



## SEANAD ÉIREANN

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*Dé Máirt, 6 Nollaig 2005.*  
*Tuesday, 6 December 2005.*  
 —————

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

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

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

The need for the Minister for Social and Family Affairs to clarify the position regarding his refusal to grant an orphan's contributory allowance or supplementary welfare allowance to the grandparents of two young children (details supplied).

I have also received notice from Senator McDowell that he proposes to raise the following matter:

The need for the Minister for Health and Children to take action to combat the worrying increase in the rate of sexually transmitted infections in Ireland and that initiatives (details supplied) be taken as a matter of urgency to combat the problem.

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

### Order of Business.

**Ms O'Rourke:** The House will have to put up with me; the Order of Business is a long story. The Order of Business is Nos. 1 to 5, inclusive. No. 1 is a referral motion whereby the subject matter of Nos. 16 to 18 inclusive, on the Order Paper are being referred to the Joint Committee on Justice, Equality, Defence and Women's Rights.

Nos. 16 and 17 concern an agreement between Ireland and the Republic of Bulgaria and the Republic of Cyprus providing for co-operation in the exchange of information relevant to the prevention, detection and investigation of illicit trafficking in drugs, money laundering, organised crime, trafficking in persons, terrorism and other serious crime. It also provides for co-operation in the development of training programmes, includ-

ing the exchange of law enforcement personnel. Articles in the agreement cover procedural matters such as the use and confidentiality of information of the agreement regarding other international agreements, entry into force and termination.

No. 18 concerns an agreement between Ireland and the Republic of Poland providing for co-operation in combating organised crime and other serious crime. The agreement provides for co-operation in combating crimes such as offences against the person, paedophilia, terrorism, trafficking in arms, illegal migration, crimes against property, money laundering, drug trafficking, trafficking in persons, trafficking in nuclear and radioactive materials and corruption. It also provides for the secondment or exchange of personnel with a view to sharing professional expertise. Articles in the agreement cover procedural matters such as the use and confidentiality of information, protection of personal data, refusal of assistance, bearing of costs, implementation of the agreement regarding other international agreements, entry into force and termination. This item will be taken without debate.

Nos. 2 and 3 are motions which were referred to the Joint Committee on Communications, Marine and Natural Resources. That committee has completed its deliberations. No. 2 concerns the postponement of the elections of the regional fisheries boards due to the recent Government decision to restructure the inland fisheries sector. No. 3 concerns a change in the fees for licences issued or renewed on or after 1 January 2006. These items will be taken without debate.

No. 4, Transfer of Execution of Sentences Bill 2004 [Seanad Bill amended by the Dáil] — Report and Final Stages, will be taken after the Order of Business and conclude not later than 3.45 p.m.; and No. 5, Irish Medicines Board (Miscellaneous Provisions) Bill 2005 — Committee Stage (Resumed), will be taken on the conclusion of No. 4 or at 3.45 p.m., if No. 4 has not concluded earlier. This item will conclude at 6 p.m. or whenever Committee Stage is concluded.

**Mr. B. Hayes:** I wish to refer briefly to the content of the "Prime Time Investigates" programme last night on RTE, which shone a light on the price fixing cartel that exists among some car dealers in this country. That programme highlighted an abuse, a restrictive practice and a criminal situation where Irish car owners now have to pay, on average, more than 30% more than their UK counterparts. This is a very serious issue. That alleged reputable dealers are involved in fixing prices for car owners here is a scandal. The Government must ensure that prosecutions, through the Director of Public Prosecutions, are taken against this practice if it is a criminal offence. Additional strengths and supports must be given to the Competition Authority to ensure prosecutions occur. Irish motorists are already being ripped off in terms of the high VRT they

[Mr. B. Hayes.]

pay in comparison to other EU citizens on average but now we find that some major dealers in this country are fixing prices in the most extraordinary manner. It is a cartel that smacks of the type of corruption we have seen in other sectors of industry. I ask that the Government take a strong view of this matter, that a firm statement is made by the appropriate Minister and action is taken.

**Mr. Ross:** Hear, hear.

**Mr. B. Hayes:** The Government has been quiet on this matter to date. It has sat back and waited for the Competition Authority to do its job. Only when we see prosecutions in courts and people accounting for their criminal actions therein will we believe the situation.

The coroners review group reported in 2002 and proposed a number of legislative changes in the way inquests and coroners' rights are applied in Irish courts. One glaring anomaly is that only two medical personnel can take part in a case in the Coroner's Court. The Labour Party leader, Deputy Rabbitte in the Lower House, has proposed straightforward amending legislation. It was published in the past 24 hours and all Members should have it. Will the Leader provide time between now and next week to ensure that Deputy Rabbitte's Bill, which deals exclusively with the issue of the Coroner's Court, will be expedited through this House rather than wait for the omnibus legislation the Minister for Justice, Equality and Law Reform is proposing? Many cases must be dealt with. It is an urgent matter that Deputy Rabbitte's Bill would resolve.

**Mr. O'Toole:** I know that my colleague, Senator Norris, will say something about aeroplane landings but Dr. Condoleezza Rice reportedly said in Germany this morning that European Governments using intelligence obtained by the CIA or other American authorities should not question how it was obtained. This is an appalling reflection on the West. Is it any wonder that we are in trouble with the rest of the world?

We must get an answer from the American authorities at some stage about what Dr. Rice's statement means. Is it that the ends justify the means, matters that many people have questioned over the past one or two years? People diligently stood up on principle and were for or against the war or American involvement. They spoke honestly, openly and articulately. They must feel they are being let down time and time again. That Dr. Rice could state this brings a new end to the issue. It is a philosophy without ethics and is impossible for us to be a part of. If western civilisation does not distance itself from it, we will all pay a serious price in the short term. Others will have more to say on this matter.

I wish to raise an issue in which the Cathaoirleach will have a special interest. I have noted

over the past number of days that National University of Ireland, Maynooth, has given a certification to a group of people it refers to as school child protection officers. This sounds like a good idea but it really worries me. I am sure this happened with the best of intentions but the only way in which children will be protected in school is if their relationships with the authorities of the schools — teachers, principals, boards, etc. — is safe. This move diverts that authority and leads a child to believe he or she can talk to a child protection officer as opposed to a teacher, principal, parent or board. Not for a moment would I suggest that anyone has this in mind but, to those of us who saw its downside in the weeks after the Ferns Report, it allows children to be groomed by unscrupulous people who might ensure they get into those positions. I am not alleging or hinting via innuendo that the people who have received this certification are anything other than well intentioned and decent people. However, it is a type of diversion we do not need. We need, as stated previously, the Stay Safe programme, mandatory reporting and all the matters we have talked about here many times before. We do not need a new body of people within schools to deal with this.

**Ms Tuffy:** I support Senator Brian Hayes on the need for action by the Government on information about price fixing by car dealers. It is important that the Government would take action and that there be feedback to this House about what has been done in this regard.

I support Senator O'Toole on the need for us to question the United States on its foreign policy. By us not doing that sufficiently, we are endangering our sovereignty. For example, if Shannon Airport is being used to land CIA planes which are being used for bringing detainees to other countries for torture or ill-treatment, as has been alleged by Amnesty International, or if there are secret flights landing at Shannon being used for who knows what by the US Government, it could be unconstitutional and would have a detrimental effect on our sovereignty. We need to act on that now. I ask the Leader to ensure a debate on the issue as soon as possible.

I wish to raise with the Leader a letter I received from the SIPTU office in Kilkenny on the Comerama textile factory workers in Castlecomer. The letter outlines how the Tánaiste and Minister for Health and Children, Deputy Harney, who was then Minister for Enterprise, Trade and Employment, gave the workers a commitment in 2002 that they would get the approved statutory redundancy terms. That commitment has not been honoured by the Tánaiste or by the Government. I ask the Leader to take up the matter with the Taoiseach and to come back to this House to let us know the up-to-date position.

**Mr. Minihan:** I echo the comments by Senator Brian Hayes on last night's programme on the investigation into the motor industry. Action is required. According to the programme, it now transpires that there are files with the DPP. We all urgently await a DPP decision on this so that we can move forward.

The beefing up of the Competition Authority to carry out similar types of investigations into illegal price fixing is a matter which should be seriously taken on board. In that regard, I wish to mention, as I have done previously, that there are accusations of other cartels operating, particularly in the cement industry.

**Mr. B. Hayes:** The meat industry.

**Mr. Minihan:** My office has received much information in that regard which I have had forwarded to the Competition Authority. I would welcome an investigation along similar lines.

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

**Mr. Minihan:** I hope the Competition Authority will act on the matter.

I also wish to comment briefly on the use of Shannon Airport. I have spoken a number of times in the House on the situation in Iraq and my views would be known. I commented on the EU's initiative last week in this regard. It is disturbing that when we cut out all the semantics we are now apparently down to a definition of torture. The admission that the planes are being used to move prisoners is one issue, but where we seem to differ is on what is and what is not torture. Given the admission, the statements made in this House by previous speakers put a considerable onus on the Government to ask serious questions and I would welcome if those questions were asked.

**Mr. Norris:** Good.

**Mr. Finucane:** In recent times there has been extreme concern on the basis of the statement by the US Secretary of State, Ms Condoleezza Rice, that these planes going through Shannon were not being used for torture. Ms Rice probably coined a new expression in the English language on the use of the word "rendition". I always thought the word "rendition" was a reference to when one asked someone to sing a song at closing time in a public house.

**Ms O'Rourke:** Yes, a rendition of a song.

**Mr. Norris:** They will sing when Condoleezza Rice gets her hands on them.

**Mr. Finucane:** However, the concern is that these are the same Americans who previously made statements about weapons of mass destruction in Iraq which proved to be wrong. They have also made recent statements in respect of phos-

phorous bombs and were proved wrong. Why should we now believe Condoleezza Rice?

It is not satisfactory for the Government to state that it has asked a specific question and has received a response. There are concerns. It is not sufficient to suggest, as would the Minister for Foreign Affairs, that if people have proof they should give it to the Government. It is now imperative that the Government carries out investigations to try to find out what is going on. All Members are aware that there is much concern at present as to what is happening.

**Dr. Mansergh:** The remit of the Private Security Authority, which has been established in Tipperary town, should be extended from simply licensing private security firms to dealing with anyone involved in debt collection. It is appalling that anyone who is, or who has been, involved in serious crime and intimidation should be allowed to be involved in debt collection in any way.

In respect of Senator Brian Hayes's opening request, if the Government establishes an agency such as the Competition Authority, it must ensure it is well resourced. However, those industry representatives who lobby the Government and every Oireachtas Member for tax reductions in respect of their industrial sector have a duty to ensure they do everything within their power to keep prices down. I note that Aer Lingus intends to resume providing air freight services. Perhaps the Minister could make a similar recommendation to Irish Rail, to the effect that it would step up the use of freight.

As far as Shannon is concerned, the Minister for Foreign Affairs asked questions of the Secretary of State and I understand he was given an unequivocal answer. While I would hesitate to describe her as a liar—

**Mr. Norris:** I would not hesitate.

**An Cathaoirleach:** We are entering dangerous waters.

**Dr. Mansergh:** —there is no disguising the fact that throughout Europe, everyone is deeply unhappy about some of the practices being used in the war on terror and would like to see the norms of international law fully respected.

**Mr. Ross:** I endorse the comments of Senators Brian Hayes, Tuffy, Minihan and other Members regarding the cartel operating in the car industry. I was a participant in the "Prime Time" programme which was broadcast last night and I was staggered by the evidence put in front of me. While the price fixing in that industry is bad enough, it has been suspected for a long time. However, the additional operation of a system of enforcement among these car dealers may not have been noticed or highlighted quite so obviously. They have set up their own rules and courts and fine their own members up to €1,000

[Mr. Ross.]

for breaching rules they have imposed which are themselves against the law. This is extremely serious. I ask the Leader to organise an all-party motion, debate or statements on this issue, because these car dealers have usurped the role of the Legislature.

The second issue raised by some Members, notably Senator Mansergh, concerns the Competition Authority. There is a tendency in this House to pay almost unanimous tribute to the Competition Authority.

**Mr. Finucane:** Is there?

**Mr. Ross:** I am not sure that the authority should be given a fool's pardon in these cases where it always seems to be unable to produce the evidence for prosecutions. It might be a matter of underfunding but I doubt it. I believe there are problems within the Competition Authority which politicians, for some reason, are unwilling to recognise. However, we should recognise and scrutinise them. Finally——

**An Cathaoirleach:** The Senator has been given fair latitude. Other Senators are offering.

**Mr. Ross:** The debate we are seeking is to ensure that the motorist, who is vulnerable to these big companies, big government and unscrupulous people, should not be victimised without the protection of this House.

**Ms Ormonde:** Like other Senators, I seek a further discussion about the illegal price fixing outlined in the shocking programme last night. The motorist is being victimised and we have a duty to highlight this and to consider how we can deal with it.

I support Senator O'Toole with regard to the new course that has been established. I wondered where this new child protection certificate course in Maynooth will fit into the broader ambit of the Department of Education and Science. How will these people be employed? Why is this happening now or were there discussions within the Department about it? Perhaps the Leader would investigate this further and arrange a debate on it. It is a good course but I wonder where it will fit into the broader system.

**Mr. U. Burke:** The findings of a report on mental health in Irish prisons were published recently. They are a shocking indictment of our system and how we care for people with mental illness. If a homeless person suffering from a mental illness comes to the attention of gardaí, he or she is, despite being in distress and in need of treatment, taken to a prison instead of to a mental institution for proper attention and treatment. That is unfair and unsuitable. Something must be done immediately to stop that practice. Indeed, in some cases, when there is no room either in a mental insti-

tution or in the jail, such people are taken to accident and emergency departments and held there under security until a place is finally found for them. I ask the Leader to arrange an urgent debate on this issue. If homeless persons are in distress and in need of treatment, why are they put in jail?

**An Cathaoirleach:** Many Senators are offering so I ask them to be as brief as possible.

**Mr. J. Walsh:** I join other Senators in calling for a debate on the Competition Authority. The fact that a programme such as "Prime Time" can, through investigative journalism, secure documents which show collusion on anti-competitive practices and the Competition Authority, which has statutory powers, is unable to do so raises serious questions about the body. This relates not just to the motor industry but also to other areas such as the legal and medical professions. There are many areas where the Competition Authority appears to be ineffective. That is the issue which should be examined.

**Mr. Norris:** This House led the way in alerting the public to what is happening regarding extraordinary rendition. It is appropriate that we continue to do this. The United States authorities and people such as Vice-President Cheney actively endorse and approve of torture. However, people in American society, such as Republican Senator John McCain, are so concerned about this that Senator McCain put down amendments to legislation to outlaw torture. Vice-President Cheney is now trying to remove this provision from the Bill so the CIA can continue to torture. As former President Carter has expressed serious concern about this, it could not be seen as anti-American to examine it.

In 2004, the Minister for Transport, Deputy Cullen, told the Dáil about one of these rendition flights that landed in Shannon. He described it as

a technical stop. That is worrying.  
3 o'clock We must examine it in light of advice given to a committee of the British

Parliament yesterday to the effect that allowing these aeroplanes to refuel renders a country's Government complicit, under international law, in the commission of a serious international crime. Last week I mentioned the possibility of establishing an all-party committee of this House to investigate this matter and the Leader indicated she would consider it. With the assistance of the clerical staff here I have looked through the Standing Orders of this House and there is provision under Standing Order 64 to establish such a committee. I ask the Leader to consider this as soon as possible and would be happy to talk to her after the Order of Business to see if this can be done. All that is required is the establishment of terms of reference.

