Paris, where there has been a great deal of destruction in recent weeks. Police there say the main problem was posed by those under 14 years of age. The curfew in the city has been imposed on those under 16. A considerable portion of the destruction was caused by juveniles rather than those aged between 20 and 25 years. We must examine this issue because it is important. When one sees how out of control the situation can get, we must ensure that such a scenario never happens here.

Mr. B. Lenihan: I welcome this debate and agree with a considerable portion of the Labour Party motion, although there will, no doubt, be a vote on it at the conclusion of Private Members’ business. The Government has tabled an amendment extolling the work we have done in this area, which is set out in bullet points. The content of the Labour Party motion chimes in with my aims as Minister of State and is something I intend to implement within the lifetime of this Government. I would, of course, qualify some elements of the motion in the name of Senator Ryan but it accords considerably with my aim as Minister of State attached to the Departments of

Education and Science, Health and Children and Justice, Equality and Law Reform, all of which are involved in the implementation of the Children Act 2001.

The one area of the Labour Party motion which I welcome but which does not fall within its spirit is the call for the passing of legislation on the rehabilitation of offenders. I welcome its inclusion in the motion but it falls within the remit of the Minister for Justice, Equality and Law Reform because such legislation would apply to all offenders, not just juveniles. The Minister for Justice, Equality and Law Reform is examining this issue but Seanad Éireann might be a better place in which to examine it.

The rehabilitation of offenders is a legislative lacuna. A person convicted of a crime in England whose criminal record is transmitted to Ireland continues to retain an Irish criminal record after the UK criminal record is expunged, which is an extraordinary state of affairs. Many jurisdictions have arrangements whereby offences eventually become spent and the person with the conviction receives a clean slate in the sense of not merely serving a sentence but having his or her criminal record wiped out. This does not happen in Ireland. I mention this because it is worthy of debate, although it is not exclusive to youth justice.

Senators’ contributions to this debate were very stimulating. I will not bring Members through every aspect of the Government amendment. The Government is implementing the Children Act 2001. I have secured additional staffing for the probation and welfare service to enable it to implement the Act and have a presence in the Children’s Court, which did not occur before my appointment and the Government’s term of office. The Special Residential Services Board has been established on a statutory basis and is providing a service to the courts by indicating the services that are available for troubled children who come before them. This matter must be fine-tuned. Our survey of the courts revealed that a considerable number of parties are willing to appear before the courts to suggest what should be done for children but that fewer parties are willing to discuss the services which are available. Courts and judges want clear options, whether they involve diversion, sanctions, detention or care.

The Act’s provisions regarding restorative justice have been implemented in terms of the provision of restorative justice by the probation and welfare service as an alternative to the full court hearing, as well as the Garda diversion programme. The amendment refers to the youth justice review. In 2004, I was not satisfied that I would be able to commence the Children Act 2001 within the lifetime of the Government and asked it to consider instituting a youth justice review to restructure the youth justice system,

improve delivery of services and strike a balance between rehabilitation of offenders and the essential protection of the community. This review has now been completed and I will bring proposals on foot of it to Government in the coming weeks. The youth justice review aimed to bring about an effective youth justice system, complete the implementation of the Children Act and secure the necessary resources to see this happens. The review also aimed to bring about essential legal changes in the Children Act to finalise its implementation. I will return to Senator Tuffy's query about the age of criminal responsibility. I have attached considerable importance to implementing the above measures, which is why I welcome this motion.

On my appointment as Minister of State at the Department of Justice, Equality and Law Reform, I was struck by the lack of a unit dealing with youth justice in the Department. The Garda established its excellent juvenile liaison scheme several decades ago and the work carried out by juvenile liaison officers has been praised by Senators on both sides of the House. This scheme has now been put on a statutory basis as has the Garda diversion scheme. However, this was the preserve of the Garda. The detention of offenders over the age of 16 was the preserve of the Prison Service and community sanctions were the responsibility of the probation and welfare service, although the bulk of the service's work is naturally and rightly taken up with the management of adult offenders.

There was no research base on juvenile justice, the approaches used in other countries and what we could learn from them in the Department of Justice, Equality and Law Reform. The Department even lacked a statistical base on the issue. I suggested the creation of a youth justice unit within the Department that would be dedicated to analysing these issues and coming forward with solutions. Otherwise, and with respect to Senator Cummins, we will end up with the same scenario as that at the Fine Gael Ard-Fheis in Millstreet, County Cork, last week, where Deputy Jim O'Keeffe called for the electronic tagging of children as the ultimate solution to youth justice problems. I accept that Senator Cummins is on the side of the angels in today's debate but this subject leads rapidly to that kind of analysis at many party conferences, congresses and Ard-Fheiseanna.

Mr. Ryan: I am glad the Minister of State mentioned Ard-Fheiseanna.

Mr. B. Lenihan: I am being very ecumenical, given the genuinely ecumenical nature of this debate. The youth justice unit in the Department of Justice, Equality and Law Reform is consulting widely with those in the youth justice sector and has brought forward very effective proposals for

the Government. One of the key proposals is the creation of a youth justice service within the Department. Senator Jim Walsh referred to the issue of who takes operational responsibility for child detention schools. The responsibility must be moved from the Department of Education and Science to the Department of Justice, Equality and Law Reform if we are to have a holistic approach to the issue. I wish to reassure Senators that this responsibility will not be moved to the Prison Service and these schools will remain child detention schools. The matter will be brought to Government in the coming weeks so I do not wish to divulge too much detail. One of the ideas I put forward in public debate and would like to see established is making child detention schools the norm for the detention of all offenders up to the age of 18 and abolishing the provision of child detention centres as separate parts of prisons which would hold juvenile offenders aged 16 and 17, as envisaged in the Children Act. I hope that we would use the Scandinavian model whereby every offender under 18 is housed in a child detention school, which would be entirely separate from any penal complex. The Children Act did not go far enough in this respect.

It is extraordinary that we passed the Children Act without putting the means that were essential for its implementation in place. It is impossible to have good legislation unless it clearly designates who is responsible for providing services for the groups it is aimed at. The Government amendment refers to the Government's decision to increase the strength of the Garda Síochána and to extend various social inclusion measures. Offending behaviour among young persons is of great concern to the Government and we have regular reports of violent crime. Senator Henry referred to recent events in France and Senator Cummins referred to problems with drug taking, drink, lawlessness and anti-social behaviour. In this jurisdiction those problems are more concentrated in the young adult group than in the under-18 group but that does not absolve us from the need to establish a robust system of juvenile justice and care for offenders.

I accept the Children Act 2001 provides a sound basis for a modern, progressive youth justice system. Much implementation has occurred and the objective is to complete it. Complete implementation was never envisaged in a year or two; a long timescale was set and I am trying to accelerate the process. The Act is in place for four years and I wish to see its provisions implemented within the lifetime of this Government. It is major legislation with 271 sections and its implementation involves three Departments and their respective agencies. This requires parallel action by these bodies on an agreed timetable and many sections are interdependent.

[Mr. B. Lenihan.]

I referred to the statutory diversionary programme. Senator Cummins referred to restorative justice, which is included in this programme. The victim does not always want restorative justice and this has been the experience of juvenile liaison officers in implementing the Act. A number of conferences have been held where the victim was given the opportunity of confronting the juvenile offender. In legal theory this is a very attractive idea but victims do not always want to meet the offender and we must take this into account.

The family conferencing provisions, involving the probation and welfare service, have also been implemented. This is another form of restorative justice to which I have already referred. The fundamental detention provisions have not yet been implemented and these are important because in this section it is clearly stated that detention is a matter of last resort and that no person under the age of 18 can be lodged in a prison.

We must implement these provisions by bringing clarity to this area, through legal amendments. To implement a part of this kind one must have absolute clarity about the power of the courts as they must withstand severe legal challenge on occasion. The provisions we enacted in 2001 are unnecessarily complex as we envisaged a distinction between offending and non-offending children, which is valid as some require care and some protective detention.

Regarding children detained in a protective way, there are several categories including those who are sentenced, remanded, males, females, over 16 years of age, under 16 years of age as well as 16 and 17 year olds. In total this amounts to eight different types of institution for a core group of approximately 120 offenders. As a legislative scheme this is unsustainable so I must examine how sense can be made of it and how it can be implemented quickly. I am keen to do so, as Senators will appreciate.

Of the remaining parts of the Act, one of the crucial issues is family welfare conferences. Section 77 of the Act allows the judge to refer to a family welfare conference. In the course of a criminal case a judge can require the HSE to appear in court and participate in a conference on a person before conviction. The HSE can examine what services can be put in place.

New Zealand has a similar provision and is a jurisdiction of a similar size to our own. There can be up to 50,000 conferences per year, a substantial figure. The resources required would be substantial but I am confident I can secure funds to implement this on a pilot basis in particular districts. I am anxious we put a provision into the legislation that the HSE should always attend court when requested by the judge to do so. I see too many reports of the HSE's failure to attend

when judges request its attendance to examine the services available to children.

The judge should be advised by the Department of Justice, Equality and Law Reform on the options available and those in care services should advise what they can provide. Some provincial venues have this working relationship between social workers, probation officers and juvenile liaison officers. Much of the Children's Act requires such an inter-agency approach. It is not solely a matter of resources, but of getting different agencies to work together. All of us in public life know how difficult this can be. If I can strengthen the legislation to procure inter-agency co-operation, I will do so.

Senator Tuffy referred to the age of criminal responsibility. The 2001 Act originally specified the age of criminal responsibility as ten years, with a graduated increase to 12. The United Nations was unhappy with this and the commission on children and the Convention on the Rights of the Child suggested we should opt for 12 years of age. I have examined this matter and am open to Senators' views.

Some practical difficulties exist and as the matter is now before Government I do not want to go into great detail. I agree with Senator Tuffy that we must implement this provision as quickly as possible. The present common law arrangement whereby a child of seven years of age can be prosecuted is unsatisfactory.

Mr. Ryan: It is appalling rather than "unsatisfactory", which is far too soft a word.

Mr. B. Lenihan: It is not acceptable and we must implement the section of the legislation relating to the age of responsibility. There are reasons it has not yet been implemented, one of which is that the health boards claimed it would cost a substantial amount to implement. If one legislates that every person under the age of 12 who commits an act amounting to an offence has not committed an offence, one must decide who will look after this person. The Act envisaged that social workers would deal with these cases at all hours instead of the Garda Síochána. A substantial sum of money would be required to attend to these children and this sum must be validated.

I am satisfied I can make proposals to Government that will ensure the rapid implementation of an age of criminal responsibility. I do not want to anticipate the Government's decision. I agree with the headline figure of 12 years of age but there is a difficulty with serious offences committed by ten and 11 year olds. On rare occasions serious sexual crimes have been committed by 11 year olds. The public would not be satisfied that such an offender would be left to the attentions of a social worker. In the United Kingdom, the Bulger killing may not merit the word murder but manslaughter can be committed by 11 year olds.

The Houses will be able to discuss this at a later stage as proposals are being brought before Government to ensure that the age of responsibility provisions are commenced. I am committed to doing this and the detail of that can be examined by the House.

I mentioned the work of the youth justice taskforce and the project team for this was established in the Department of Justice, Equality and Law Reform in October last year. The group made proposals that are before Government; it is important that the necessary funds are secured to implement the Act and that we make progress on clarifying where particular responsibilities lie.

Senator Tuffy mentioned Dr. Kilkelly's work and highlighted the importance of research in this area. The Department must have a youth justice division to enable us to carry out the basic fundamental research required in an important area such as this. It is a requirement of the legislation that parents should attend and we must examine the reason parents do not do so. I dealt with the question of the age of responsibility.

Senator O'Meara referred to rehabilitation in the widest sense and that is very much the philosophy of the Act. There has been an increase in the number of children taken into care, primarily due to neglect rather than abuse. There has been a large increase in our population. One of my major concerns as Minister of State is to ensure we have uniform standards in regard to who is taken into care. One of the difficulties with the health board system was that there was considerable divergence between different community care areas. One of the most startling figures in those statistics are the divergent numbers who have been taken into care in apparently similar geographical districts.

Senator Cummins rightly praised the work of the diversion officers and was concerned about the non-implementation of the 2001 Act. I agree with him that it must be implemented and I am committed to doing that. Senator Minihan also commented in that context.

Senator Henry touched on the area of child psychiatry, which strictly speaking does not arise under the legislation but is an issue the Senator rightly raised in this context. When Mr. Justice Kelly in a series of historic judgments required us to establish secure care units for "out of control" children, a great deal of investment was made in providing them, yet many of the behavioural problems with which those children present relate to issues in the child psychiatric service.

Senator Henry also raised the question of the reporting of family law proceedings. I understand that the Minister for Justice, Equality and Law Reform has taken a legislative initiative in that regard and used powers under the courts legislation to provide for greater scrutiny and research in that area.

Mr. Ryan: I am usually rude but I wish to say the Minister of State is welcome. The fact that he ran away, so to speak, from a few of the hard questions is perhaps understandable. Given all the kind words he used about the Labour Party motion, it is not clear to me the reason there must be an amendment, or one of this scale, to the motion but we will live with that.

There is a fundamental issue to be dealt with in terms of young people, the law and juvenile crime. It is easy for some of the trumpeting journalists who preach to the politicians about juvenile crime to portray it as if it were something perpetrated overwhelmingly by hulking 17 and a half year olds who are essentially distinguished by their birth certificate from tough guy crimes. We are talking not only about the 16 year olds or 17 year olds but children aged five to seven who come into contact with the law, children who are under the extraordinarily and quite primitive age of criminal responsibility. There are also offenders in the seven to 12 years age bracket. First and foremost these are children. That does not necessarily mean they are easy to deal with or that they are delightful little angels; it simply means they are children. The consensus in the Oireachtas was that 12 years of age was the appropriate age below which children should be treated as children, as people who cannot be seen as being personally culpable and responsible in the way that an adult or a mature young person could be regarded as being culpable and responsible for their actions.