**An Cathaoirleach:** The Senator has made the request.

**Mr. McHugh:** On the eve of the budget — it is probably written in stone but there may be a window of opportunity——

**An Cathaoirleach:** Does the Senator have a relevant question?

**Mr. McHugh:** I received a letter from An Grianán Theatre in Letterkenny with an 11th hour plea for VAT exemptions for Northern Ireland artists and theatre companies. Some 20% of the theatre's programme involves artists from Northern Ireland and these VAT charges will curtail Northern Ireland artists from coming to Letterkenny and will lead to a price hike that will affect Donegal theatre patrons. As patrons come to Letterkenny from Derry, Tyrone and Fermanagh, this would be a conciliatory cross-Border project and a good token in the terms of the Good Friday Agreement.

On an RTE programme shown on Sunday the shop steward from Fruit of the Loom in Inishowen said there was no FÁS intervention for their employees. I am verifying this comment but Inishowen people should not be treated differently from other people in County Donegal who leave their jobs. I ask for clarification on that.

**Mr. Bannon:** I support the Leader and other Members who requested immediate action by the Government on price fixing in the car industry. Some dealers lie to and cheat their customers. There is also a health and safety issue. If mileage clocks are being interfered with to the extent that last night's programme claimed, other parts of the engines are being interfered with and some of those cars may become a traffic hazard. The onus is on the Government to deal with this immediately. We do not want it put on the long finger as this reactionary Government has done with so many other issues.

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

**Mr. Bannon:** I ask the Leader to invite the Minister for Social and Family Affairs, Deputy Brennan, to this House to debate the pension crisis. We were told recently that 69% of the population does not have a pension plan and that figure rises to 76% in the private sector. There is an onus on the Government to ensure that people are looked after in their old age and additional tax incentives and relief to deal with this should be built into the budget. There is also an opportunity for the Minister to reduce the duty on diesel and petrol. Businesses, farmers and the Irish road haulage industry are at risk. There is an element of fear in industry due to unfair competition.

**An Cathaoirleach:** I am sure he will heed the Senator.

**Mr. Bannon:** I wish to see action on those issues.

**Dr. Henry:** As Senators O'Toole and Ormonde have mentioned, I am alarmed by the development of these newly certified types of child protection officers. We should inject urgency into this matter and ask the Minister for Education and Science into the House to explain the position these officers will take up, if any, in schools. Will this be in a paid or a voluntary capacity? We should investigate this as we have gone through a traumatic time in this country with regard to child sexual abuse. Initiatives which may appear beneficial could be quite harmful in the long term.

I support Senator Ulick Burke's call for a debate on the report by the Irish Prison Service on the mentally ill in prison. It has not yet been published but it appears that these cases are even worse than we all believed. I am sure Senators know there is a special area in Mountjoy Prison where mentally ill and intellectually incapacitated people are held. It is incredible that in 2005 we have a special area in one of our oldest prisons devoted to minding these people, who should not be in the facility at all. Many of these people are imprisoned because of petty crimes. These issues are not politically biased, and as soon as the report becomes available we should debate them in the House.

There should be a sense of urgency surrounding the issue of child protection officers.

**Mr. Coghlan:** It is some years since the Minister of State at the Department of Finance, Deputy Parlon, told us he would compile an inventory of State assets, with particular emphasis on those considered to be surplus to requirements and which could be sold off or put to better use, perhaps in connection with the decentralisation programme.

**Mr. Leyden:** He has done so.

**Mr. Coghlan:** Where is this report and does it exist? We have not seen it.

**Mr. Leyden:** It is finished.

**An Cathaoirleach:** The Senator without interruption.

**Mr. Leyden:** The report has been completed.

**Mr. Coghlan:** Perhaps, given that there is a question over the decentralisation programme, will the Leader arrange an early debate on the matter so we could take both issues together?

**Mr. Browne:** I ask for a special debate on the sugar beet industry. We are having a debate tomorrow on World Trade Organisation talks but I suspect there will not be sufficient time to debate the sugar industry. I ask that before the

[Mr. Browne.]

Seanad rises next week we have a specific debate on the industry's future. When we return in late January next year we might well have no sugar beet industry left.

**Mr. Callanan:** We will.

**Mr. Browne:** We owe it to the 4,000 beet growers and the hundreds of workers that may lose their jobs over the Christmas period.

**Mr. Callanan:** It is not over.

**Ms Ormonde:** The industry will still be there.

**Mr. Browne:** I agree with Senators who raised the question of the child protection officers being appointed with regard to schools. Bullying is a significant problem in secondary schools in particular, and the Government has given only €2 million instead of the requested €5 million. Perhaps we should examine whether resources are being well spent. It may make more sense to give money to teachers to counteract attacks both on staff and pupils in schools.

I thank Senator Tuffy for raising the issue of the Comerama workers. I attended a meeting, along with other Senators and Deputies from across the parties, regarding promises made to these workers that they would receive enhanced redundancy packages, as the textile firm is going out of business. These workers are out by approximately €10,000 each. If the workers had known they would not get the enhanced package, they could have worked an extra day a week until such time that a new redundancy package was formulated. These workers are protesting outside the House on a cold December day.

Some 16 workers who worked for longer got a better package. The workers misled by the Tánaiste have since been treated with contempt. Government Deputies and Opposition Deputies and Senators are also involved. The current Minister for Enterprise, Trade and Employment, Deputy Martin, was sent a letter on 13 May but he did not have the manners to reply. The workers had to come to Dublin today to accost the Minister on the street, as it was the only way to get his attention. It is disgraceful.

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

**Mr. Coghlan:** Absolutely.

**Mr. Browne:** We talk of the importance of democracy.

**An Cathaoirleach:** The Senator has made his point quite adequately.

**Mr. Browne:** We speak of the benefits of democracy, but those poor people are out on a cold street today and their voices are not being heard. Neither the former nor the current Mini-

ster for Enterprise, Trade and Employment has honoured a commitment or even met the workers to hear their case.

**Ms O'Rourke:** Senator Brian Hayes mentioned last night's "Prime Time Investigates", which investigated restrictive practices, price fixing and the existence of a cartel in the car industry and was watched by many in this House. The uncovering of the existence of this cartel is a credit to the team which produced this programme. Senator Brian Hayes asked whether the Competition Authority needs more resources. I understand that the files in question have been sent to the Director of Public Prosecutions. It was disturbing to see how people could be so easily ripped off and how easily price cartels could be assembled to treat consumers in such an unfair fashion. This House should attempt to follow up the matter.

Senator Hayes also inquired about the coroners review board. I met with Deputy Rabbitte this morning and he brought the Bill to my attention. I had already read the Bill, which aims to rectify a situation relating to parents and young children who were treated in Our Lady's Hospital for Sick Children in Crumlin. In the current restrictive set-up, only two medical personnel are allowed to testify at the Coroner's Court. Deputy Rabbitte told me that he has agreed with the Minister for Justice, Equality and Law Reform that the matter will be debated and dealt with expeditiously in the Dáil tomorrow and asked me whether the matter could be debated in the same fashion in this House. We will monitor the Bill's progress through the Dáil over the coming days.

Senator O'Toole spoke about the recent statement by the US Secretary of State, Dr. Condoleezza Rice, which I also found appalling. He also addressed the role and training of school child protection officers, with which I am unfamiliar. I did not know that school child protection officers would be certified by the National University of Ireland, Maynooth. I am sure these developments are for the best, although they are slightly odd. It appears there has been a rush to introduce arrangements to ensure children's safety in schools. The Minister for Education and Science should come to the House to tell us more about the role and training of school child protection officers. I agree that mandatory reporting and the Stay Safe programme would be far more useful but we must wait and monitor developments.

Senator Tuffy spoke about price fixing in the car industry. She also argued that our sovereignty is endangered if CIA flights transporting detainees to other countries for torture or ill treatment or secret US flights land at Shannon Airport. However, we do not know if this is true. I tabled an Adjournment motion on the matter approximately one month ago but received a very vague reply. We need some method of dealing with the array of developments regarding this issue.

Senator Tuffy also spoke about a letter she received from SIPTU concerning the situation of workers at the Comerama textile plant in Castlecomer and the assurances given to them. I think every Member received this letter. The matter should be debated on the Adjournment.

I agree with Senator Minihan's call for the strengthening of the powers of the Competition Authority. He also spoke about the possible existence of cartels in the cement industry. We all knew about the existence of cartels in this industry but not those in the car industry until we watched "Prime Time Investigates" last night. I agree that we should show our concern about the situation in Iraq. Concern has certainly been expressed about it for a long time.

Senator Mansergh argued that the remit of the Private Security Authority should cover debt collection. He also argued that industry has a duty to keep prices down and that as Aer Lingus was resuming freight services, Irish Rail should do likewise, which I agree with. Senator Mansergh also stated that international law should be fully respected.

Senator Ross also commented on price fixing in the car industry and I compliment him on his performance in last night's edition of "Prime Time Investigates".

**Mr. Ross:** Will the Leader please answer the question?

**Ms O'Rourke:** We are used to Senator Ross being a media mogul. He was astounded when he was presented with evidence of price fixing in "Prime Time Investigates". He argued today that the Competition Authority is apparently unable to produce evidence for prosecutions and that motorists are victimised. He also spoke about how car dealers have set up their own rules and fines, which appears very odd.

Senator Ormonde took up the same issue as Senator O'Toole about the child protection officers and their place in the school environment. Senator Ulick Burke wondered how we care for people with mental health problems in the prison system. Senator Henry told us the Irish Prison Service report is not out yet. As soon as it is released we will discuss it in the House.

Senator Jim Walsh requested a debate on the Competition Authority. That is long overdue. The members of the authority are leaving one after the other. There were five resignations last week, which was quite alarming.

**Mr. B. Hayes:** It is like the office of the Minister of State at the Department of Transport, Deputy Callely.

**Mr. U. Burke:** They are all going to Tesco.

**Ms O'Rourke:** Last week Senator Norris suggested setting up a cross-party committee of this House and subsequently wrote a letter to that

effect. This is allowed for under the comhrú as we have it now. I asked the Assistant Clerk to the Seanad to give me information on that, which I have. If it suits the party leaders we can have a quick chat about this proposal after the Order of Business. We should do something about it because those of us who used to raise that topic were regarded as cranks, now those who do not bring it up are cranks.

With regard to the transport of US prisoners, all the evidence cannot be wrong. I always had an uneasy feeling about the rendition and torture but could not get any information, which might lead one to believe I am the crank but I do not think so now. The attack on sovereignty is the danger if Shannon Airport is being used in this process.

Senator Norris suggests we should obtain the right to investigate the aeroplanes in question but in many cases the horse has bolted. The United States will tighten up on this and Shannon will no longer be used. In Germany this morning there was an acrimonious debate between Ms Rice and Angela Merkel about the issue. I will report back to the Senator on the all-party committee when we have drafted its terms of reference.

Senator McHugh spoke about VAT exemptions for artists from Northern Ireland coming to Letterkenny to ply their trade. He also said that according to a man who spoke about this in a programme on RTE, there was no FÁS intervention at Fruit of the Loom. The Senator will furnish further information on that issue.

Senator Bannon spoke about the fixing of car prices and requested a debate on the pensions crisis. The Minister for Social and Family Affairs, Deputy Brennan, will come to the House to talk about that issue. Senator Bannon also made a last minute plea to the Minister of Finance for reductions on diesel and petrol duty in the budget. The prices have gone down today. It is cheaper to fill one's tank than it has been for some time.

Senator Henry spoke about child protection officers and the report of the Irish Prison Service. Hopefully, we will receive that when it is published. Senator Coghlan requested a report on the inventory of State assets and a debate on decentralisation. He asked that the Minister of State at the Department of Finance, Deputy Parlon, come to the House to answer questions on both matters. I am sure he would be very pleased to do so. He does come here.

**Mr. U. Burke:** There is more property for sale now.

**Mr. Coghlan:** I am glad to see the Leader is not using a "little red book".

**Ms O'Rourke:** I have a big book.

Senator Browne spoke about the sugar beet industry. The Minister for Agriculture and Food told us she will discuss the sugar industry tomor-

[Ms O'Rourke.]

row when she comes to the House for statements on the WTO trade talks. The Senator will have his chance then to ask about it. Like Senator Tuffy, he asked about the package for the SIPTU workers. That would make for a good Adjournment matter.

**Mr. Browne:** It has been raised as an Adjournment matter time and again, here and in the Dáil, but the workers are being continually cut down.

**Ms O'Rourke:** We all have had that experience.

Order of Business agreed to.

### **International Agreements: Motion.**

**Ms O'Rourke:** I move:

That the proposals that Seanad Éireann approve the terms of the agreements between the Government of Ireland and:—

(i) the Government of the Republic of Bulgaria on co-operation in combatting illicit trafficking in drugs and precursors, money laundering, organised crime, trafficking in persons, and other serious crime which was signed in Dublin on 31 January 2002, copies of which were laid before Seanad Éireann on 15 November 2005,

(ii) the Government of the Republic of Cyprus on co-operation in combatting illicit drug trafficking, money laundering, organised crime, trafficking in persons, terrorism and other serious crime which was signed in Dublin on 8 March 2002, copies of which were laid before Seanad Éireann on 15 November 2005,

(iii) the Government of the Republic of Poland on co-operation in combatting organised crime and other serious crime which was signed in Warsaw on 12 May 2001, copies of which were laid before Seanad Éireann on 15 November 2005,

be referred to the Joint Committee on Justice, Equality, Defence and Women's Rights, in accordance with paragraph (1)(Seanad) of the orders of reference of that committee, which, not later than 15 December 2005, shall send a message to the Seanad in the manner prescribed in Standing Order 67, and Standing Order 69(2) shall accordingly apply.

Question put and agreed to.

### **Regional Fisheries Boards (Postponement of Elections) Order 2005: Motion.**

**Ms O'Rourke:** I move:

That Seanad Éireann approves the following order in draft:

Regional Fisheries Boards (Postponement of Elections) Order, 2005,

copies of which were laid before Seanad Éireann on 22 November 2005.

Question put and agreed to.

### **Fisheries (Miscellaneous Commercial Licences) (Alteration of Duties) Order 2005: Motion.**

**Ms O'Rourke:** I move:

That Seanad Éireann approves the following order in draft:

Fisheries (Miscellaneous Commercial Licences) (Alteration of Duties) Order, 2005,

copies of which were laid before Seanad Éireann on 22 November 2005.

Question put and agreed to.

### **Transfer of Execution of Sentences Bill 2003** *[Seanad Bill amended by the Dáil]: Report and Final Stages.*

**An Cathaoirleach:** This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 103, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question, "That the Bill be received for final consideration", the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators' convenience, I have arranged for the printing and circulation of the amendments. Senators may speak only once on Report Stage. I remind Senators the only matters which may be discussed are the amendments made by the Dáil.

Question proposed: "That the Bill be received for final consideration."