It is easy to produce an exception to say that we should not have a principle in place. There is a good lawyer in front of me and he is as good as anybody at finding a spectacular exception. The Bulger case is grist to the mill for the champions of one Sunday newspaper of the "hang 'em and flog 'em and lock 'em all up brigade" of crime journalism, but it is not the answer to the 99% of children who, while they are involved in activities we all know are wrong and unacceptable, are still children. It is high time we as politicians took courage in our hands and kept on saying that these are children and that we will not solve the problem by any of the usual methods. The "hang 'em and flog 'em brigade" would have us believe that there was a time when because we beat children when they were in institutions, they would behave themselves afterwards. As one who was at the receiving end of the nasty side of some of the victims of that system, it did not make them any less violent; if anything it turned them into profoundly disturbed people with absolutely no threshold of self-control because they never dealt with themselves in terms of personal choice. They were terrorised into conformity when they lived in terrorising institutions. Once they moved out of them that discipline went. The "hang 'em and flog 'em" approach, apart from the morality

[Mr. Ryan.]

aspect, is extraordinarily inefficient, wasteful and wrong and it does not work.

I am genuinely glad that the Minister of State is providing for people to engage in research in this area. The question to which I have always wanted an answer in regard to crime in this State, particularly when dealing with child offenders, is “what works?”. One element that works is to eliminate child poverty. The Government, which has had unprecedented resources, has singularly failed to deal with the issue of child poverty. We can argue over how one measures poverty but, by an universal index of poverty based on medium incomes, we are in a shamefully low position. It does not have to be like that. Depending on how one measures poverty, between and 16% and 20% of our children live in households with income poverty. Child poverty is as low as 2% in civilised countries and as high as 25% or 26% in that most uncivilised of places, the United States. We are much closer to the United States in this respect.

I do not suggest that eliminating child poverty will end juvenile crime. We need to ensure that children live in households which have a decent income, that they receive decent early intervention education and are educated in classes with sufficiently low pupil-teacher ratios to enable teachers to have sufficient time to do their job. The education system needs to be backed up by a proper psychological service with, as Senator Henry said, the further backup of a good child psychiatry service. The combination of the elimination of income poverty and the ending of service poverty — service poverty being that with which most of our poor children live — would bring about change.

The new rhetoric of the Government is the rhetoric particularly from the socialist ring of Fianna Fáil, of which the members of the entire Lenihan family have always been among the most notable——

Mr. Cummins: There are not very many in that ring.

Mr. B. Lenihan: I am not the third man.

Mr. Ryan: The third man is Deputy Michael D. Higgins — there is absolutely no doubt about that. There is a wonderful rhetoric of compassion, concern and all the good, social democratic instincts, but the fundamental problem is the delivery of the resources to follow through on that. The delivery of such resources is what distinguishes conservatism from social democracy. That is the reason the countries in Europe where child poverty is low are the countries where there is a strong healthy and vigorous social democratic tradition. I invite the Minister of State, Deputy Brian Lenihan and the Government, even at this

late stage in their total capitulation to the PDs, to remember that.

Ms Ormonde: I welcome the Minister of State, Deputy Brian Lenihan. I am pleased the motion was tabled at this particular time in light of what has happened in recent days and weeks. It is important that we talk about juvenile crime because if we do not curb it now the next generation of gangs will emerge on our streets.

I wish to deal with the amendment to the motion. I agree with the Minister of State that work still remains to be done but some parts of the programme have been implemented. The co-ordination aspect of this work is currently in train. The Minister of State referred to the youth justice system and the rehabilitation of young offenders. We must also take into account the protection of the community, which is an important aspect of the matter. The Minister of State has referred to this issue which is one to which we will return in future.

The role of the Garda is central in dealing with young offenders. I agree with some of the points made by the Labour Party. The Minister of State has also reciprocated on those issues. We must examine why the fabric of society is breaking down. A problem exists in that marriages and families are breaking down and there are no supports for young children or families. In some respects, people have too much money. People from both ends of the social spectrum are involved in juvenile crime.

Parental control and responsibility are central to this issue. We could throw all the money we like at it but we must get the fundamental issues right.

Mr. Ryan: We could solve many of the problems that way.

An Cathaoirleach: Order, please.

Ms O'Meara: The earlier the better — pre-school and early childhood education.

Ms Ormonde: I could not agree more with Senator O'Meara. The earlier the intervention the better. We must examine how best we move forward with intervention strategies. I could speak at length on this subject having been involved in this area for much of my career. I welcome the introduction of welfare conferencing by the Minister of State, which would involve probation officers, the Department of Social and Family Affairs, teachers, career guidance counselors and juvenile liaison officers. Members of the community should also be involved as this is a community issue.

I read an article recently about a pilot project in operation in Nenagh in Senator O'Meara's county. The project is working very well and I

congratulate the judge who took it upon himself to set it up. This proves the effectiveness of community involvement. The judge visited New Zealand and on his return he arranged a public meeting. He was responsible for involving members of the community, teachers and other key people in the Nenagh area. The project has an 85% success rate which proves that such projects can work if one gets the involvement of all the interested parties. We can throw all the money we like at projects but they will not work if we do not have the goodwill and backup of local people.

A Bill was introduced recently in regard to anti-social behaviour which involved juvenile liaison officers, local authorities and schools, which have a major role in the prevention of juvenile crime. There should be no doubt about the importance of involving schools, to which the Minister of State referred. Nobody is better placed than teachers to detect when problems arise.

Mr. Ryan: That is difficult with 35 children in a classroom.

Ms Ormonde: I would welcome a backup service in this regard. Teachers are aware of absenteeism and who is not contributing to the class, which are indicators that a problem may exist. It is important that we would get the infrastructure right in regard to education, social welfare, the probation service and the community at large. A multi-agency approach is required. I am not convinced that co-ordination is adequate between Departments. There are many loose connections. When one contacts one area, one often finds the other area knows nothing about it. The Minister of State has introduced a one-stop-shop with the National Children's Office and I look forward to its work coming fully on-stream.

It is important to direct the operation of the Children's Court in a sensitive manner. Judges may need to be retrained to deal with certain situations. The focus should also be on parents and teachers and how best we can rehabilitate young people. That is the way forward. Schools can play a big part in rehabilitation in terms of improving sporting activities. The Cathaoirleach will be delighted to hear me compliment GAA clubs which do much important work in getting young children and their parents involved in sport. That is another way forward. At the end of the day if we do not have parents and the wider community working together on this issue we will not get anywhere. The project in Nenagh is a prime example of what works and I look forward to this being repeated elsewhere.

Mr. J. Phelan: I wish to share time with Senator Bannon. I will speak for three minutes and he will speak for five minutes. I am very fair.

An Cathaoirleach: Is that agreed? Agreed.

Mr. J. Phelan: I welcome the Minister of State, Deputy Brian Lenihan. I am pleased to have a chance to debate this issue. I support the Labour Party motion. I agree with most of the sentiments expressed on this side of the House, particularly the views of Senator Ryan on the problems of young offenders. His point about child poverty was correct. That is the single biggest contributory factor to the problem of young offenders. The greatest role the Government can play is to reduce the number of children who find themselves in those situations. Comparative poverty is still a problem in this country. Many children live close to the poverty line despite the economic success we have had in recent years. As we face into the Estimates tomorrow, and with the budget imminent, it is apt that more funding would be found in this area.

I echo the sentiments of my colleague, Senator Cummins, on the subject of restorative justice. I did not hear the full contribution of the Minister of State but I understand he outlined that an element of this provision in the Children Act had been implemented. I do not see any evidence of that in my immediate area. This is something which should be pursued. Placing children in detention facilities should be the last resort.

Examining restorative justice would be a much more beneficial path to take in terms of the future development of the children in question.

I refer to the Children Act about which the Minister of State spoke to my colleague, Senator Cummins, last year. There is a delay between offences being committed and something being done about them, whether in the courts or elsewhere. For the offender to appreciate he or she is being punished for committing an offence, it is essential action is taken as close as possible to the time the offence is committed. That is not happening and I urge that whatever steps are necessary be taken to ensure that happens.

Mr. Bannon: I too welcome the Minister of State and support the Labour Party motion. On 20 October 2004, the Minister of State, Deputy Brian Lenihan, told us that the former Minister for Justice, Equality and Law Reform made it clear in 2001 that the Children Act would take a number of years to implement. It is now almost 2006 and sufficient time has passed in which to implement this Act. I support the Labour Party motion which calls for its implementation without further delay. During that same debate in October 2004, my colleague, Senator Cummins, said some progress had been made in the implementation of the Act but that the words of the Government before the last general election — a lot done, more to do — would be apt in the case of the Children Act. That was one year ago but a

[Mr. Bannon.]

lot more still needs to be done to ensure the Act is implemented.

We must, however, question how well we are served by the Children Act or how good intentions towards children are served by the fact that almost 150 children and teenagers have been placed in adult prisons since the beginning of the year in breach of the international treaty which prohibits the detention of juveniles in adult prisons. Over 147 young offenders between the ages of 15 and 17 have been placed in adult prisons such as Cloverhill and Limerick prisons since January of this year. As we all know, adult prisons are most unsuitable for young offenders. I am aware of the efforts of the prison authorities to keep young offenders separate from adults in so far as possible. However, they are obliged to deal with referrals from the courts and the situation is far from ideal.

The practice of placing young children in adult places of detention is likely to be raised before the UN committee on children's rights early in the new year. It will monitor Ireland's implementation of the Convention on the Rights of the Child. In 1998 the UN report led to the setting up of the National Children's Office and the Ombudsman for Children.

More than half the teenagers in the State's secure prisons for young offenders ended up in adult prisons or were homeless within six months of their release. Of the 57 boys released from Trinity House in 2003, 25 returned home and the remaining 24 ended up in prison, health board residential care or back in secure units.

Juvenile crime is on the increase at an ever younger age. At a most simplistic level, we could perhaps attribute this to the advent of the violent computer games which, in many cases, seem to be played without parents' knowledge or consent or without restrictions being placed on young people. We have been told this time and again. Last June five children aged between 11 and 12 years were arrested in Britain on suspicion of attempted murder of a five year old found with neck injuries. Of course, we are all only too aware of the murder some years ago of little Jamie Bulger which, in many ways, led to the destruction of the innocence of childhood.

In Ireland, a troubled 14 year old set fire to a room with children in it and is now in a special care unit in Sweden costing this State a considerable amount of money. This boy has been in a number of care units since the age of six, has suffered a mental breakdown and has been on numerous medications. His mother is unable to manage him and there are fears for the community if he is released.

Drugs and alcohol have also played a part in the rise of juvenile crime. Anti-social behaviour is making life hell for residents in certain urban and rural areas, particularly the elderly who suf-

fer greatly in districts in which juvenile behaviour is out of control. In my area, some young people are out of control. A middle aged man with a young family was victimised and terrorised by a fire rocket being thrown through his letter-box last week. He was hit in the stomach and spent three days in hospital. Gardaí were unable to access his estate because youths blocked off the entrance which is a tactic used also in drug dealing.

Fine Gael calls on the Government to honour its commitments on the provision of extra gardaí. It is impossible to expect our disaffected young to tow the line without the deterrent of a visible Garda presence.

An Cathaoirleach: The Senator's time is up and he should conclude.

Mr. Bannon: We should perhaps look to America—

An Cathaoirleach: The Senator should conclude.

Mr. Bannon: —where the PAY system is in place — the prosecution alternatives programme.

An Cathaoirleach: The Senator should conclude. I call Senator Glynn.

Mr. Bannon: It is something the Minister should consider for young people.

An Cathaoirleach: I ask the Senator to conclude. I call Senator Glynn.

Mr. Bannon: The Cathaoirleach does not like to hear the truth.

An Cathaoirleach: I ask the Senator to withdraw that remark. It seems to imply I am biased.

Mr. Bannon: If it suits, I will.

An Cathaoirleach: I ask the Senator to withdraw that remark unreservedly.

Mr. Bannon: If it suits, I will.

An Cathaoirleach: Will the Senator withdraw that remark?

Mr. Bannon: If it hurts, I will.

An Cathaoirleach: It does not hurt. I want the Senator to withdraw that remark unreservedly.

Mr. Bannon: Can one not speak the truth in the Chamber?

An Cathaoirleach: The Senator's time was up, which I told him. He knows there is a Standing

Order dictating times. I gave the Senator six minutes even though he had only five. I was too liberal with him. Will the Senator withdraw his remark?

Mr. Bannon: I will.

An Cathaoirleach: I thank the Senator.

Mr. Glynn: Cuirim fáilte roimh an Aire Stáit. Much of what I wanted to say has been said, although I wish to make a few observations. The Children Act has been an important instrument in tackling a number of adverse situations as they affect children. Much is being thrown at children these days, including drugs, crime, theft, etc. More than ever before, it is imperative that everything possible is done for the children of today — the Oireachtas Members, parents and workforce of tomorrow — to allow them to have a childhood and to develop.

We must welcome the great work done by the gardaí in tackling the DID people, that is, the dealers in death — the drugs barons and the drug pushers. Problems not only occur in disadvantaged areas; one would be surprised to know the addresses about which we talk at times. A good parent can live anywhere.

To some extent, greater emphasis should be placed on the attendance of children at school. I am sure everyone in the Chamber remembers when if a child was absent from school for a day or two and if a satisfactory explanation was not forthcoming from the home, the gardaí called to the house to ask where Joe or Mary was. I do not know to what extent that system is still operational today, but I am led to believe that in certain areas truancy is at unacceptable levels.

It has been said that young people must deal with other situations today, including the impact of television and the Internet. Some of the material being downloaded by children from the Internet is outrageous and does not bear mentioning. That problem must be tackled in a forthright manner.

Under age drinking is a problem all over the country, including Mullingar. I am not satisfied that enough is being done to curb under age drinking. When I was doing a course in substance abuse therapy, one of those on the course was a 22-year-old woman who was a dry alcoholic. She was an only child and had regularly been out until the small hours of the morning. Her parents were elderly and were glad to hear her voice when she came home, but they never thought to check what condition she was in. By the time they discovered that she was addicted to alcohol and other substances it was far too late and, consequently, she got into serious trouble with the law.

When speaking about children we must always look at the home and the parents involved. The persona of a child is mainly formed in the home.