**Minister for Justice, Equality and Law Reform (Mr. M. McDowell):** This Bill was initiated in the Seanad in December 2003 and completed all Stages in June 2004. Report and Final Stages in the Dáil were completed on 30 November 2005. Two amendments were made by the Dáil in its course of considering the Bill.

Amendment No. 1 resulted in a new section 2 being added to the Bill. This was a Labour Party amendment which I accepted on Report Stage in the Dáil. It entailed an amendment to section 11 of the Transfer of Sentenced Persons Act 1995 to ensure the annual report to the Houses of the Oireachtas, prepared under section 11 of the 1995 Act, also includes details of applications for arrests under the Bill. I was happy to accept this amendment and I commend it to the Seanad.

**Ms Tuffy:** It is welcome that the Minister for Justice, Equality and Law Reform adopted a Labour Party amendment on this matter.

**Dr. Henry:** Unfortunately what I said in June 2004, at the end of the Bill's passage in this House, is even more apposite. While I welcomed the Bill, I was worried about the transfer of unsentenced persons. Unfortunately, we are still in the same situation to date with certain aeroplanes going through Shannon Airport. At the time, the Minister told me that anyone going through Shannon Airport—

**An Cathaoirleach:** That is not relevant to the Bill.

**Dr. Henry:** May I compliment the Minister when he said those prisoners would be covered by the Constitution if they were on such aeroplanes? I sincerely hope the Minister will do his utmost to ensure this. It is extremely gloomy that a year and a half after we last debated the Bill we should be continuing with the same lack of information about what is happening to people who may be going through our country.

**Mr. M. McDowell:** Amendment No. 2 relates to section 8(4) as passed by the Seanad. Section 8 deals with situations where the sentencing state requests the Irish authority to arrange for the provisional arrest of a sentenced person, pending submission by it of a formal request. Such a possibility also exists under our extradition law.

Section 8 provides that the High Court can grant an application for provisional arrest. Subsection (4) sets out the powers of remand available to the High Court once the person has been provisionally arrested and brought before it. Initially, it was provided that the person should be remanded in custody pending receipt of the formal request but as a result of the amendment I moved in the Dáil, the court now has the option of remanding the person in custody or on bail.

The amendment aligns the Bill with section 27(6) of the Extradition Act, which also deals with provisional arrest. It has been my policy that, in so far as possible, the arrangements under the Bill should be similar to those which apply in extradition cases. I had already ensured this in respect of the safeguards available to arrested persons when I moved an amendment in this House which inserted section 9(2)(f) into this Bill. This subsection provides that the extensive safeguards available under Part 3 of the European Arrest Warrant Act 2003 are also available to a person who has been arrested under this Bill. The amendment to section 9(4) completes this approach.

The amendment inserted in the Dáil has improved the Bill and I am pleased to commend it to the House.

Question put and agreed to.

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

**Dr. Henry:** The introduction of this Bill was an excellent initiative and a sensible decision by the Minister. There is little point in people from abroad serving sentences here or Irish people serving sentences abroad. The primary purpose of prison must be to rehabilitate prisoners in order that they can take their place in society again. It is considered much better if prisoners serve their sentences close to their abode and family in the hope that they will find some degree of stability when they leave prison, although many prison inmates come from most unstable backgrounds.

I have been asked by prisoners in other countries whether it would be possible to ensure that sentences imposed in other European jurisdictions would be more consistent. I have no expertise in this area but I ask the Minister, who will have his own views on the issue, to keep this request in mind when he meets his ministerial counterparts at European Union level. Sentencing policies vary considerably among judges, as the Minister has noted in the past, and between countries. I compliment the Minister on introducing this Bill, which will be extremely useful.

**Mr. Cummins:** I, too, commend the Minister on this eminently sensible Bill. With regard to the transfer of sentences, I sought a meeting with the Minister about three weeks ago to discuss the possibility of securing the release on humanitarian grounds of one of my constituents who was serving a sentence in prison in the United Kingdom. I was not aware of the position as regards the possibility of transfer. An official from the Department informed me that the Minister has no jurisdiction in the matter. Fortunately, however, the Department of Foreign Affairs made a helpful intervention.

The UK authorities were less than helpful in the case, which involved the transfer of a young lad whose father was dying. The person in question was eventually released to attend his father's burial but was deported rather than transferred. He had only six weeks left to serve of a 12 month sentence. I am aware that the Department of Foreign Affairs was concerned about the case. These types of issues should be raised with the British authorities, which I expected to be more helpful in cases involving humanitarian issues. It is appropriate to raise this matter during the debate on this Bill, which the Fine Gael Party fully supports. However, other jurisdictions should take humanitarian considerations, such as those I have mentioned, into account.

**Mr. J. Walsh:** I join with other Senators in complimenting the Minister. We went through the Bill thoroughly in the past and the amendments that have been made are sensible. While I am sure that judicial discretion will deal with it, I have one slight reservation in that we are probably dealing with people who have absconded from serving sentences in the past. While every

[Mr. J. Walsh.]

effort must be made to rehabilitate people, the deterrent of prison must be there as well.

Recently, I visited Germany and spoke to some people who were knowledgeable about the justice system both there and in Austria. I know the Minister is preparing to tackle the issue of anti-social behaviour, but parental responsibility needs to be exercised in this regard. I understand that in Austria parents can be imprisoned because of their failure to exercise responsibilities and duties concerning their children who behaved in an anti-social manner. We need to push the pendulum somewhat in that direction because too often a *laissez-faire* approach is taken in society with regard in particular to incorrigible, repeat offenders who commit fairly serious crimes. They can graduate from one form of crime to another. The emphasis should be on rehabilitation, but where people fail to respond to that they should be open to the full rigours of the law.

**Ms Tuffy:** I support the Bill and agree with the comments by other Senators that the operation of the legislation should be monitored. I welcome the fact that the Minister has adopted a Labour Party amendment.

I also wish to raise an issue that is indirectly related to the Bill. Other speakers have referred to the rehabilitation of offenders, along the lines of measures already introduced in the United Kingdom. I raised this matter approximately two weeks ago with the Minister of State at the Department of Justice, Equality and Law Reform, Deputy Brian Lenihan. The Labour Party had tabled a motion on young offenders and the Minister of State was supportive of the need for legislation to rehabilitate such people. He said that the Minister, Deputy McDowell, was examining the matter. While the Minister is present in the Chamber, I want to raise the issue with him. Such legislation may not be suitable for all offenders or offences.

However, some people may commit an offence, the record of which they will then carry with them for the rest of their lives. That can affect their employment prospects. Certain offenders should be given the opportunity of rehabilitation through a process that would help them to clear their record, similar to the way it has been done in the UK and other jurisdictions. I hope the Minister will do something about that as soon as possible. I have dealt with such a once-off case where it was definitely out of character for the person to have acted thus. However, that person's career possibilities are now restricted for life, unless rehabilitative legislation is enacted. The Minister should consider introducing such legislation in the near future.

**Minister for Justice, Equality and Law Reform (Mr. M. McDowell):** I thank Senators for their kind remarks and for all the work undertaken in considering this Bill at great length before it went

to Dáil Éireann. The House will note from the few amendments that were made in the Dáil that the general view in the Lower House was that all the valuable work had been done in this Chamber. Therefore, I wish to thank Senators for having done that work with me.

The Bill deals with situations where a sentenced person has fled from the sentencing state and has returned to his or her state of nationality without having served the sentence. The Bill provides that the sentencing state may request the state of nationality to enforce the sentence. As a result of this Bill, Ireland, as the sentencing State, will be in a position to request other states to enforce Irish sentences in their jurisdictions where the person is a national of that other state and has fled from Ireland without serving or completing a sentence imposed here.

The reverse will also be possible. Ireland will be able to accept requests from other states for the enforcement against Irish nationals who have fled from the sentencing state without serving a sentence imposed there. Needless to say, these arrangements can only operate with states that are also parties to international instruments, to which I have referred, and to which this Bill gives effect in Irish law.

In addition, we are providing in the Bill that these arrangements may operate only where the other state has been designated by the Minister for Foreign Affairs as a state with which we are prepared to operate these arrangements. That is a valuable safeguard. It will be seen that the arrangements under this Bill provide an alternative of kinds, in certain cases, to extradition. These arrangements are beneficial to the sentenced person insofar as they allow service of the sentence in the person's home state, nearer to family and in an environment which will generally be more favourable for that person. However, it is important to stress at the same time that it will also have the effect of ensuring the sentence is served and in that way it will ensure that justice is done.

Senator Henry raised the consistency of sentencing, which is a fraught issue. Even if one were to take the European Union as one's theatre of operations, there are radically different sentencing philosophies across the EU. I am not quite clear in my own mind that the people of Ireland would be prepared to adopt some of the approaches to, say, homicide cases that some other countries adopt in civil law. Likewise, the notion of minimum sentencing is far more common in the civil law system than in our system. We give our Judiciary a broad remit to decide sentences. The disadvantage of that approach is that consistency is difficult to extract from sentencing decisions, but the advantage is that justice is always flexible in respect of each accused person, and one case is not always treated as a precedent for another.

The balance between consistency and individuality is hard to strike. In recent times, however,

we have had plenty of examples of major controversy about whether or not a sentence was harsh. That controversy cuts both ways, but we must accord to members of the Judiciary the respect to which they are entitled under the prosecution — that is, that unless they err egregiously it is their job to decide how to sentence, just as it is our job to decide what the law should be. There must be some degree of mutual respect between the pillars of the Constitution in those kind of cases, having provided for the right of the State and the accused to appeal sentences that they consider are wrong in principle or excessively lenient, as the case may be.

Since Senator Henry raised the matter of people in custody travelling through Ireland, I do not want to be struck dumb, however out of order she was. Under our Constitution, there are only two circumstances in which they can be held in custody by any foreign power in Ireland. The first is if they are being extradited and the second is if they are sentenced persons being transferred. Those are the only two situations, so there is no possibility whatsoever for it to be lawful under Irish law for anybody to be brought by a state in some form of informal rendition. It is simply unconstitutional and is not provided for in Irish law.

**Mr. Cummins:** The Minister should tell that to Condoleezza Rice.

**An Cathaoirleach:** The debate is over.

**Mr. M. McDowell:** I have received categorical, unambiguous and absolute assurances from the diplomatic representative of the United States in Ireland that at no time — in the past, present or future — will the United States ever seek to bring a person in custody through Ireland, using any Irish airport, in contravention of our law. These are categorical and unambiguous assurances which I have received and there are no circumstances or qualifications to them. In those circumstances, unless evidence was given to me that those assurances were offered in bad faith concerning past, present and future conduct, I find that I should accept them. That is the position of the Government.

Question put and agreed to.

**Irish Medicines Board (Miscellaneous Provisions) Bill 2005: Committee Stage (Resumed).**

SECTION 6.

**Acting Chairman (Mr. U. Burke):** Amendment Nos. 14, 53 and 61 are cognate and may be discussed together by agreement.

Government amendment No. 14:

In page 7, line 42, after “by the” to insert “Council of the”.

**Minister of State at the Department of Health and Children (Mr. T. O'Malley):** Amendments Nos. 14, 53 and 61 are technical drafting amendments that clarify it is the council of the pharmaceutical society that is being referred to and not the Pharmaceutical Society of Ireland as a whole.

**Mr. Browne:** On a point of order, last week we were promised briefing notes. Perhaps I might raise in the House the fact that mine arrived at 10.45 a.m., and I received it only at 2 p.m. My point is that the briefing note is less than the substantive amendment that we were discussing last week. It does nothing to endear the Bill to the House. The Minister of State seeks co-operation, but it is very difficult to oblige when matters are so. We expressed serious concerns last week and pointed out that serious amendments were being made to the Bill. We should be treated better, and getting a one-page briefing document—

**Acting Chairman:** Is the Senator agreeing to the amendment?

**Mr. Browne:** I will agree to this amendment, but I will not do so in future.

Amendment agreed to.

Section 6, as amended, agreed to.

Section 7 deleted.

SECTION 8.

**Acting Chairman:** Amendments Nos. 15 and 16 are related and may be discussed together by agreement.

Government amendment No. 15:

In page 10, line 12, after “20015” to insert “, as amended from time to time”.

**Mr. T. O'Malley:** Amendments Nos. 15 and 16 are being made to indicate that the definitions concerned have been amended by a later directive, namely, Directive 2004/27/EC.

**Mr. Browne:** This is turning into a farce. The Labour Party spokesperson is not present, although I am sure that he will arrive presently. We have eight civil servants in the House and no proper briefing material on the Bill.

Amendment agreed to.

Government amendment No. 16:

In page 10, line 30, after “20016” to insert “, as amended from time to time”.

Amendment agreed to.

Section 8, as amended, agreed to.

#### SECTION 9.

**Acting Chairman:** Amendment No. 17 is out of order, as it involves a potential charge on the Revenue.

Amendment No. 17 not moved.

**Acting Chairman:** Amendments Nos. 18, 20 to 26, inclusive, and 31 are consequential on amendments Nos. 19, 29 and 30, and are related. Therefore, amendments Nos. 18 to 26, inclusive, 29, 30 and 31 may be discussed together by agreement.

Government amendment No. 18:

In page 11, to delete lines 34 and 35 and substitute the following:

“(iv) in paragraph (p), by substituting ‘1994,’ for ‘1994.’; and”.

**Mr. T. O’Malley:** Amendments Nos. 18 to 26, inclusive, 29, 30 and 31 are related. Amendment No. 18 corrects a drafting error. Amendments Nos. 19 to 24, inclusive, 26 and 31 relate to the renumbering of subsections. The purpose of amendment No. 25 is to insert a comma after “20018” in line 19 on page 12. It is a typographical correction. Amendments Nos. 29 and 30 are drafting or technical amendments.

**Mr. Browne:** I asked last week regarding the consequences of typographical errors. I understand that they normally arise in Bills, but there seems to be a very large number in this Bill. I did not receive an answer last week, so perhaps I might get one this week. Apart from the need to correct the text grammatically, do all these mistakes have legal consequences if the Bill is ever challenged?

**Mr. Quinn:** My amendment was No. 17, and I gather that I may have missed it by a moment or two. I did not hear it called.

**Acting Chairman:** The Senator may raise the point when we deal with the section.

**Mr. T. O’Malley:** As I said, these are merely typographical errors. Regarding what Senator Browne said about possible implications, as far as I am aware, the amendments simply clarify the text and correct typographical errors. It is necessary to do so in the Seanad, where typographical errors are addressed. I understand that it is normal procedure here. I accept the Senator’s remarks about seeking briefing documents as bona fide. I understand that some of the Senators who last week expressed their concern at the lack of briefing were telephoned by departmental officials, who offered to give every assistance to

those interested in the Bill who wished to speak on it. Did that not happen?

**Mr. Browne:** That did not happen.

Amendment agreed to.

Government amendment No. 19:

In page 11, line 36, to delete “(n)” and substitute “(p)”.

Amendment agreed to.

Government amendment No. 20:

In page 11, line 37, to delete “(o) to exercise, subject to subsection (4A)” and substitute “(q) to exercise, subject to subsection (5)”.

Amendment agreed to.

Government amendment No. 21:

In page 11, line 42, to delete “(p)” and substitute “(r)”.

Amendment agreed to.

Government amendment No. 22:

In page 11, line 47, to delete “(q)” and substitute “(s)”.