Some people say there has been a decline in parental control, but I do not think so. In some instances, children are controlling their parents very well. That is the truth. References have been made to attacks on old people. Some teenagers will attack and rob the elderly, leaving them for dead. Senator Bannon mentioned the Jamie Bulger case, which was a serious matter. I agree with my Opposition colleagues that children should not be admitted to institutions unless as a last resort.

Close attention should be paid to the development of child and adolescent psychiatric teams around the country. Planning for future psychiatric services was a great buzz-phrase at one time and Mr. Liam Flanagan was the author of such a report back in the mid-1970s. Such community services are better than the old hospital-based ones but they are expensive to resource.

It is imperative to provide proper funding for the provision of child and adolescent psychiatry, which was the Cinderella service for some years. While matters have improved, there is nothing so perfect that it cannot be further improved. We must keep pushing out the boat. I acknowledge that great strides have been made in this regard. The Children Act was an innovative piece of legislation and many of its provisions have now been brought into operation. Although much has been done, we need to do that little bit more. There is always more to do, but maybe that is one of the curses of being human.

We must focus on our children who will be the politicians and leaders of tomorrow. We must also put those who would corrupt children, in whatever situation, out of circulation where they belong.

Mr. O'Toole: I agree with the point made by the Minister of State, Senator Glynn and others that the Children Act is a good piece of legislation. I recall when that legislation was going through the House, both Senator Ryan and I tabled amendments to provide for a commencement date on the total Act. It was not brought forward, however. The former Minister of State, who is now the Minister for Education and Science, assured us there would be no difficulty in putting the whole Act in place, yet we are still waiting. It is a lesson to be learned, but I will leave it at that.

The debate about parents and parenting is important and we should start at the beginning. Those who drafted our Constitution came to the conclusion that parents had extraordinary skills in parenting, education and a variety of other matters. I do not know what the thinking was behind that. It might have been a nice idea, but there was no sense to it. Senator Glynn is correct in saying that children can control their parents, but that may be because some parents have never learned the skill of controlling difficult ado-

[Mr. O'Toole.]

lescents. I am a teacher and it took me a lot of training and experience to learn how to control children with difficulties, so parents should not be expected to cope without knowing how to do so. Parenting courses should be provided for them.

I always apply the nursery test in this regard. I could visit a nursery in the nearest maternity hospital and without looking at the children, but only seeing their addresses, I would be able to give the Minister of State a profile of where they are likely to finish up during their lives.

Mr. Ryan: That is correct.

Mr. O'Toole: We all know that 90% of the prison population comes from clearly defined urban areas, so why do we not do something about it at an early stage?

Mr. Ryan: Quite right.

Mr. O'Toole: I would like to talk more about child care, education and life skills, but my time is limited. I would like every child to be able to cook and learn interpersonal skills, but that cannot be done solely in school, which accounts for only six or seven hours per day. The remainder of the time will shape their life experiences. I would stake my reputation on guaranteeing that if every child in disadvantaged areas could be opened up to a whole new set of experiences, it would improve the situation. These experiences, include things they will not come across at school. Some children are not skilled in contact sports, but other pursuits like orienteering, archery, sailing, canoeing and cooking would awaken a passion in such children. That training would allow them to succeed in a given area of expertise.

Children from disadvantaged areas are brought closer to prison if they do not experience success in their lives. This is not a soft, liberal view; it represents hard thinking. As the
7 o'clock Minister of State knows, in my professional capacity I have visited every detention area for young offenders in this State. I have dealt with the management of such centres and I know how they operate. They are doing fantastic work, but youngsters must still adjust to the outside world after being released.

Let us commence all of the Act, as well as teaching parenting skills to parents. We should also apply the nursery test and examine where children come from. We must then help them to do things they never did before, including travel and sporting activities. By doing so, we could change things for the better.

Ms Tuffy: It would be a disgrace if the Government backtracks on raising the age of criminal responsibility from seven to 12.

Mr. Ryan: Hear, hear.

Ms Tuffy: That provision is in keeping with the rest of the Government's legislation. As the former Minister for Justice, Equality and Law Reform, Deputy O'Donoghue, said when he held that portfolio, it would totally contradict the principle behind the Act not to bring that provision into force. The Minister of State said he hoped he could persuade the Cabinet to introduce this provision, which highlights the fact that he should be a member of the Cabinet. This provision brings home the need for a Minister for children in Cabinet. I would be happier to see the Minister of State in the Cabinet than many of the others there now.

The reasons given for the delay in introducing this legislation are part of the wider failure in our society to recognise the unique rights of children. These reasons do not stand up to scrutiny. If cost is a factor against raising the age of criminal responsibility, the Government would not be able to pay for family conferences and that provision is just window dressing. The reference to cost also contradicts many of the provisions in the Government amendment — for example, that it has done such great work with the probation and welfare service.

It is ridiculous to say the seriousness of the offences is the issue. The issue is whether the child has the intellectual and legal capacity to bear that criminal responsibility. I welcome the Minister of State's comments about the rehabilitation legislation. I intended it in the broader sense that the Minister of State applied because the rehabilitation aspect of the Children Act is limited.

That should be extended but rehabilitation legislation should also be brought in for the general population. I know of a case involving someone who committed a once-off offence which was out of character but that is on the person's record for life. It affects the person's ability to get a job and so on. There should be a system similar to the English one the Minister of State described.

I did not have a chance to discuss educational programmes and so on as mentioned in the motion. The Minister of State, however, is familiar with the work of the Carline Centre for Learning. The centre fights for funding during the year, and from year to year. It needs definite guaranteed funding to help it to fully realise its programme, which it cannot do now as it has to cut back on programme materials.

The issue of cost in respect of the Children Act is bogus because family conferences, which have been enforced, are its most costly feature. The Government should bring in the legislation in full and provide the necessary resources.

Amendment put.

The Seanad divided: Tá, 26; Níl, 21.

Tá

Brady, Cyprian.
 Brennan, Michael.
 Callanan, Peter.
 Daly, Brendan.
 Dooley, Timmy.
 Feeney, Geraldine.
 Fitzgerald, Liam.
 Glynn, Camillus.
 Kenneally, Brendan.
 Kett, Tony.
 Kitt, Michael P.
 Lydon, Donal J.
 MacSharry, Marc.

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

Níl

Bannon, James.
 Bradford, Paul.
 Browne, Fergal.
 Burke, Paddy.
 Burke, Ulick.
 Coghlan, Paul.
 Cummins, Maurice.
 Feighan, Frank.
 Finucane, Michael.
 Hayes, Brian.
 Henry, Mary.

McDowell, Derek.
 McHugh, Joe.
 Norris, David.
 O'Meara, Kathleen.
 O'Toole, Joe.
 Phelan, John.
 Ross, Shane.
 Ryan, Brendan.
 Terry, Sheila.
 Tuffy, Joanna.

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

Amendment declared carried.

Question, "That the motion, as amended, be agreed to", put and declared carried.

An Cathaoirleach: When is it proposed to sit again?

Mr. Glynn: At 10.30 a.m. tomorrow.

Adjournment Matters.

Hospital Services.

Mr. Finucane: I wish to give a minute of my time to Senator Cummins.

An Leas-Chathaoirleach: is that agreed? Agreed.

Mr. Finucane: I welcome the Minister of State to the House and am pleased to raise this issue because on many occasions in this House I looked for a radiotherapy unit to be set up in Limerick. I was therefore delighted that the unit opened in Limerick Regional Hospital on 27 October.

In the past, patients in need of radiotherapy had to travel long distances, especially to Dublin, for treatment. This created a great deal of inconvenience for patients and their families. It is to be welcomed that up to 95% of all those in the area

in need of radiotherapy treatment for cancer can be treated at the new unit which is to be operated by the Mater Private Hospital. There will be occasions when specialist radiotherapy treatment will be required at other locations outside Limerick. The Tánaiste and Minister for Health and Children, Deputy Harney, recently announced that a radiotherapy unit would operate as a satellite of the existing radiotherapy unit in Galway. There have been strong traditional links with Dublin and it would be necessary to retain those links along with Galway for the widest possible expertise to be available.

The mid-west owes a tremendous debt of gratitude to the Mid-Western Hospitals Development Trust for providing funding of up to €8.5 million to complete the radiotherapy unit. It has also promised to open the unit to public and private patients. We are fortunate to have the expertise of the staffing resource provided by the Mater Hospital. The Department of Health and Children should now clarify that it will be providing the funding to compensate the Mid-Western Hospital Trust for the private patients.

Mr. Cummins: In Waterford, the Whitfield Clinic, a private hospital which will hopefully open at the end of next year, will provide radiotherapy. We want to know what is the situation with regard to funding of public patients in that hospital. How will the Government fund public patients with regard to radiotherapy? The Whitfield Clinic is a private facility but it is willing to

[Mr. Cummins.]

provide services to the public. However, the issue is whether the Government will pay for those services.

There is talk of another private hospital being built on the grounds of Waterford Regional Hospital to provide similar services, but that is a long way off.

Will the Minister of State indicate Government thinking on funding for public patients? People continue to travel from the south east to Dublin. As there is no dedicated transport service for these patients, they have to find their own way to the city. The situation is different in Dublin and surrounding areas, where taxis and ambulances are provided. The people of the south east are being treated as second-class citizens in this regard.

Minister of State at the Department of Health and Children (Mr. T. O'Malley): I thank Senators Finucane and Cummins for raising this matter on the Adjournment. I would like to take this opportunity to set out the current position with regard to national radiation oncology services.

Last July, the Tánaiste announced the Government's approval for a national network of radiation oncology, work for which will commence in 2008 and be completed by 2011. The national plan will mean an investment in additional capacity to the equivalent of 23 additional linear accelerators. The capital investment involved will be approximately €480 million, most of it funded through public private partnerships over the period to 2011.

The network will consist of four large radiotherapy centres in Dublin, Cork and Galway and two integrated satellite radiotherapy centres in Limerick and Waterford Regional Hospitals, conditional on their conformity to certain quality assurance arrangements and on the following basis: satellites to be limited to locations which are geographically distant from a large centre but have a population which can support a requirement for a minimum of two linear accelerators; satellites to be integrated with one of the four large centres to ensure maintenance of standards and adherence to protocols; radiation staff to be employed by large centres, subject to agreement and arrangements where there are pre-existing employment contracts; and radiation staff to rotate in and out of large centres to maintain and develop skills and knowledge.

In 2004, the former Mid-Western Health Board provided a site at Limerick Regional Hospital to the Mid-Western Hospitals Development Trust for the development of a radiation oncology facility. The trust in turn contracted the Mater Private Hospital to run the service. To date, patients in Limerick have been referred for treatment to the radiation oncology departments at Cork University Hospital and University College Hospital, Galway. The HSE explored with the

Mid-Western Hospitals Development Trust the possibility of the facility at Limerick becoming a satellite to be integrated with University College Hospital, Galway, in the context of the national plan. The question of access to this unit for public patients is a matter for the HSE and is subject to adherence to national quality assurance guidelines. The funding of public patients so referred is also a matter for the HSE.

In this regard, the national radiation oncology co-ordinating group provides advice to the Tánaiste and the HSE on radiation oncology. A leading consultant in the mid-west is a member of this group. The group recently submitted quality standards for the provision of radiation oncology services for public patients to the Tánaiste. I expect that any service agreement involving the HSE and the centre will reflect these guidelines.

Since 1997, we have provided additional cumulative funding of over €60 million to support the development of cancer treatment services in the mid-western area. This investment has resulted in the appointment of an additional eight consultant posts in specialties such as medical oncology, histopathology, haematology and surgery and the appointment of an additional 22 clinical nurse specialists.

I have described in broad outline the considerable investment and planning for the development of radiation oncology services nationally and in the mid-west in particular. This reflects the commitment of the Government to cancer care in the region. I see significant potential for the centre as part of the integrated national network announced by the Tánaiste last July. This will have major benefits for patients in the mid-west. I encourage all relevant parties to act on this element of Government policy as a matter of priority in the interest of developing the centre to its true and full potential.

The Tánaiste and I have acknowledged the work of the Mid-West Hospitals Development Trust in bringing forward radiotherapy in the mid-west. Throughout the health sector, we support and salute innovation and work by charitable organisations to provide new services and support for patients. The HSE is currently in discussions with the trust to agree a fair and sustainable basis for payment for public patients using the facility. The trust's offer to pay for public patients was well received. These discussions are entirely appropriate and normal in respect of any services paid for by the State. I am confident they will reach a speedy conclusion in the context of the preparation of the Estimates and the HSE service plan for next year. Both the HSE and the trust will find mutually acceptable arrangements, including financial issues, to make this happen.

Mr. Finucane: The Minister of State used the word "speedy" in the context of the Estimates. Does he expect the matter to be resolved by January 2006?

Mr. T. O'Malley: In my opinion, the answer to the Senator's question is in the affirmative.

Mr. U. Burke: Is that a promise?

Mr. Finucane: As the Minister of State is a Limerick man, I am sure he wants to resolve this matter.

Earthquake Relief.

Ms Tuffy: Now is a critical time in terms of supplying aid to the victims of the recent earthquake in Kashmir. The next couple of weeks will be decisive because the weather is becoming very cold. Lives may be saved over the coming winter if people receive medical aid now.

I was struck by last night's report on RTE of a child whose broken foot went untreated for a number of weeks with the result that it may need to be amputated. While others may face more grave situations, simple medical aid would have saved that girl's foot.

I live in Lucan, as do many doctors from the Kashmir region. The Minister of State will be aware that many of these doctors work in Irish hospitals. Like other foreign doctors, they have kept our hospitals going through their contributions to our health services. It is time that we gave something back to these people. Many of the doctors I refer to have lost relatives in the earthquake. It is important that we help them return to provide medical aid to their people over the next couple of weeks.

When a submission was recently made to the Tánaiste on this issue, my local newspaper, the *Lucan Gazette*, reported her as being supportive of the idea of allowing doctors return to Kashmir to help in relief work. It is important that this matter is considered urgently by the Tánaiste and her Department and that she is proactive and imaginative in her response. The doctors' return to Pakistan should not have a detrimental effect on their careers, even if it is done at their own expense.

Mr. T. O'Malley: I am taking this matter on behalf of my colleague, the Tánaiste and Minister for Health and Children, Deputy Harney. I would like to thank the Senator for raising this issue as it provides me with an opportunity to outline to this House the contribution Ireland is making to relief efforts following the recent earthquake in south Asia.