Amendment agreed to.

Government amendment No. 23:

In page 12, line 4, to delete “(r)” and substitute “(t)”.

Amendment agreed to.

Government amendment No. 24:

In page 12, line 17, to delete “(s)” and substitute “(u)”.

Amendment agreed to.

Government amendment No. 25:

In page 12, line 19, to delete “2001<sup>8</sup>” and substitute “2001<sup>8</sup>”.

**Mr. Browne:** Could we have an explanation of the amendment?

**Acting Chairman:** It has already been discussed with amendment No. 18.

**Mr. Browne:** It is unusual and I wonder if it could be explained.

**Acting Chairman:** Minister, can you comment on amendment No. 25?

**Mr. T. O'Malley:** A comma was added because a new section is being inserted.

**Mr. Browne:** Can 2001<sup>8</sup> be explained? I am puzzled as to what that means.

**Acting Chairman:** The Senator can raise that point when we discuss the section.

Amendment agreed to.

Government amendment No. 26:

In page 12, line 20, to delete “(t)” and substitute “(v)”.

Amendment agreed to.

**Acting Chairman:** Amendment No. 28 is consequential on amendment No. 27 and these amendments may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 27:

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

“(w) to exercise the powers conferred on the competent authority by Directive 2004/23/EC of 31 March 2004<sup>11</sup>.”

**Mr. T. O'Malley:** Amendment No. 27 inserts a new sub-paragraph (w), which confers an additional function on the IMB arising from Directive 2004/23/EC relating to the setting of standards of quality and safety for the donation, storage and distribution of human tissues and cells. The scope of the directive does not apply to blood and blood products, organs or *in vitro* research. Amendment No. 28 is a consequential change to the insertion of the new sub-paragraph (w).

**Dr. Henry:** Is this in accordance with the tissue directive from the European Union, which Ireland must bring in next April? Will this legislation cover that or must we bring in other legislation as well?

**Mr. T. O'Malley:** My understanding is that we have until April 2006 to transpose the directive.

**Dr. Henry:** That is right. Will this legislation cover that or will we be required to introduce additional legislation?

**Mr. T. O'Malley:** As far as I am aware, some more regulations will be necessary.

**Dr. Henry:** The United Kingdom has asked for a derogation from the tissue directive regarding human gametes. Do we propose to do that?

**Mr. T. O'Malley:** I do not believe a decision has been made on that question.

**Dr. Henry:** I thank the Minister of State.

Amendment agreed to.

Government amendment No. 28:

In page 12, line 27, to delete “(u)” and substitute “(x)”.

Amendment agreed to.

Government amendment No. 29:

In page 12, line 32, to delete “subsection (4)” and substitute “subsections (4) and (5)”.

Amendment agreed to.

Government amendment No. 30:

In page 12, line 40, to delete “(4A)” and substitute “(5)”.

Amendment agreed to.

Government amendment No. 31:

In page 12, line 41, to delete “(1)(o)” and substitute “(1)(q)”.

Amendment agreed to.

Question proposed: “That section 9, as amended, stand part of the Bill.”

**Mr. Quinn:** I thank the Minister of State for his coverage of what we are doing. I tabled amendment No. 17, which was not allowed and I have a confession to make in that regard. I knew when I was putting forward the amendment that it probably would be ruled out of order under the quaint rules by which we operate in this House. I persevered in submitting it because I got the strong impression in the debate two weeks ago that I was pushing an open door as far as the Minister and the Department were concerned. I believe strongly in this amendment and that there is a benefit to be had from it. It is my hope that the Minister will tell the House that he intends to take on board the intention of my amendment and perhaps reintroduce it on Report Stage.

Perhaps I may be allowed to recap on the case I made in the debate two weeks ago. The matter concerns the drugs doctors order and prescribe for their patients, which represent a large and growing cost of our overall health system because they are paid for by the State. Everybody, including the Minister and me, is concerned to ensure we get the best possible value for the money we spend. That is not the case currently because of the way drugs are prescribed. Very often the prescribing doctor has a choice between a well known and well advertised branded drug and a generic drug. In most cases the only significant difference between those two drugs is the cost.

[Mr. Quinn.]

The branded drug invariably costs more than the generic one and can cost a multiple of the cost of the generic drug. Ultimately, the difference is paid by the taxpayer because the amount goes into the coffers of the big drug companies.

As I pointed out two weeks ago, I am not trying to undermine the business model of the giant drug companies; they do a very useful job. I have no problem with them recouping the research costs they put into their drugs during the period the drugs are covered by the patent but when that patent protection expires, there is no reason the general public should continue paying for those drugs an amount that is vastly greater than the actual cost of producing the drugs because the patent and the research has been covered. Generics come into the picture when the patent protection expires. They do not have to carry the burden of recouping the research costs and therefore the prices at which they sold can be much closer to the cost of producing the drugs, which is much lower.

Understandably, the large drug companies do not see their revenues cut out in this way. They want to continue getting premium prices for what they have invested in but I spoke in the previous debate about their techniques for trying to ensure that happens. One is to keep making small and largely insignificant changes to the drugs they produce, which allows them to claim that the tweaked drug is new and improved but much of the time that is marketing bluff of which those of us in business are aware, as are consumers.

Another technique they use is to expose medical practitioners to a blitz of publicity pushing their wares. I am sure Senator Henry has had a great deal of experience of that in the past. That pressure is all one-sided. There is no corresponding marketing from the producers of the generic drugs because their cost structure does not allow for large spending on marketing. In fact, the whole concept of generics is that money is not spent on marketing.

Since speaking in the debate two weeks ago, I read an article in *The New York Times* on Monday of last week which spelled out in graphic detail one aspect of the marketing push in which the big drug companies indulge. According to that article, it is the practice of the drug companies in America to recruit sales representatives from the ranks of college cheerleaders. I thought that was fascinating. These are the girls who dance and wave pom-poms in front of the crowds at American football games. They encourage the team and the supporters. Apparently, the drug companies are not interested in the subject the potential sales representative studies at college. As one person quoted in the article stated:

Proven cheerleading skills suffice. Exaggerated motions, exaggerated smiles, exaggerated enthusiasm — they learn those things, and they can get people to do what they want.

That is a lovely quote worth remembering. I do not suggest that should happen in Ireland. For one reason I do not see it working but all Irish doctors will talk about the real pressure they come under from the big drug companies pushing them to use their products. The inevitable result is that we, the public, end up paying far more for many drugs than we need to pay to get the medical results we desire. In most cases it is the taxpayer who ends up paying the bill.

As the Minister readily acknowledged in the debate two week ago, we cannot force doctors to prescribe one type of drug over another. The freedom to choose a particular drug appears to be regarded as an important issue of clinical independence, which I understand. In the face of that I made a modest proposal which is encapsulated in the amendment we will now discuss. I suggested that the Irish Medicines Board keep a register of those drugs for which there is a generic equivalent and update and publish that register via the Internet to medical professionals and also to pharmacists. The register would be a considered statement by an authoritative and respected body that there is no significant therapeutic difference between those drugs other than the price. It would put into the public domain the real truth about the drugs the doctor is choosing between — the generic or the branded one. It would be an admittedly small but useful counterweight to the marketing efforts of the big drug companies, which understandably seek to preserve their revenues. Therefore, the doctor would have a readily available reference, which he or she could quickly consult if in doubt or in need of information on whether there was a generic equivalent of the particular drug about to be prescribed.

Such a register as I am proposing could be established and maintained at a tiny cost. My amendment was turned down because of its cost implications but putting this information on a website would incur a small cost compared to the large amount that could be saved if the prescribing practice of doctors could be changed. I accept we cannot do so by compulsion but it does not mean we should not take every possible step to set out the facts of the matter before the medical professionals, both doctors and pharmacists.

For these reasons I look forward to hearing the Minister of State say the Government will adopt the intention of my failed amendment and act on my suggestion. I feel strongly on this matter as I know something about generics from the grocery business. The difference is that much research has been carried out in the area of prescribed drugs. Big drug companies must be refunded for that research. The concept is that we will continue to encourage them in their research but, once a patent has expired, a doctor could identify an alternative drug deemed by an authoritative source as being as good as a highly branded drug and prescribe the generic version. It is worthy of con-

sideration. I was impressed by the Minister of State's words last week and I hope the matter will be considered.

**Dr. Henry:** I do not query the Acting Chairman's ruling on amendment No. 17 being out of order but would accepting it not have incurred a saving for the State rather than a charge? As Senator Quinn said, perhaps the Minister of State could re-examine it before Report Stage.

Speaking as a member of the medical profession, there is much pressure to continue prescribing the most heavily advertised drugs. Naturally, they are foremost in one's mind and pharmaceuticals make significant efforts irrespective of cheerleaders encouraging people to prescribe their expensive products. It is difficult to keep names in one's head.

I had an interesting experience a number of weeks ago. A Member of the House forgot his prescribed anti-inflammatory tablets and he asked me whether I could get him some. I went to a chemist and got him ten 100 mg tablets, saying they were for someone who forgot his as I was obviously not his doctor. The pharmacist asked why I had not suggested he get an alternative, which was exactly the same but came in 50 mg tablets as pharmacists were only allowed to give that amount over the counter.

It was the same product, which I had not realised. It is not something one can keep in one's head all of the time, although pharmacists are better than doctors. If a person was buying two 50 mg tablets over the counter, it would be the same as going to a doctor to get a prescription for one 100 mg tablet. It was not a question of a patent. An Internet site would be useful in order to view such information immediately.

The costs of producing drugs from basic research are extraordinarily high. The Minister of State knows that, over the past 20 years, few important drugs have been produced *de novo*. As Senator Quinn pointed out, most have been variations on themes. Changing them slightly allows drugs to stay in patent for much longer. Someone I know involved in the Global Fund wants to know why, in respect of artemisinin, the drug recently found to be suitable for malaria that has been used in China for years, we could not crush the leaves as Chinese peasants did for hundreds of years and give them to patients rather than having them made into various patented tablets. This incurs a significant cost on treating malaria as we are making matters more expensive and difficult. If one examines the costs of producing a drug, the main cost is advertising, including cheerleaders. By producing something simple, such as an Internet website, people would be able to see whether they want the tablet — expensive due to advertising — or the alternative, which is much cheaper because it is not heavily advertised.

Claims of a new improved product may be greatly exaggerated. The Minister of State knows that there have been dreadful situations where

trials on drugs have too often been multicentred, involving members of the medical and pharmaceutical professions. The results are sent back to pharmaceutical companies, for example, for reports to be extrapolated. Some years ago, Dr. Marcia Angell, a former editor of the *New England Journal of Medicine* — one of the most reputable of journals — said she would not produce articles in it anymore when those involved in the research had more than a certain amount of financial involvement in the firms. After approximately two years, she wrote an editorial stating she was removing the stipulation because she was not receiving enough papers.

This is a serious issue. The Minister of State is allowed to incur costs on the State. He would do a great service in terms of saving the State money if he could examine Senator Quinn's amendment and determine how he could frame it to ensure that those involved in the medical and pharmaceutical professions and others who will be allowed to prescribe could determine which drugs are the same and could also make price comparisons more easily.

I was not here for Committee Stage last week as I was in Barcelona with members of the Joint Committee on Health and Children to examine aspects of its health service. A significant difference is the cost of drugs to that service. This amendment would allow people to make a choice without forcing them into any type of prescription. They would have knowledge, which is what people generally want before they make decisions.

**Mr. Browne:** I rise in support of my colleagues. When it comes to health there is a certain amount of snobbery or elitism. Regardless of the Department of Health and Children, health professionals do not seem to want to give information to the public.

We are dealing with a sophisticated public. Consumers have access to the Internet and can access information if they so wish. They deserve to access information and must be aware of all of the information readily available to them. Unfortunately, when people are sick they will do anything to get better. Therefore, if we do not fill the vacuum by giving them information, unscrupulous and dubious alternative medicines will spring up, as was seen in parts of the country. We should be taking a proactive role in this matter. The amendment tabled by Senator Quinn and ruled out of order was sensible. The public should be given the information it deserves. People should make up their own minds about what does or does not work.

The main point in section 11 is the appointment of a chairperson of the advisory committee and that the person will sit on the Irish Medicines Board. If the committee was split equally on a product but it was passed on a casting vote, would this information be relayed to the board? The chairperson of the advisory committee would be

[Mr. Browne.]

present and decisions on most products would be unanimous. If, for example, one product was quite contentious and the board was split equally, would the fact that there was a split in arriving at the final decision be communicated to the board as well as the overall decision or would there be any onus on the chairperson of the advisory board to inform the Irish Medicines Board of such?

**Mr. T. O'Malley:** I thank Senators Quinn, Henry and Browne for their contributions on this matter. The Department is examining the increased use of generics as part of a wider review of all aspects of the GMS and community drugs schemes. As a first step, negotiations will shortly commence on the renegotiation of the IPHA-APMI agreement which sets the supply terms, conditions and prices of medicines supplied to the health services. As the increased use of generics will be discussed in this context, an amendment of the kind proposed would be premature. The appropriate body to have the role of formulating therapeutic substitution groups for generics has yet to be decided in the context of the present examination of all the policy, legal and administrative issues involved.

If it were decided to publish a register of generic drugs and therapeutic equivalents, it may not necessarily require legislation as it would be expected that the relevant body would make such a register publicly available and update it regularly, in line with best practice. Therefore, amendment No. 17, which was ruled out of order, is premature in the context of ongoing policy examination of the issues and I could not have accepted this proposal.

I wish to comment on a few of the issues to which the Senators referred. I thank Senator Quinn for raising the matter of generic medicines. I certainly do not disagree with anything he stated. I have always held the view that there should be far greater penetration of generics in the Irish market. Off the top of my head, there is only about 6% or 7% penetration in the Irish market compared with 26% to 30% in other European countries. There must be a rethink about the education of doctors on the use of generic medicines. I find it difficult to believe that students use the generic name in their training in the universities and in the hospitals, and then there is considerable promotion in the hospitals to get them to forget about the generic name and use the trade name.

I agree with the Senators who referred to the problems with clinical trials and research being put to the top of the agenda of the pharmaceutical industry. I have stated publicly on many occasions that I have considerable concerns about the overuse of medications in my own area of responsibility, the mental health area, which is not as clearcut as other areas like diabetes where one can measure the results of treatment. Much

work is being done internationally and many share my concerns. I do not want what I say to be misconstrued. Many of the drugs are good but I, and many others, would suggest they are being too widely used.

I note a concerted effort, promoted by the medical council, to inform doctors about drug promotions and the way in which drug companies can use promotions to influence the choice of the medical profession. Much work has been done by the medical council in the past few years in that area. I agree with all the Senators who spoke about generics. In my view, there should be far greater use of generics in Ireland. It would result in significant savings, not just for the taxpayer. One must remember that many people pay for their own medicines. I have always felt that many such people, were they better informed, would choose to use generic medicines which are the equivalent of the branded product, which is no longer under patent.

Some Senators spoke about education. I commend the Consumers Association of Ireland. For years it has been doing much useful work in supporting the greater use of generics in the Irish market and from time to time it publishes leading articles on the greater use of generics in Ireland. Some of its articles in the past few years have been very useful and informative to people who are members of the Consumers Association of Ireland.

As we are on the topic of generics, another issue of which the Senators may be aware and which is causing a problem, not alone in Ireland but all over Europe, is that many inexpensive products are going out of stock and pharmacists and doctors are encountering a major problem as a result. These are essential medications for many people. While I am not saying this is being done deliberately, unfortunately some of the drug companies are allowing situations to develop where these products go out of stock and this causes major problems for both doctors and pharmacists. Sometimes there would be an equivalent alternative. It may be worthwhile for European Health Ministers to come up with a register of these products, as Senator Quinn suggested, so that there are enough of these medicines in Europe. While some of the products concerned are inexpensive, they are essential. I am aware of several such products. Aspirin is one that went out of stock a while ago. Eltroxin-thyroxine is another. At present, cytamem and neocytamem are out of stock. These are products that have been on the market for years. There may be a necessity for the EU Health Ministers to get together to ensure there is a sufficient supply of these products to meet the needs of patients in the European Union.

I thank the Senators for raising this matter on which I have strong views. I agree totally with the points made by Senator Quinn. However, there are legal implications at which we must look and my colleague, the Tánaiste and Minister for

Health and Children, Deputy Harney, is looking at all of these in the context of upcoming discussions. I am sure that there will be quite an amount of movement in this area in 2006.

**Dr. Henry:** I support the Minister of State in what he stated at the end of his reply about a small number of people on useful drugs which have been around for a long time. What makes one a little suspicious is that price is important and these drugs are frequently very cheap. Those patients who take them are being obliged to try to make do with a much more expensive alternative. It would be most useful if the Minister of State, relying on his professional experience, raised this within the Council of Ministers. One finds people trying to get these drugs when they go abroad because they have been prescribed for them for decades and proved suitable. They could really be put under the class of orphan drugs. One must remember the important humanitarian side of the issue. If one has been on a drug for decades that has proved suitable, it is a great pity to have to make a change, especially if the person has a serious condition.

**Mr. Quinn:** I thank the Minister of State for his remarks and I thank Senators Henry and Browne for supporting me in that area. I am delighted to hear what the Minister of State said. His heart is in the right place. I hope the intention is to find a solution to the problem. I take the Minister of State's other point too, that this involves a cost not only to the taxpayer but also to the individuals who pay for their own drugs. It is a worthy objective.

**Mr. Browne:** I asked a question about the chairperson of the advisory council.

**Mr. T. O'Malley:** My understanding is that under EU directives being implemented, all decisions of public bodies such as the one the Senator mentioned are taken on a consensus basis. I do not know if it would be the intention of the IMB to publish whether a decision was made on the casting vote of the chairperson. I do not see how that would be useful. It is still a consensus if the majority agree. That is the way in which all committees operate. That is my understanding of the matter raised by the Senator.

**Mr. Glynn:** Lest it be construed that I disagree with my colleagues on the other side of the House, I do not. I agree with them. I was delighted to hear what the Minister of State had to say. I remember an extremely lively debate on this issue when the association of health boards was in operation. As this took place quite some time ago, the issue is not unusual. I am delighted it will be brought centre stage and that 2006

might be the year in which some sanity is brought to the subject. A serious cost issue arises in this regard and one does not need to be a rocket scientist to work out what it is. It has been noted correctly that generic drugs and those other drugs with trade names, whatever one wishes to call them, perform the same function. Why, in most cases, are people obliged to opt for the most expensive variety, since they are the same? Variety may not be an appropriate word to use.

I am delighted by the Minister of State's comments. I know that he has difficulties and I appreciate that there are likely to be legal implications which must be teased out. We should proceed with a degree of caution and should not sacrifice accuracy for speed. While this has been going on for a long time, it is never too late to do the right thing. I am sure that sanity will have been introduced in this respect by the end of 2006.

**Mr. T. O'Malley:** As far as generic drugs are concerned, I may have omitted to discuss the issue regarding items going out of stock. The Senator is correct that such items may be out of stock for quite some time. Frequently, one company is taken over by another and, unfortunately, when a given product comes back into stock, it can cost approximately ten times the original price of the inexpensive product that went out of stock. We can all use our own judgment as to whether that is by accident or by manipulation.

**Dr. Henry:** Yes.

**Mr. T. O'Malley:** I omitted to answer a question from Senator Browne concerning the small figure "8". It was a reference to the EU's *Official Journal*, where the directive has been published. The full reference may be found at the bottom of page 12 of the published Bill.

Question put and agreed to.

Sections 10 and 11 agreed to.

#### NEW SECTION.

Government amendment No. 32:

In page 13, before section 12, to insert the following new section:

"12.—Section 9 of the Irish Medicines Board Act 1995 is amended—

(a) by substituting the following for subsection (8):

'(8) The Board shall not refuse to grant a licence or authorisation in respect of—

(a) a medicinal product or class of medicinal products, or

(b) the manufacture or wholesale of a medicinal product or class of medicinal products, on any ground relating to the safety, quality or efficacy of the medicinal product or class of medicinal products, as the case may be, unless the Board has requested the advice of the appropriate committee in relation thereto and considered the advice given pursuant to the request.’, and

(b) by inserting the following after subsection (9):

‘(10) In subsections (8) and (9), any reference to a medicinal product includes a reference to a medicinal product for animal use.’”.

**Acting Chairman:** Acceptance of this amendment involves the deletion of section 12.

**Mr. T. O’Malley:** It has always been the case that whenever the Irish Medicines Board proposes to refuse the grant of an authorisation or licence in respect of a medicinal product, either human or veterinary, it must consult with the appropriate independent expert scientific advisory committee. This consultation is only mandatory where the refusal is on grounds relating to safety, quality or efficacy of a medicinal product. At present, there are two independent scientific expert committees to which referrals in such circumstances are required. These are the advisory committee on human medicines and the advisory committee on veterinary medicines. The reason for requiring a referral in such matters is to ensure that any such refusal is justified on the basis of appropriate independent expert scientific advice.

The current amendment is being made with a view to extending the same facility to applicants for manufacturing and wholesaling licences, when refusals are based on quality, safety or efficacy. At present, there are three independent expert advisory committees. The third such committee is the one which advises on medicinal devices. All of these committees operate on an ongoing basis to advise the board with regard to its evaluation of applications made to the board and on matters relating to pharmacovigilance. They act on a consultative basis.

Amendment agreed to.

Section 12 deleted.

Section 13 agreed to.

#### SECTION 14.

**Acting Chairman:** Amendments Nos. 33 to 37, inclusive, 43 to 46, inclusive, and 49 are related and may be taken together by agreement.

Government amendment No. 33:

In page 15, to delete lines 3 and 4 and substitute the following:

“(ii) in paragraph (a)—

(I) by inserting ‘administration,’ after ‘supply,’ and

(II) by inserting ‘, or the device or devices,’ after ‘the product or products’,”.

**Mr. T. O’Malley:** In amendment No. 33, the substitution of lines three and four on page 15 arises from the need to make it clear that the Minister has power under subsection 2(a) of section 32 of the Irish Medicines Board Act 1995 to make regulations in respect of the administration of medicinal products. For that purpose the word “administration” is being inserted into section 32(2)(a) of the 1995 Act.

Amendment No. 34 is a minor restatement of the original text in the Bill in order to make its intention more clear. Amendment No. 35 is a renumbering of a reference to subsection 10, which now becomes subsection 9 as a result of subsequent amendments. Amendment No. 36 is a technical amendment to replace a reference to subsections 8 and 11 with a reference to subsection 10, which is the subject of later amendments.

Amendment No. 37 is being introduced to provide an assurance that any prohibition on the administration of medicinal products that may be introduced would not impinge on the professional role of practitioners in treating patients under their care. In amendment No. 43, the deletion of these four lines is consequential to the amendment to paragraph (k) in amendment No. 37. Amendments Nos. 44 to 46, inclusive, and 49 arise as a consequence of the amendment to paragraph (k) in amendment 37.

Amendment agreed to.

Government amendment No. 34:

In page 15, to delete lines 17 and 18 and substitute the following:

“(III) by substituting ‘or products or such device or devices which is or are’ for ‘which is’.”.

Amendment agreed to.

Government amendment No. 35:

In page 16, line 4, to delete ‘subsection (10)’ and substitute ‘subsection (9)’.

Amendment agreed to.

Government amendment No. 36:

In page 16, line 14, to delete 'subsections (8) and (11)' and substitute 'subsection (10)'.

Amendment agreed to.

Government amendment No. 37:

In page 16, line 18, after 'except' to insert 'by a member of a relevant profession in his or her capacity as such member, or'.

Amendment agreed to.

Government amendment No. 38:

In page 16, between lines 29 and 30, to insert the following:

“(l) subject to subsection (11) and without prejudice to the generality of any regulations made under paragraph (k), the prohibition of the sale or other supply of a medicinal product, or class of medicinal products, specified in the regulations except—

(i) pursuant to a prescription issued by a member of a relevant profession in his or her capacity as such member,

(ii) pursuant to a prescription issued by a registered nurse—

(I) who—

(A) is specified in the regulations as being a registered nurse who may, or

(B) belongs to a class of registered nurses specified in the regulations as being a class of registered nurses any member of which may, issue a prescription in relation to the medicinal product, or class of medicinal products, as the case may be, concerned, and

(II) in accordance with such conditions, if any, as are specified in the regulations in relation thereto,

or

(iii) by such person, in or for such emergency circumstances and in accordance with such conditions, if any, as are specified in the regulations in relation thereto,

(m) the regulation and control of medicinal products that are subject to classification under Article 70 of Directive 2001/83/EC of 6 November 2001 and, in particular, in the case of such a medicinal product the classification of which is a medicinal product not subject to medical prescription, the prohibition of the sale or other supply of the medicinal product except—

(i) by a person lawfully keeping open shop for the dispensing or compounding of medical prescriptions in accordance with the Pharmacy Acts 1875 to 1977 and in accordance with such conditions, if any, as are specified in the regulations in relation thereto, or

(ii) subject to subsection (12), by a person other than a person referred to in subparagraph (i) and in accordance with such conditions, if any, as are specified in the regulations in relation thereto.”.

**Mr. Browne:** I intend to call for a division on this amendment. This is not because I disagree with it, but to express my annoyance at the manner in which the Seanad is being treated. This is a major amendment under discussion today, and while Members were promised a briefing note, we were not briefed properly. I am concerned because this is a quite substantive amendment. The explanation provided last week by the Minister was laughable and no Member understood it. I am sure the Minister would not have done so either, had he been listening to it rather than reading it from a script. I am sure he also found it confusing.

This is not the way to pass legislation. There is an onus on Members to scrutinise proposed legislation to the best of our ability. It is virtually impossible to do so in respect of this Bill. Its amendments are longer than the Bill itself. When one considers the typographical errors in the Bill, one is struck that it was published first and written afterwards. The habit of publishing legislation and then making substantive changes afterwards appears to have become a trait of the Government. I understand the Criminal Justice Bill has more than 200 pages of amendments. I am grateful that I am not justice spokesperson, as I thought that health was bad enough.

This is not the way to do business in a democracy. In principle, Fine Gael have no problem with the idea of nurses being allowed to prescribe. We welcome it and have suggested it in the past. However, on a point of principle, I intend to call a division on this amendment. Had I so wished, I could have called divisions in respect of all the amendments proposed today. I did not do so, as I did not wish to waste the House's time. However, I am putting this down as a marker. If this ever happens again while I am spokesperson on health, I will call divisions for all amendments. Moreover, I will call for walk-through divisions. The Seanad should not be treated with the contempt shown to it today. It is regrettable that the Government has acted in this way, by producing such substantive amendments after the publication of the Bill. It makes the job of Opposition Members to scrutinise legislation

[Mr. Browne.]

virtually impossible. That scrutiny is not in our interest but in the interest of the general public. There is also growing commercialisation of the pharmacy sector so it is vital that we do all in our power to ensure the public gets the product it deserves and which is appropriate.

**Dr. Henry:** Like Senator Browne, I support the amendment. I would not have agreed to go on the visit to Barcelona if I had known nurse prescribing was being included in this Bill. I only discovered it from one sentence in the Minister's speech on Second Stage. In fact, I might have missed it only a friend of mine, who is a nurse, told me it would arise in this Bill. She was better informed about the legislation being introduced than me, and I am a Member of the House. I am sure there is a good reason for that but I do not like the minimising of this change in powers to prescribe being brought forward in what seems a casual way because of the unfortunate way it is perceived by the public.

One member of the public who I thought would have been a little more thoughtful about these matters said to me: "Why should nurses not prescribe? Why should they not be able to give you four to six antibiotics if that is what you want?" I would much prefer they were giving morphine to terminally-ill patients, which is the type of area where such involvement will really be needed, rather than the general public thinking that the regulations regarding prescribing will become loose. It will not become loose under this legislation. However, the impression is being given that there was little discussion by Members about the philosophy behind it. The reasons for allowing nurse prescribing are extremely good. It was recommended a long time ago in Ms Justice Carroll's report on the nursing profession.

However, like Senator Browne, I am concerned that this came into the Bill quite unexpectedly. It was not in the Bill as drafted and I nearly missed the reference to it in the Minister's speech on Second Stage. Now we are faced with a considerable amount of legislation being introduced as amendments to an important Bill.

**Ms Tuffy:** I missed the previous discussion on this provision. Obviously, it was introduced for inclusion in this Bill in response to the recommendations in a report. However, it should have been dealt with in a separate Bill which could also have dealt with other issues relating to nurses or this provision. I agree with the points made by the other Senators. When something comes up the Government has a tendency to deal with it by including it in whatever legislation is going through the Houses that relates to it. Obviously this provision is related to the legislation before

us but it could be suitably dealt with in a short Bill.

The Bill deals with things such as the definition of practitioners. How do nurses fit into those definitions? Are they now included in them or will that be dealt with separately? If they are acquiring this new role will training requirements for nurses be included in the regulations? Why is there only provision for emergency circumstances? It would be better if there was a straightforward power to prescribe that is not limited to particular circumstances but relates to particular medicines and certain types of nurses. I welcome the provision but I hope the Minister of State can answer my questions.

**Mr. Minihan:** I am sorry I was not available to speak on Second Stage but I wish to comment on this amendment. I am perturbed about the omission of pharmacists. I should declare an interest in that I own a pharmacy. I am not a qualified pharmacist but I have worked in a pharmacy and I am aware that the Minister of State is a pharmacist. Nevertheless, I have a certain amount of expertise about the role of a pharmacist and how pharmacists operate.

Under legislation that is due to be enacted in spring 2006 in Northern Ireland and the UK, pharmacists will be able to prescribe in Northern Ireland. In the Border counties it might be more attractive for a patient to seek prescription drugs across the Border but this will give rise to jurisdiction, accountancy and records problems if that patient were subsequently to become ill and be hospitalised. I am seriously concerned that we will not have any access to the records and will not know what has been prescribed. This leaves us exposed in an important area of control and regulation.

I am not suggesting that because the UK introduces legislation we should necessarily follow suit. At present, pharmacists prescribe over the counter controlled medicines but it is a major omission in the Bill that we have not given serious consideration to the principle of pharmacists being allowed to prescribe in certain categories. Has any consideration been given by the Department to broadening the legislation, either now or on a later Stage, not only to include nurses and veterinary surgeons but also pharmacists?