A strong and devastating shallow earthquake measuring 7.6 on the Richter scale struck south Asia on Saturday, 8 October. Its unusual shallowness caused widespread structural damage to buildings and bridges in the towns and most of the 15,000 villages in this remote, mountainous and politically sensitive area. The Kashmir region, in particular, was affected.

The sad facts are that casualty figures have now risen to more than 73,000 according to the

Government of Pakistan. Estimates on the number of seriously injured are in excess of 79,000. It is estimated that more than 5 million people have been affected across the region, that 3.3 million have been made homeless, and that 1.1 million jobs have been lost. It is anticipated that those affected will be dependent on emergency relief for a six-month period.

Ireland has pledged €5 million to the emergency relief effort. This money has been allocated to UNICEF, the International Federation of the Red Cross, the International Organisation for Migration, the World Food Programme, the World Health Organisation, the UN Office for the Co-ordination of Humanitarian Affairs, and to Concern, Trócarie, GOAL, Oxfam, World Vision and Plan Ireland.

Ireland is also liaising closely with other EU member states, in the co-ordination of material assistance through the European civil protection mechanism, which is the formal EU co-ordination mechanism for such assistance. The European Commission Humanitarian Office has committed up to €10 million in EU funding to the south Asian region to date.

While emergency relief remains the immediate priority, Ireland has publicly committed itself to assisting in the recovery phase. A reconstruction conference will be convened by the Government of Pakistan on 19 November. Ireland will be represented by former Taoiseach, Albert Reynolds, and officials from the Department of Foreign Affairs at this conference to demonstrate our commitment to assisting both the relief and recovery phases of this disaster.

With regard to the possibility of doctors from the Kashmir region, now working in Ireland, returning to the region to assist in the relief efforts I would like to inform the Senator that a Department of Health and Children scheme of special leave with nominal pay has been in place for a number of years. This leave is granted to permanent professional staff, including doctors, for assignments abroad on disaster-emergency relief or development work in the public health service of developing countries. The foreign destination must be a recognised underdeveloped country, a disaster-emergency region or a developing country whose public health service is underdeveloped. The work must be under the auspices of one of a number of recognised Irish-international bodies involved in the provision of development services. Service under the scheme is reckonable for incremental credit and superannuation.

Both the Department and the Health Service Executive are open to individuals wishing to assist in the relief effort to apply under these arrangements. Any application regarding the crisis in Kashmir will be considered on its merits. I assure this House that the Government takes its responsibilities in times of humanitarian disasters very seriously. This was clearly demonstrated by

[Mr. T. O'Malley.]

Ireland's swift, generous and effective response to the earthquake on 8 October.

Ms Tuffy: I thank the Minister of State for the details of the general scheme in place. There is a need for a particular response, whether through the scheme mentioned or otherwise, that ensures that as many of the doctors as possible who are from the region of Kashmir would return and participate in the relief efforts there.

Mr. T. O'Malley: I have dealt with that issue in my reply. A scheme already exists for any doctor who wishes to go there.

Departmental Properties.

Mr. Kitt: I wish to share time with Senator Ulick Burke.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Mr. Kitt: I thank you, a Leas-Chathaoirleach, for allowing me to raise this matter on the Adjournment. There have been reports of the selling off of surplus lands in County Galway for housing. I understand a Government decision was taken in respect of surplus lands held by Departments and agencies. I am aware some lands in the ownership of Departments and agencies are not in use. I often wonder if anyone asked what is the intended use of these lands. I am aware that any sale of the 31 acres at St. Brigid's Hospital, Ballinasloe, was to be on the basis that the funding would go towards the psychiatric services in Ballinasloe in east Galway.

Similarly in Athenry where there are Teagasc lands, the question was what lands would go for housing, industrial development or other community and amenity purposes. I cannot understand why this issue was raised in regard to Portumna because it was envisaged that the two acres would be part of the development of the old workhouse.

The issue in Tuam is the most striking of all because €3 million was paid to the Bons Secours order in December 2001 for the Grove Hospital and six acres of land. According to Councillor Kieran Cannon, a member of the Progressive Democrats, the six acres of land are to be sold off. If that happens all that will be left will be old buildings. Our intention was to have the six acres developed. One must ask why the lands and property were bought in the first place.

The bottom line is that the Taoiseach, the Tánaiste and the Minister of State at the Department of the Taoiseach, Deputy Parlon, are being blamed for information that certain individuals in the Health Service Executive gave concerning these lands. To the best of my knowledge the individuals I know in the HSE western area never knew about this issue and would not have that

answer. While the lands may not be in use, as public representatives in County Galway and particularly in east Galway, we all know the intended use.

Regarding the health campus proposed for Tuam, an application was made to the Department in October 2002. We await a decision on that issue. Given that design stage was completed in October 2002 we would like to see a hospital there, an Alzheimer's disease unit, a child care training centre, a primary care unit and an ambulance base in Tuam. An ambulance base in Tuam, with two ambulances and perhaps eight staff would cost less than €1 million. There are ambulance bases at Clifden, Carraroe, Galway city and Loughrea, and Ballinasloe is served by Roscommon, but there is no ambulance base or health campus in north Galway. I would like to see such a service and it is an issue on which I have campaigned for a long time.

I would like to give the Minister of State a sample petition after this Adjournment debate. I have been trying to get people to support the call for an ambulance base and a health campus in Tuam. I obtained more than 4,000 signatures which I have given to the Tánaiste and Minister for Health and Children, Deputy Harney, with a view to expediting the health campus and the ambulance base for Tuam. However, this cannot be done if people such as Councillor Kieran Cannon make statements in the media that lands in the ownership of the Department and its agencies at Tuam, Ballinasloe, Portumna, Athenry and other places are being sold off. Perhaps the Minister of State will clarify these issues and give us the opportunity to develop the health and housing services which about which Councillor Cannon speaks.

Mr. U. Burke: I welcome the Minister of State and thank Senator Kitt for sharing time. I endorse what Senator Kitt has said. The rumour in east Galway as a result of statements by a particular councillor has brought uncertainty to the issue, particularly in the case of Tuam where the proposal to sell off six acres of land would eliminate the possibility of ever providing a much needed health facility in the town of Tuam. As a member of the Western Health Board at the time I was part of a delegation to the then Minister for Health and Children, Deputy Martin, which encouraged him to purchase the old Grove Hospital when it was being vacated by the nuns. He subsequently purchased the property. Everybody looked forward to having a new service provided in Tuam to serve north Galway, south Mayo and north Roscommon.

Will the Minister of State clarify if the statement issued by Councillor Cannon is true? The statement indicated that the Taoiseach had directed the sale of lands in Tuam, Ballinasloe and Portumna. The lands in Portumna do not belong to the Health Service Executive, but it had

acquired them on the basis that it had a facility on them for many years. While other agencies used the land, it is the land of the old workhouse. A group in Portumna have gone a long way in developing plans for this disused facility over the years. I would hate its plans to be laid aside through the sale to a developer.