**Mr. T. O'Malley:** We had a fair amount of discussion last week about nurses prescribing. Nurses work as part of a multidisciplinary team and it is anticipated that only a small number of nurses will be involved in independent prescribing. It will be in the context of their work with the multidisciplinary team. Examples are nurse-led services such as minor injury units, chronic disease management, such as asthma or diabetes, or specialist nurses in palliative care. In time,

nurses in the community and nurses involved in care of the elderly could also be involved in independent prescribing in limited circumstances, such as antibiotics for minor infections and so forth.

As I said last week, there will be full consultation with all stakeholders. A detailed review of this Bill was published by An Bord Altranais for the benefit of nurses. This is enabling legislation and the details will follow after consultation. This is the correct legislative way as it covers the supply and administration of medication.

With regard to the role of pharmacists in prescribing, this was discussed and ruled out for this Bill. I accept Senator Minihan's comments that pharmacists, in their own right, would have a claim to prescribe. There will be problems when the legislation is enacted in the UK, particularly for Border counties. If pharmacists in the UK have powers to prescribe certain medications and pharmacists in the Republic do not, it will be a problem for pharmacists in the Border counties. We will examine this again. It could result in

further legislation but there is no provision to introduce it in this legislation.

**Dr. Henry:** Given the proposals for direct entry into midwifery, will this legislation cover midwives?

**Mr. T. O'Malley:** The parameters regarding which nurses it will apply to have not been set out. That will follow consultation with the nursing profession. It could cover midwives as a specialty but that will be set out in regulation.

**Mr. Glynn:** I support this amendment. I also support Senator Minihan's comments, which make sense. I know a number of pharmacists who are excellent people and I hope this will be enabling legislation to provide for the necessary regulation in the future, if required, to complement, augment or introduce Senator Minihan's suggestion. I have always believed professionals such as nurses are an under-used resource. This is a belated recognition of their training, talents and expertise in a given area. I wish to emphasise "in a given area".

Amendment put.

The Committee divided: Tá, 27; Níl, 15.

Tá

Brady, Cyprian.  
Brennan, Michael.  
Callanan, Peter.  
Daly, Brendan.  
Dooley, Timmy.  
Feeney, Geraldine.  
Fitzgerald, Liam.  
Glynn, Camillus.  
Hanafin, John.  
Kenneally, Brendan.  
Kett, Tony.  
Kitt, Michael P.  
Leyden, Terry.  
MacSharry, Marc.

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

Níl

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

Finucane, Michael.  
Hayes, Brian.  
Henry, Mary.  
McDowell, Derek.  
McHugh, Joe.  
Quinn, Fergal.  
Ross, Shane.

Tellers: Tá, Senators Minihan and Moylan; Níl, Senators Browne and Cummins.

Amendment declared carried.

**Acting Chairman (Mr. Brady):** Amendments Nos. 39 to 42, inclusive, are related and may be discussed together by agreement.

Government amendment No. 39:

In page 16, line 30, to delete "(l)" and substitute "(n)" without prejudice to the generality of

section 3(1) of the European Communities Act 1972,".

**Mr. T. O'Malley:** This amendment is one of a number made necessary by the judgment of the Supreme Court in the case of Vincent Browne v. the Attorney General and others, where powers are being created which would enable the implementation of Acts of the European Communities,

[Mr. T. O'Malley.]

such as directives and regulations, by means of secondary legislation. This amendment, taken with other related amendments which follow immediately, will enable appropriate implementation of EU obligations in this country, where medicinal products for human use, medical devices and cosmetic products are concerned.

Amendment No. 40 is a consequential renumbering of the paragraphs following an earlier insertion. Amendment No. 41 substitutes two new subsections for sections 32(3) and 32(4) of the Irish Medicines Board Act 1995. The new section 32(3) provides for the introduction of such incidental, supplementary and consequential provisions as may be necessary for the implementation of Acts of the European Communities relating to medicinal products. As is standard in such implementation, it is being provided that existing laws, including Acts, may be appropriately amended. The new section 32(4) converts to convenient euro amounts the financial penalties established in the Irish Medicines Board Act 1995.

Amendment No. 42 is a technical drafting amendment arising from amendment No. 41.

**Mr. Browne:** I will raise a general point which I always put forward on legislation. Why is the amount of money imposed in fines not index linked? In a few years the fines stipulated in this legislation will be completely out of date. I receive the same answer on this issue from different Ministers that the Attorney General is not in favour of it. However, it would make sense in making legislation to put in place index-linked fines.

Fireworks legislation is an example, as the maximum fine for possession of fireworks is currently £5. This shows how out of date legislation can become, although it is an extreme case. We should index link all monetary fines in new legislation.

**Mr. T. O'Malley:** I thank Senator Browne for raising this matter. The Attorney General and the Government have decided that it would be a matter for the Oireachtas to change the penalty amounts. If fines were index linked, it may make it more difficult for the Oireachtas to change the amount at a later time. This is why fines are not currently index linked.

Amendment agreed to.

Government amendment No. 40:

In page 16, line 34, to delete “(m)” and substitute “(o)”.

Amendment agreed to.

Government amendment No. 41:

In page 16, between lines 37 and 38, to insert the following:

“(b) by substituting the following for subsections (3) and (4):

‘(3) Without prejudice to the generality of subsection (2)(o), regulations under subsection (2)(n) 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).

(4) A person who contravenes a regulation under this section shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding €2,000 or imprisonment for a term not exceeding one year or both,

(b) on conviction on indictment—

(i) in the case of a first offence, to a fine not exceeding €120,000 or imprisonment for a term not exceeding 10 years or both,

(ii) in the case of any subsequent offence, to a fine not exceeding €300,000 or imprisonment for a term not exceeding 10 years or both.’”.

Amendment agreed to.

Government amendment No. 42:

In page 16, line 38, to delete “(b)” and substitute “(c)”.

Amendment agreed to.

Government amendment No. 43:

In page 16, to delete lines 47 and 48 and in page 17, to delete lines 1 and 2.

Amendment agreed to.

Government amendment No. 44:

In page 17, line 3, to delete “(9) Subject to subsection (12)” and substitute “(8) Subject to subsection (13)”.

Amendment agreed to.

Government amendment No. 45:

In page 17, line 17, to delete “(10)” and substitute “(9)”.

Amendment agreed to.

Government amendment No. 46:

In page 17, line 25, to delete “(11)” and substitute “(10)”.

Amendment agreed to.

Government amendment No. 47:

In page 17, between lines 35 and 36, to insert the following:

“(11) The Minister shall only make regulations under this section to provide for a prohibition and exception to the prohibition referred to in subsection (2)(l) if the Minister, after having had regard to the nature and purpose of the medicinal product, or class of medicinal products, concerned (including any deleterious effects which may arise from the misuse thereof), is satisfied that the prohibition and exception to the prohibition is in the best interests of the persons to whom the medicinal product, or class of medicinal products, as the case may be, is usually administered.

(12) The Minister shall only make regulations under this section to provide for the exception referred to in subsection (2)(m)(ii) if the Minister, after having had regard to the nature and purpose of the medicinal product concerned (including any deleterious effects which may arise from the misuse thereof), is satisfied that it is reasonably safe to permit the medicinal product to be sold or otherwise supplied by a person other than a person referred to in subsection (2)(m)(i).”.

Amendment agreed to.

Government amendment No. 48:

In page 17, line 36, to delete “(12)” and substitute “(13)”.

Amendment agreed to.

Government amendment No. 49:

In page 17, line 38, to delete “subsection (9)” and substitute “subsection (8)”.

Amendment agreed to.

Government amendment No. 50:

In page 17, line 44, to delete “service.” and substitute “service.”.

Amendment agreed to.

Government amendment No. 51:

In page 17, between lines 44 and 45, to insert the following:

“(14) In this section, ‘relevant profession’ means—

(a) for the purposes of subsection (2)(k), any profession a member of which may, before the commencement of this subsection, and in his or her capacity as such member, have lawfully administered a medicinal product,

(b) for the purposes of subsection (2)(l), any profession a member of which may, before the commencement of this subsection, and in his or her capacity as such member, have lawfully issued a prescription for a medicinal product.”.

Amendment agreed to.

Section 14, as amended, agreed to.

#### SECTION 15.

**Acting Chairman:** Amendments Nos. 52 to 58, inclusive, and amendment No. 62 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 52:

In page 17, to delete lines 49 and 50 and substitute the following:

“ ‘authorised officer’ means—

(a) a person appointed under section 32B(1) to be an authorised officer, or

(b) an officer of customs and excise;”.

**Mr. T. O’Malley:** Amendment No. 52 extends the definition of authorised officer to include officers of the Customs and Excise. This is an important extension in view of the amount of medicinal products passing through our ports, which are supervised by officers of the Customs and Excise. It will increase the effectiveness of their surveillance, particularly with regard to areas of counterfeit medicines and the importation of prescription medicines, often sourced via the Internet, for uses other than those under medical supervision.

Amendment No. 54 excludes officers of the Customs and Excise from having to produce warrants for inspection under this provision. Customs officers have their own authority under their own legislation which sufficiently identifies them for that purpose.

Amendments Nos. 55 and 56 are technical amendments which permit the addition of further paragraphs to subsection 3 of new section 32(b)(3) of the Irish Medicines Board Act.

Amendment No. 57 proposes the insertion of three new paragraphs — (l), (m) and (n) — into

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section 32B(3) of the Irish Medicines Board Act. These new paragraphs are necessary for the appropriate enforcement of provisions of any regulations that may be made under the Act. Paragraph (l) enables the inspection of data within the meaning of the Data Protection Acts 1988 and 2003. Under this power, it is likely that the examination of medical prescriptions will be necessary and will include the names of identifiable individuals.

The new paragraph (m) requires a person having authority to do so to break open any container or open any vending machine to permit inspections as required. The new paragraph (n) requires persons making facilities such as post office boxes, telecommunications or electronic mail addresses to render assistance and provide information as may be required for the enforcement of the provision of regulations made under the Act.

Amendment No. 58 is a consequential amendment that is necessitated by the insertion of the new paragraphs — (l) (m) and (n) — in subsection 3. Amendment No. 62 is a technical correction of the text where the original reference should have referred to subsection 8 rather than subsection 9.

**Dr. Henry:** With regard to amendment No. 52, will a person appointed under section 32B(1) as an authorised officer have the same powers as officers of the Customs and Excise? They will both be called authorised officers but will they have the same powers?

**Mr. T. O'Malley:** They will have the same powers under this Bill.

**Mr. Browne:** We had an interesting discussion last week about the sale of drugs over the Internet. Senator Ryan made a comment about boosting his love life. As I understand it, if a company in Ireland sends spam e-mail, it is breaking the law and can be prosecuted. However, the majority of spam e-mail comes from abroad. It has been stated that the Bahamas, where we have no jurisdiction, is the main source of such spam. I understand that spam e-mail has been outlawed in the US and companies can be immediately shut down if they send spam e-mails. Could the Minister of State clarify matters regarding the sale of medicines over the Internet?

Will the impending decision on the prescribing of drugs by pharmacists in Northern Ireland have any implications here for people who travel north to purchase drugs and bring them back over the Border for their personal use?

**Mr. T. O'Malley:** I will not comment on Senator Ryan's love life as he is not here. The purchase of medicines over the Internet is an

international problem. Many of these companies, which possibly operate in the US and the Bahamas, move constantly and it is very difficult to locate and bring charges against them.

This matter was first brought to my attention by Stephen McMahon of the Irish Patients Association and others. Since last week, I have received correspondence from the Irish Patients Association, which has devoted a considerable amount of work to the issue and which expects to present a report to my Department in the near future.

My Department has held discussions with the association, the Revenue Commissioners and people with expertise in IT. It is a very difficult issue which countries larger than Ireland have failed to control and I can give no guarantees as to how successful we will be. We are working with the Irish Medicines Board and the Customs and Excise to ensure that vulnerable people are not abused and will not be able to gain access to illicit products or products of doubtful origin. People who purchase medicines over the Internet often receive products which are completely different. The problem lies in the fact that the area is unregulated.

There will be no problem with members of the public buying medicines prescribed by pharmacists in Northern Ireland and bringing them back over the Border. Pharmacists would be upholding the legislation under any regulations drafted by the UK Government. It could force people from this country to go to Northern Ireland to procure drugs which they might have been able to buy here if legislation allowing pharmacists to prescribe medicines was introduced. However, I see no problem with the safety or efficacy of the drugs prescribed.

**Mr. Browne:** If a person purchases an antibiotic, which must be prescribed by a doctor in this country, from a pharmacist in Northern Ireland and brings it over the Border, he or she is, strictly speaking, illegally importing a drug into this country. According to our laws, he or she should have gone to a doctor for a prescription. When people are sick they are desperate and will do anything to get better. Some, unfortunately, are taken in by the numerous spam messages in their e-mail, offering medicine for sale. What is the position if someone receives such mail offering to ship drugs? Are the packages stopped or do they come through undetected?

This also raises the issue of protecting people's private property and legitimate business. Some of these tablets can be posted in small containers making it difficult for a customs officer to distinguish which package to inspect. I would not envy him or her that job. How can the requirement to ensure a person's safety be balanced with

that person's right to privacy when receiving goods from abroad?

**Mr. T. O'Malley:** I do not see it as a problem for people to procure medicine legally in other countries. I would hate to see people get excited about it. Ryanair would have major problems if the luggage of every passenger on every flight was to be inspected to see whether they procured medication legally abroad. The same would be true of Aer Lingus and all other operators bringing in tourists.

The point about a member of the public buying an antibiotic from a pharmacist in the North of Ireland is a bad example. There has been some discussion but no agreement on what products could be bought in the future. We are discussing a hypothetical example. Antibiotics are a bad example because we know that the legitimate prescription of antibiotics by medical practitioners has created significant resistance to bacteria.

I would hate to see another avenue by which wholesale or widespread unnecessary use of antibiotics was made possible. The medical profession, and others who study this matter, understand there is widespread abuse and overuse of antibiotics. The Government would not like it to become too easy to procure antibiotics. This caused serious problems in veterinary medicine, resulting in European legislation.

The issue regarding pharmacists is a legitimate concern for the public and will arise. If those living near the Border can obtain medicines in a pharmacy in the North which cannot be obtained in the South that puts the pharmacist in the South at a disadvantage. The customer is also disadvantaged because he or she would not want to pay €40 or €50 for a doctor's prescription for a drug which can be obtained legally in a pharmacy two miles up the road.

**Mr. Glynn:** I would not like to see antibiotics become freely available. Too many people take antibiotics too often without due regard to the preceding tests. For example, in the case of a throat infection, a throat swab should be taken, or for a urinary tract infection a sample should be sent to the laboratory. People could take antibiotics that are of no use for their condition. That has been proved time and again. I could cite numerous examples if the Senators had time to listen. I would not like to see antibiotics generally available. They should be controlled in some way.

**Dr. Henry:** I support the Minister of State and Senators Glynn and Browne. It is very unfortunate that the overuse and abuse of antibiotics has not come to the fore in the debate on methicillin resistant staphylococcus aureus, MRSA. We need to highlight that point not only for the prescribing

professions but for the general public because the points made in this debate are not being raised in the debate on MRSA.

**Mr. Browne:** That is my point. In a recent debate on MRSA at the Oireachtas Joint Committee on Health and Children the main issue was the over-prescription of, and over-reliance on, antibiotics. When people do not finish courses of antibiotics they build up more resistance later. This is a major factor in the MRSA epidemic.

The Government Members say they would not like to see this happening. That does not answer my question. I asked what happens if I am on a regular course of tablets, such as warfarin — I am not sure whether that is expensive — that requires me to go to the doctor to get a prescription every few months, but realise I can go to a pharmacy in Northern Ireland to stock up on my tablets? That may save me money but there is a danger that I might become over-reliant, and other medical issues arise.

Fireworks provide an example of this point. Strictly speaking they are not allowed in the Republic yet we all know that is a farce. Senator Brady knows that better than anyone else, having seen them in Dublin's inner city. They were also very bad in Carlow town. Although they are prohibited here, the sky was lit up like Baghdad for the past two months. Fireworks are legal in the North and many came from there. We might have a similar case now in respect of prescribed drugs being available in the North, which raises other issues.

To repeat my question on the drugs bought on the Internet, how does the Government protect the individual from getting what the Minister of State described as bogus drugs in some cases, while at the same time respecting the privacy of people receiving packages from abroad? How does a customs officer differentiate them, especially given that tablets can be hidden in tiny packages and so might not be as obvious as other items?

**Mr. T. O'Malley:** I covered that question when I said earlier that this is a complex area. Senator Browne is correct in saying that many of these items would be small and come through the post in ordinary envelopes. The Irish Medicines Board does a great deal of work in collaboration with customs officers and there have been some seizures of drugs.

**Mr. Browne:** That is only the tip of the iceberg.

**Mr. T. O'Malley:** I agree but it is an extremely difficult matter that has confounded not only Ireland but also causes major problems around the world. We are in discussions with all the stakeholders in this area and are considering the situation in regard to counterfeits. Some of the

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major pharmaceutical companies are having a problem with counterfeit drugs coming in. In that case the public does not receive what it thought it had bought.

If the Senator has any suggestions on this issue there is a committee studying it with all the relevant stakeholders.

Amendment agreed to.

Government amendment No. 53:

In page 18, line 35, after “the” to insert “Council of the”.

Amendment agreed to.

Government amendment No. 54:

In page 19, line 10, after “officer” to insert “(other than an authorised officer who is an officer of customs and excise)”.

Amendment agreed to.

**Acting Chairman:** There is a correction to amendment No. 55. This amendment should read “to delete “or” where it secondly occurs”.

Government amendment No. 55:

In page 20, line 50, to delete “or” where it secondly occurs.

Amendment agreed to.

Government amendment No. 56:

In page 20, line 56, to delete “analysis.” and substitute “analysis,”.

Amendment agreed to.

Government amendment No. 57:

In page 20, after line 56, to insert the following:

“(l) inspect and copy or extract information from any data within the meaning of the Data Protection Acts 1988 and 2003,

(m) require a person, having authority to do so, to break open any container or package, or to open any vending machine, or to permit him or her to do so, as he or she may reasonably require for the purposes of his or her functions under this Act, or

(n) require a person, who makes available facilities such as post office boxes, telecommunications or electronic mail address or other like facilities, to give him or her such assistance and information as he or she may reasonably require for the purposes of his or

her functions under this Act in any case where the officer has reasonable grounds for believing that any relevant thing is being supplied by mail.”.

Amendment agreed to.

Government amendment No. 58:

In page 21, line 41, to delete “(k)” and substitute “(n)”.

Amendment agreed to.

Amendment No. 59 not moved.

Government amendment No. 60:

In page 23, line 48, to delete “to 1936”.

Amendment agreed to.

Government amendment No. 61:

In page 24, line 5, after “the” to insert “Council of the”.

Amendment agreed to.

Section 15, as amended, agreed to.

Sections 16 to 18, inclusive, agreed to.

Section 19 deleted.

Sections 20 to 22, inclusive, agreed to.

#### SECTION 23.

Government amendment No. 62:

In page 28, line 47, to delete “subsection (9)” and substitute “subsection (8)”.

Amendment agreed to.

Section 23, as amended, agreed to.

Section 24 deleted.

#### NEW SECTIONS.

**Acting Chairman:** Amendment No. 68 is consequential on amendment No. 63 and both may be discussed together by agreement.

Government amendment No. 63:

In page 29, before section 25 and Part 5, to insert the following new section:

#### “PART 5

#### AMENDMENT OF HEALTH ACTS 1947 TO 2005

25. — Section 54 of the Health Act 1947 (as amended by the European Communities (Health Act 1947 Amendment of Sections 54 and 61) Regulations 1991 (S.I. No. 333 of 1991)) is repealed and the following substituted:

‘54. — (1) The Minister may, after consultation with the Minister for Enterprise, Trade and Employment and the Minister for Agriculture and Food, make regulations providing for—

(a) the prevention of danger to the public health arising from the manufacture, preparation, importation, storage, distribution or exposure for sale of food intended for sale for human consumption,

(b) the prevention of contamination of food intended for sale for human consumption,

(c) the prohibition and prevention of the sale or offering or keeping for sale of—

(i) articles of food intended for human consumption,

(ii) living animals intended for such food,

(iii) materials or articles used or intended for use in the preparation or manufacture of such food, which are diseased, contaminated or otherwise unfit for human consumption,

(d) the protection of consumer interests (including regulations requiring persons operating in the retail, restaurant or catering sectors to provide information on the country of origin of meat sold or otherwise supplied to consumers where, in the opinion of the Minister, such information is not already adequately provided under national or EU legislation),

(e) without prejudice to the generality of section 3(1) of the European Communities Act 1972, giving effect to acts of the institutions of the European Communities relating to the official control of foodstuffs for the protection of health.

(2) Regulations made under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purpose of the regulations (including, in the case of regulations made under subsection (1)(e), regulations repealing, amending or applying, with or without modifications, other law, exclusive of this Act).

(3) A person who has gained access to information by virtue of inspections made in

the enforcement of regulations made under this section shall not disclose such information unless it is necessary to do so for the purpose of the enforcement of the regulations.

(4) A person who, on or after the commencement of this section, contravenes a regulation made under this section, or contravenes subsection (3), shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or both.

(5) A person guilty of an offence under subsection (4) shall, on each day on which the contravention to which that offence relates is continued by the person after having been convicted of that offence, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €500 or to imprisonment for a term not exceeding one month or both.

(6) Regulations made under the repealed section and in force immediately before the commencement of this section shall be deemed to be made under this section and may be amended or revoked accordingly.

(7) In this section — ‘protection of consumer interests’ includes all measures for the prohibition or prevention of the processing, storage, transport, distribution, trading or selling to the prejudice of the consumer of any food which is not of the nature, substance or quality demanded by the consumer; ‘repealed section’ means section 54 of this Act as in force immediately before the commencement of this section.’.”

**Mr. T. O'Malley:** Amendment No. 63 is an amendment to section 54 of the Health Act 1947 which deals with regulations for the prevention of danger from food and drink. This new section is being inserted to allow for the making of regulations to extend the beef labelling regulations that exist at retail level under EU legislation. This is a requirement for information on the country of origin of beef to be provided to the consumer at the point of choice by establishments in the restaurant and catering sectors. These regulations will be made following consultations with the Minister for Agriculture and Food and will also be subject to EU approval.

The aim of the regulations is to ensure the consumer is properly informed while reinforcing the themes of quality and choice. The amendment will allow for the subsequent extension of the requirement to provide country of origin information on other meats such as poultry, pig and sheep meat. It is anticipated this initiative will

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commence at retail level and progress for all three meats to the restaurant and catering sectors in the same way as is planned for beef. However, this is not a straightforward matter and would involve considerable complexities. Such an extension would also require EU approval. The opportunity has been taken in the amendments to this section to increase the maximum fines for breaches of regulations made under section 54 of the Health Act 1947, including those on meat labelling, to €5,000 on summary conviction to bring them into line with current values.

Amendment No. 68 will amend the Long Title to include the Health Acts 1947 and 1970 and the Health (Amendment) Act 1994. The original Long Title referred to the Irish Medicines Board Act 1995, the Misuse of Drugs Act 1977 and 1984 and the Clinical Trials Act 1987.

**Dr. Henry:** I support the amendment because it is a good idea. Some people have strong views on the origin of meat, in particular. After a certain length of time, exported Irish beef herds acquire another nationality. Six weeks in a field in northern Italy can do much for one. Will bringing in these regulations cause any reciprocal troubles with other countries to which we export beef?

**Mr. Browne:** While I am not a smoker, if I was, I would feel hard done by. The fine for smoking in a public place is approximately €3,000. However, the fines in this amendment are only €500. We seem to heavily penalise smokers but go lightly on offenders in other areas of health. Is the smoking fine too high or are the fines in this case too low? Someone who is involved in endangering someone's health should be dealt with far more harshly than an individual who has a cigarette.

**Mr. T. O'Malley:** When cattle are exported, they retain their tags and are traceable, therefore, there will be no problems. The first fine in the amendment is €5,000 and €500 on each subsequent day after that.

Amendment agreed to.

Government amendment No. 64:

In page 29, before section 25 and Part 5, to insert the following new section:

“26.—Section 59(2) of the Health Act 1970 is amended by inserting, ‘or on the prescription of a registered nurse (being a person whose name is entered in the register of nurses maintained under section 27 of the Nurses Act 1985) entitled pursuant to any enactment to prescribe the drugs, medicines or medical or surgical appliances so obtained, ‘after practitioner.’”.

Amendment agreed to.

**Acting Chairman:** Amendment No. 67 is related to amendment No. 65 and they may be discussed together by agreement.

Government amendment No. 65:

In page 29, before section 25 and Part 5, to insert the following new section:

“27.—Section 66 of the Health Act 1970 is amended by substituting the following for subsections (2), (3) and (4):

(2) The Health Service Executive shall make available without charge a health examination and treatment service for pupils who attend any primary school or who are taught at home.

(3) The Health Service Executive may, by notice given to a school manager, or governing body of a school, require the school manager or governing body, as the case may be, to provide reasonable facilities for an examination under this section.

(4) A school manager or governing body given a notice under subsection (3) shall comply with the notice.”.

**Mr. T. O'Malley:** This amendment relates to section 66 of the Health Act 1970. It makes provision for dental, ophthalmic and aural health examinations for children. Under the current section 66 of the Health Act 1970, these examinations are confined to children of five years and under or children who attend national primary schools. There is also provision for primary schools which are not registered with the Department of Education and Science to apply to the Health Service Executive to have such examinations carried out in their schools.

Under the ongoing review of eligibility issues, it has been identified that children attending private primary schools and home-taught children are not eligible to receive these health examinations. It has been decided to address the anomaly whereby some children are not eligible to these important developmental tests. The amendment proposed to section 66 of the Health Act 1970 will provide for all primary school or home-taught children to be eligible for dental, ophthalmic and aural health examinations.

With regard to amendment No. 67, the Health (Amendment) Act 1994 is related to section 66 of the Health Act 1970 in that it provides for free dental services for certain children. Similar to section 66 of the Health Act 1970, the services provided for under section 1 of the Health (Amendment) Act 1994 are limited to those who have attended national primary schools. It is intended to deal with this further anomaly whereby certain children are excluded from eligi-

bility to these free dental services. Under this proposed amendment children attending primary school or who are home-taught will be eligible for these dental services.

**Mr. Browne:** While I welcome this initiative, is it possible to extend the scheme to post-primary schoolchildren? Children would normally get orthodontic work done after they have left primary school. However, a problem appears to arise with regard to children aged between 14 and 16 years, even those who hold a medical card. This group falls between two stools as it is not covered for the costs of orthodontics. While I am not certain of the exact ages, I understand those aged between 14 and 16 years do not qualify for orthodontic work. I will forward details to the Minister of State if he wishes. Will he extend the scheme to include this group of children, particularly those who hold a medical card, given that teenagers often need orthodontic work? The Bill offers a great opportunity to make the necessary changes.

**Mr. T. O'Malley:** The Bill does not provide such an opportunity. I understand any defects detected in primary school will be treated up to the age of 16 years. I agree with the Senator on the general position of orthodontics, which I understand has been the subject of two reports produced by the Joint Committee on Health and Children. There is a great deal of dissatisfaction with the orthodontic service, particularly in areas which once had excellent services. For reasons I do not propose to discuss in detail, the services in question were sabotaged, as it were, and certain actions had an effect on them. I am aware that these services are being examined with a view to reinstating the services in place a few years ago because at that time excellent work was being done in orthodontics in certain former health board areas. For example, waiting lists in some of them, which were once short, have increased significantly.

The orthodontic service as a whole needs to be examined. The Tánaiste and Minister for Health and Children, Deputy Harney, and I would be obliged if the Joint Committee on Health and Children were to produce further recommendations. While orthodontic treatment is not a question of life and death, it is very important for the children involved and their parents.

**Mr. Browne:** Two issues arise in this regard. Some parents experience major difficulties obtaining an appointment to see an orthodontist and, once they obtain an appointment, they find they are liable to pay considerable amounts of money for the treatment, in some cases amounting to thousands of euro. In addition, medical

card holders are not covered. This anomaly needs to be addressed.

**Mr. T. O'Malley:** I have commented sufficiently on the issue.

**Mr. Glynn:** The Oireachtas Joint Committee on Health and Children, of which Senator Browne is a member, has deliberated on orthodontics and published a report on the issue. Certain parts of the country are experiencing difficulties with orthodontic services. In the midlands, the area in which I live, an excellent orthodontist whose name I shall not mention has virtually eliminated waiting lists in three or four counties. The Minister of State has expressed concern regarding the orthodontic service and acknowledged that the Bill does not provide a facility to address the concerns outlined by Senator Browne. Perhaps in the fullness of time he will examine the issue to ascertain what can be done.

Amendment put and declared carried.

Government amendment No. 66:

In page 29, before section 25 and Part 5, to insert the following new section:

“28.—Section 67 of the Health Act 1970 is amended—

(a) in subsection (1), by deleting ‘and persons with limited eligibility’,

(b) in subsection (3), by substituting ‘Charges’ for ‘Save as provided for under subsection (4), charges,’ and

(c) by deleting subsection (4).”.

**Mr. T. O'Malley:** As part of the ongoing review of eligibility to health services, my officials have identified a possible difficulty with regard to the current section 67 of the Health Act 1970. Section 67 provides for eligibility for dental, ophthalmic and aural services. It appears that one reading of the section would appear to indicate that everyone in the country might be eligible to receive these services free of charge. It appears, however, that this was not the intention of the Oireachtas at the time this section of the Act was commenced in 1972. At that time a statutory instrument was adopted which limited the application of section 67 to medical card holders and provision of these services has been limited to medical card holders since that time. My Department sought the advice of the Attorney General on this matter. His advice was that section 67 of the Health Act 1970 should be amended to provide legal clarity with regard to the issue of eligibility to dental, ophthalmic and aural services. The proposed amendment will provide such legal clarity.

**Mr. Browne:** I am astonished by the Minister of State's explanation. Does this mean people are legally entitled to free dental care, although this was not the intention in the original legislation? Is this a rehash of the recent episode involving nursing home charges when the relevant legislation was found to be faulty, with the result that nursing home charges must be fully repaid? Do we have another nursing home scandal on our hands, this time in the area of orthodontics?