As Senator Kitt has said, in Ballinasloe approximately 32 acres of lands adjoining St. Brigid's Hospital are to be sold. Owing to the new proposal for the provision of new psychiatric services adjacent to Portiuncula there are excess lands in Ballinasloe. However, I am sure they could be put to good use for other health facilities in the area. In the case of Tuam it is unacceptable that the hard work by so many people over the years would be cast aside. These six acres of prime land in the middle of the town are ideally suited for the development of the community hospital as promised by the Taoiseach in 2002. We all welcomed that promise and we continue to hope that nobody would interfere with the plan so that it can become a reality.

Minister of State at the Department of the Environment, Heritage and Local Government

(Mr. N. Ahern): I thank the Senators for raising the matter. The identification and disposal of State land by various Departments and Government agencies for affordable housing is part of the affordable housing initiative. As the House is aware, this initiative was included as part of one of the ten special initiatives in the Sustaining Progress partnership agreement. The initiative is aimed at those who in the past would have expected to purchase a house from their own resources but find that they are unable to do so in the current housing market. The purpose of the initiative is to provide 10,000 affordable housing units through the release of State and local authority lands and through the provisions of Part V of the Planning and Development Acts 2000 to 2004.

Significant progress continues to be made on the initiative, with more than 70 projects on State and local authority lands planned, which together with a projected 2,500 affordable housing units under Part V gives the 10,000-unit target proposed by the parties to the pay agreement. The Department of the Environment, Heritage and Local Government monitors all projects with a view to ensuring early delivery of units.

Under the initiative, the Minister for Agriculture and Food released 22 hectares of land in Athenry. The Department of the Environment, Heritage and Local Government has engaged with Galway County Council to progress this project. I understand the council propose to develop an initial phase of approximately 60 affordable housing units on approximately two of the 22 hectares of the site. To this end, preparatory work, including planning consultations, design and trial holes, surveys, etc., has been carried out on this

portion of the site. An application for Part 8 approval under the planning regulations was advertised last week. This portion of the site will now go through the normal planning process.

The balance of the Athenry lands, measuring approximately 20 hectares, is the subject of a local area plan and will continue to be on public display until the first week in December. I understand the council will be discussing the outcome of the public consultation process at its December meeting. The use of this portion of the site for the initiative will be assessed in the light of the local area plan process. The Department of the Environment, Heritage and Local Government will work with the council to ensure the most effective use of the site. The Senators will be aware that the Government released State lands to the initiative in various tranches and late last year agreed to the release of a series of Health Service Executive lands, some of which are in the County Galway area.

The Minister of State at the Department of Health and Children, Deputy Seán Power, in an Adjournment debate in the Dáil on 9 November, indicated that the Health Service Executive is engaged in a process of reviewing the implications of releasing the County Galway sites to the initiative in the context of planned health services development. These may be the sites in Tuam and Ballinasloe mentioned by the Senators. I understand this review will be completed shortly and the outcome of the review will be communicated to both the Department of the Environment, Heritage and Local Government, and the Department of Health and Children.

These lands are also being examined by the Department of the Environment, Heritage and Local Government, in consultation with the council, to determine their suitability for the initiative. While the possibility of using lands in some areas has been mentioned, it has not got down to the hard detail of how many sites or how many hectares. Matters did not develop very far. The HSE is reviewing the implications of its previous commitment. My interest is from the point of view of affordable housing. The other land that has been donated from Departments and Government agencies is not bought but is transferred to the affordable housing initiative. No payment would be made in those circumstances for any Health Service Executive development. While the HSE never firmly agreed how much land we would get, it is reconsidering what it is likely to give bearing in mind its own needs.

I will continue to ensure that all projects under the initiative are progressed as speedily as possible with the aim of having the earliest possible delivery of affordable units. We are awaiting the outcome of the deliberations of the HSE regarding those three or four parcels of land in County Galway that were mentioned as possible candidates for the affordable housing initiative.

Mr. Kitt: I am somewhat disappointed by the reply of the Minister of State as I thought he would have been able to tell us what was happening to health projects such as the one in Portumna. Can the Minister of State confirm that housing will not be developed on these sites? The intended use is the most important issue. Plans existed for Tuam and also for Portumna, which involved South East Galway Integrated Rural Development Limited. Who advised the Department that a huge amount of land was available for affordable and social housing as envisaged under the plan? The Tánaiste and in particular the Taoiseach are being blamed for the leak of this information from Government. If it is a Government decision, so be it.

We need to be very clear what will happen to these lands. I would like an assurance that in the case of Tuam the lands will be used for the health service campus and that the other projects we mentioned should proceed. If the land were given to the local authority there would be no money for the psychiatric services in Ballinasloe.

Mr. N. Ahern: What is the rumour locally? Is it suggested that the land is being given for the affordable housing initiative or that it is being sold privately?

Mr. Kitt: Both.

Mr. U. Burke: As the lands in Tuam are centrally located it is believed they will be used for speculative purposes. In Portumna, South East Galway Integrated Rural Development Limited has a plan for sheltered housing for people with great needs. I presume that a certain proportion of the lands at Ballinasloe will be sold for affordable housing. The spin put on the matter was that the Taoiseach directed that it be disposed of.

Mr. N. Ahern: Some years ago the Government made an agreement with the social partners. Under that agreement, we agreed to provide 10,000 houses under the affordable housing initiative. We did a trawl of different Departments and agencies for suitable land. The Athenry site was provided by the Minister for Agriculture and Food at the time and the HSE suggested it might have other land available in various locations in County Galway. However, those locations were not tied down and they have not been transferred to us.

Mr. U. Burke: In the case of Tuam, the land, on which there was originally a hospital, was

bought from a private nursing group by the Western Health Board for the development of health services on the site. The former Minister for Health and Children, Deputy Martin, was Minister at the time and made the payment for the site.

Mr. N. Ahern: My interest is housing. The land coming to us from different Departments and agencies was land that was in their ownership for years and was surplus to any short or medium-term need. It would seem strange, therefore, that land recently bought would be transferred. What we wanted — I am coming at this from the point of view of affordable housing rather than hospital services — was free land or sites to provide affordable housing. If land had been bought privately at high expense, it would not seem to be of value to us unless the Department in question or the HSE was going to give us a present of it and not try to recoup the moneys paid from us.

I have not tied down the land we were offered. We heard from the Department of Health and Children that there was a possibility of some land being available, but that it remained to be sorted out, agreed and examined in greater detail. As far as we are concerned that examination is close to finalisation. It may be that we will get some land to provide affordable housing or it may be that the Department or the HSE will come back to us and say they have less land or no land available to us. We await their decision.

That is our approach. We do not pay for the land and therefore no moneys would cross from my Department. I cannot make statements or give any commitments about developments of the Health Service Executive. I am interested in cheap land on which we can provide affordable housing.

Mr. Kitt: I am surprised the Minister of State did not ask for what use the land in Tuam had been intended. I can tell him it was intended for a hospital.

Mr. N. Ahern: I do not need to know those details until I am offered the land. Any land we get is deemed surplus land not required for medium-term requirements. However, I have not received any land yet. These sites were only up for consideration. I do not know whether we will get part or all of what was suggested. We expect finalisation of the HSE examination soon.

The Seanad adjourned at 7.55 p.m. until 10.30 a.m. on Thursday, 17 November 2005.