**Mr. T. O'Malley:** The two cases are not the same. It is better to take this type of approach in modern legislation to ensure complete clarity. This is the case with regard to all new legislation which will supersede existing legislation. The purpose of the amendment is to ensure clarity.

**Dr. Henry:** I am disappointed by the amendment. This is an odd place to insert the proposed section.

Amendment put and declared carried.

Government amendment No. 67:

In page 29, before section 25 and Part 5, to insert the following new section:

29.—Section 1(1) of the Health (Amendment) Act 1994 is amended by substituting 'any primary Health school or who are taught at home, and who' for 'national school or a school standing specified in an order under section 66(3) of the Health Act, 1970, and'.

Amendment agreed to.

Sections 25 to 35, inclusive, agreed to.

#### TITLE.

Government amendment No. 68:

In page 5, line 11, after "1987;" to insert "TO AMEND THE HEALTH ACTS 1947 TO 2005;".

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

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

**Mr. Glynn:** Next Thursday, subject to the agreement of the Whips.

Report Stage ordered for Thursday, 8 December 2005.

**An Leas-Chathaoirleach:** When is it proposed to sit again?

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

#### Adjournment Matters.

#### Social Welfare Benefits.

**Mr. Bannon:** I thank the Minister of State for attending the House to take this important and, indeed, sad motion on the Adjournment. I am bringing this matter before the House to highlight the need for the Minister for Social and Family Affairs to clarify the position concerning his Department's refusal to grant an orphan's contributory allowance or supplementary welfare allowance to the grandparents — whose names I have supplied — of two young children whose mother died tragically last year. The children's father, from whom their mother was divorced, has remarried and has a new family, leaving the children to all extents and purposes orphaned and in the care of their grandparents.

While not technically orphaned, the two young children who are the subject of this motion are, for all practical purposes, without parents and have been left in the care of their grandparents who are doing a wonderful job in caring for them on limited resources. The children lost their mother tragically last year. Prior to her death, she had been divorced from their father who subsequently remarried and has a new family of his own in the United Kingdom. The children's grandparents retired to Ireland four years ago, having worked and paid contributions in the UK for over 45 years. The grandmother subsequently took up part-time employment here to help finance their retirement. On 6 July 2004, their daughter died leaving two young sons aged eight and 13 years. The children asked to remain in Longford with their grandparents, continuing their education there, and the grandparents were given custody of the children. Their father agreed to pay a small amount for their keep on a monthly basis. At this stage the grandmother had to give up her job to care for the children.

The couple applied for State assistance in the form of an orphan's contributory allowance or a supplementary welfare allowance, but were refused both. These allowances are not universal, but rather selective payments and that is the nub of the matter. In assessing this case, it is important to consider its circumstances, which are outside the norm. However, special measures must be applied to the unusual situation in which this couple find themselves. I am asking the Minister of State to put aside the norms of interpretation and to consider this individual case, conscious of its unique circumstances. This couple

are providing a family upbringing for their grandchildren who are, for different reasons, deprived of the care of both parents. Children have far-reaching needs which all parents, whether natural or not, struggle to provide. This couple are doing their best, but they do need financial assistance.

It is undoubtedly difficult for any couple to be left with the care of two young children. How much more difficult it must be for an elderly couple — the grandparents concerned are coming up to 70 years of age — no matter how willing, to have their lives totally changed and demands made on their finances without recourse to any State assistance. We do not come across such cases too often, but the State should be in a position to provide some assistance to grandparents who are left in this situation. The children concerned wish to attend school in Ireland, but their grandparents have been left with no financial assistance to provide for their upkeep. I ask the Minister of State to examine this unique situation so that some assistance can be provided for the children's care, maintenance and schooling.

**Minister of State at the Department of Health and Children (Mr. T. O'Malley):** I thank Senator Bannon for raising this matter on the Adjournment. I am taking this matter on behalf of my colleague, the Minister for Social and Family Affairs, Deputy Brennan.

The orphan's contributory allowance and orphan's non-contributory pension are paid by the Department of Social and Family Affairs and provide income maintenance in respect of certain dependent children, subject to satisfying the scheme qualifying conditions.

For the purposes of the orphans' schemes, a child may be regarded as an orphan where both parents are deceased or where one parent is deceased and the other parent has abandoned and failed to provide for the children. In the case in question, an application for an orphan's payment was received on 10 August 2004 from the maternal grandparents of two children who reside in Ireland. It appears that the grandparents were granted legal guardianship of the children following the death of their mother in 2004. The parents of the children had already divorced and the father, who resides in the United Kingdom, continues financially to support his two children in respect of whom an orphan's payment is sought.

In these circumstances, their father cannot be considered to have abandoned and failed to provide for them, as he is paying maintenance of €434.16 per month. Therefore, it is considered that an orphan's payment is not appropriate in the circumstances outlined. The persons concerned were informed of this decision by a deciding officer on 17 September 2004. They were also informed that they could appeal this decision by writing to the Chief Appeals Officer, Social Wel-

fare Appeals Office, D'Olier House, Dublin 2, within 21 days. An appeal was subsequently lodged by the persons concerned on 24 September 2004 and an oral appeal was held on 26 January 2005.

In considering the particular case, the appeals officer stated that the legislation specifically defines the circumstances in which a child can be regarded as an orphan. The appeals officer concluded that as the father of the children is paying maintenance in respect of his children, it cannot be held that he has failed to provide for his children and therefore they cannot be deemed to be orphans for the purpose of the scheme. The persons concerned were informed of this decision in writing on 14 February 2005.

The objective of the supplementary welfare allowance scheme, which is administered by the Health Service Executive, is to provide assistance to an eligible person whose means are insufficient to meet his or her basic needs and those of his or her dependants. With the exception of those participating in approved schemes, such as back-to-work or community employment, people engaged in full-time remunerative employment are excluded in legislation from receipt of supplementary welfare allowance.

The midland region of the Health Service Executive was contacted and has advised in this case that the conditions for receipt of supplementary welfare allowance are not satisfied, as the persons concerned are in employment.

The back-to-school clothing and footwear allowance scheme assists persons in receipt of certain payments when children start school each autumn. The scheme operates from the beginning of June to the end of September each year and is administered on behalf of the Department by the Health Service Executive. The persons concerned received a payment of €200 from the Health Service Executive in August 2005 towards the cost of clothing and footwear, as the claimant was not working at that time and was in receipt of a qualifying payment.

If the family circumstances have changed since August 2005, the persons in question should contact the community welfare officer in the local Health Service Executive area and if they wish to proceed with an application for supplementary welfare allowance, a review of their circumstances can then be carried out in order to determine the amount of assistance, if any, that is payable under the terms of the scheme.

**Mr. Bannon:** This is a special situation. Their father lives in the UK, and it is important that children of eight and 13 keep in contact with him. Whatever he pays goes towards air fares for them to travel to and from the UK during every school break and the costs of staying there. They must pay to stay in a small hotel, since he is in a new

[Mr. Bannon.]

relationship and has a very small apartment in London that cannot provide shelter for them when they are there. The allowance that they receive from him is minimal, being less than €50 per week. It is very hard for grandparents to rear two young children on their pensions. Perhaps the Minister of State might re-examine the situation or ask the Minister for Social and Family Affairs, Deputy Brennan, to do so. Perhaps an extraordinary payment might be arranged for people who find themselves in this situation.

**Mr. T. O'Malley:** The matter has been adequately dealt with.

### Health Services.

**Mr. McDowell:** I thank the Leas-Chathaoirleach and Cathaoirleach for allowing me to raise this matter on the Adjournment, which relates to sexually transmitted infections, or STIs. I tabled it because it has come to my attention that there are real difficulties and problems for people in Dublin seeking to access testing for STIs.

The Minister of State, being at the responsible Department, will probably know that there has been a steady but considerable increase in the number of STIs reported in Ireland since 1994 that cumulatively constitutes 173%. That refers in particular to such infections as chlamydia and syphilis. The former presents particular difficulties, in that for many women it is asymptomatic; to put it in plain language, one does not know that one has it. It can have very serious implications for later fertility.

We must considerably improve current facilities for testing. As matters stand, there are two or perhaps three public STI clinics in Dublin, St. James's Hospital, the Mater Hospital and, I understand, the former Baggot Street Hospital. If one goes to the walk-in clinics in St. James's Hospital or the Mater Hospital, one takes a ticket on a "first come, first served" basis. There is every chance that one may not be seen on the day that one attends, given the considerable demand for the service provided. If one wishes to make an appointment in advance, I understand that one can wait weeks or even months before one gets a suitable one. It is not a satisfactory state of affairs.

I have contacted GPs known to me, and they seem unsure regarding the extent to which testing is available from GP clinics. The GPs can administer the test and send off the sample to a testing laboratory. In any event, it is clear that it is quite costly, ranging in price from €80 to €150. The service that we provide for people who are in many cases quite distressed and worried is inadequate and does not meet the need.

Of course, people have a responsibility for their own sexual health, but we must be of assistance to them, and in many cases they are very young. There was undoubtedly a peak in awareness in the 1980s and early 1990s, when public information campaigns centred on HIV and AIDS. Awareness of STIs generally, including HIV and AIDS, has diminished very considerably since. There is a clear need for the HSE to undertake a further campaign of awareness that will bring to people's attention the dangers not just of HIV but of the other diseases that I mentioned.

As the Minister of State will be aware, there are several campaigns run through the HSE and the former health boards. There is a national AIDS strategy, a national crisis pregnancy strategy, and a youth as a resource strategy, among others. However, there seems to be no overarching strategy or campaign to get across to young people the need to be aware of the danger of STIs and take whatever measures necessary — principally, safe sex — to ensure that they do not become infected.

We must examine radical measures such as increasing the availability of condoms and providing them free in places where young people congregate to get it across to them that there is a need to take measures to ensure safe sex. The typical cost of condoms purchased in a pub is approximately €4 for two, which strikes me as exploitative. It was one of the worst examples of rounding up following the introduction of the euro. We should try to encourage the owners of pubs and clubs to provide condoms for free where young people congregate in large numbers rather than charging such clearly exploitative prices. My primary thrust this evening is the availability of testing and I look forward to the Minister of State's response.

**Mr. T. O'Malley:** I wish to thank the Senator for raising this matter and giving me the opportunity to explain the position regarding initiatives to tackle the problem of rising rates of STIs. Since the mid 1990s, all countries in the EU have experienced significant and sustained increases in the incidence of STIs. The Health Protection Surveillance Centre, HPSC, of the Health Service Executive, which is responsible for the collection of data regarding HIV-AIDS and STIs, recently published annual figures for STIs for 2004 and annual figures for HIV-AIDS for the first half of 2005.

The number of cases of STIs notified each year in Ireland has been increasing in recent years, with the cumulative rate per 100,000 population for all notifiable STIs rising to just over 270 in 2004, compared with just over 240 in 2003. In the first half of 2005, there were 148 newly diagnosed HIV infections, which roughly equates to one new diagnosis of HIV each day in Ireland and

brings the cumulative number of HIV infections reported for all years up to the end of June 2005 to 3,912.

In 2000, the Department, through the auspices of the National AIDS Strategy Committee, NASC, published the AIDS Strategy 2000: The Report of the National AIDS Strategy Committee. The report makes a range of recommendations for dealing with HIV-AIDS and other sexually transmitted infections. The Department, through the NASC and its sub-committees on education and prevention, surveillance and care and management, is working to implement those recommendations.

The National Health Promotion Strategy 2000-2005 states that sexuality is an integral part of being human, and healthy sexual relationships can contribute to an overall sense of well-being. A strategic aim of the strategy is, "to promote safer sexual health and safer sexual practices among the population", and is intended to complement the 2000 report of the National Aids Strategy Committee.

Regarding sexual health promotion, three key dimensions are identifiable: the development and promotion of sexual health and relationships within the framework of personal and social skill development; HIV and STI education and prevention; and crisis and teenage pregnancy prevention. The development of policy, strategy and programmes for all the above should be informed by relevant research and best practice.

With regard to the promotion and development of sexual health and the prevention of STIs among young people, it is recognised and proven that the development of services to meet the specific and unique needs of young people is an essential element of the work. The first Irish survey of sexual knowledge, attitudes and behaviour has been commissioned by my Department and the Crisis Pregnancy Agency to ensure that the development of policy and practice is based on a sound evidence and research base. The survey is currently at a well-developed stage and is being conducted by a consortium led by the ESRI and the Royal College of Surgeons of Ireland. The results will be available in 2006 and will significantly inform the development of strategy in the future.

Several regions within the HSE have significantly progressed strategies and programmes in this area, with dedicated human and financial resources allocated. The health promotion unit of the Department of

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Health and Children has provided finance for the development and implementation of much of that activity. Partnerships between statutory and voluntary NGOs to improve sexual health and promote safer sexual practices are common at a national and local level. Population group-specific work is resourced for particular high risk groups such as young people working in

prostitution, gay men, intravenous drug users and the homeless.

The development and promotion of sexual health and relationships within the framework of personal and social development is a cornerstone of much of the STI prevention work. In the school setting the Department of Health and Children is working in partnership with the Department of Education and Science and the Health Service Executive to support schools in the introduction and delivery of social, personal and health education at both primary and post-primary level. Relationships and sexuality education is an integral part of this curriculum and remains a key priority for this work with schools.

Out of the school setting the health promotion unit of the Department works in partnership with the youth affairs section of the Department of Education and Science and the National Youth Council of Ireland to implement the national youth health programme. The aim of the programme is to provide a broad-based, flexible health promotion-education support and training service to youth organisations and to all those working with young people in the non-formal education sector. Within the context of this programme, a new training initiative entitled Sense and Sexuality was launched in recent weeks and is offered to youth workers to provide a policy for addressing the issues of relationships, sexuality and sexual health with young people.

Specific HIV and STI education and prevention programmes are also in place, such as a national public awareness advertising campaign to promote sexual health, which is aimed at men and women in the 18 to 35 age group, to increase awareness about safer sex and sexually transmitted infections. The overall goal is to increase safe sex practices, reducing the incidence of STI transmission and unwanted pregnancies among young people in Ireland. The campaign runs in third level colleges, places of entertainment such as pubs, clubs and discos, youth venues and some health centres. This national programme has been running for several years and a new and revised campaign is currently being implemented by the health promotion unit, which has greatly increased the number of venues targeted.

The health promotion unit also produces a range of awareness raising leaflets on STIs and safe sex practices. These are available through health promotion departments in each Health Service Executive area together with condoms, which are available free of charge through HSE clinics to people at risk through drug misuse and those who are HIV positive.

As the Senator will be aware, there is a comprehensive range of programmes in place aimed at tackling the increase in STIs through sexual health awareness promotion, and I am confident

[Mr. T. O'Malley.]

that the actions undertaken will have a positive impact on the sexual health of the population.

**Mr. McDowell:** I thank the Minister of State for his comprehensive response. I appreciate the matter I raised was fairly comprehensive but I ask

him and his Department to examine the whole issue of the availability, cost and accessibility of testing because real problems exist, certainly in the Dublin area, with which I am familiar, in accessing tests.

The Seanad adjourned at 6.05 p.m. until 10.30 a.m. on Wednesday, 7 December 2005.