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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Wednesday, 31 *May* 2006.

SEANAD ÉIREANN

Dé Céadaoin, 31 *Bealtaine* 2006.
Wednesday, 31 *May* 2006.

Chuaigh an Leas-Chathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Business of Seanad.

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

> The need for the Tánaiste and Minister for Health and Children to indicate the timeframe for the permanent appointment to Letterkenny General Hospital of a consultant breast surgeon, the roll-out of breast screening to all parts of the country and the timeframe for the approved 70 extra beds at Letterkenny General Hospital.

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

> The need for the Minister for Finance to take urgent action to alleviate the serious financial loss incurred by farmers in the Shannon River basin of County Offaly due to the serious flooding of their farm lands.

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

> The need for the Minister for Justice, Equality and Law Reform to outline the Garda manpower figures for Carlow town.

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.

Mr. Dardis: The Order of Business is Nos. 1, 2, 3 and 23, motion 22. No. 1 is a referral motion, to be taken without debate, whereby the subject matter of No. 14 on today's Order Paper is being referred to the Joint Committee on Justice, Equality, Defence and Women's Rights for consideration. It is primarily a judicial arrangement whereby the judicial authority in a state requested to execute an arrest warrant would recognise a warrant issued by the judicial authority in Norway or Iceland. This information was inadvertently given yesterday to the House in respect of the motion back from committee which was passed by the House.

No. 2, Employment Permits Bill 2005 — Committee Stage, to be taken on the conclusion of the Order of Business and to conclude not later than 2.30 p.m.; No. 3, National Economic and Social Development Office Bill 2002 — Committee and Remaining Stages to be taken at 3.30 p.m. and to conclude not later than 5 p.m.; and No. 23, motion 22, to be taken from 5 p.m. until 7 p.m. There will be a sos from 2.30 p.m. to 3.30 p.m.

Mr. B. Hayes: I am duty bound to oppose today's Order of Business given the Leader's commitment on yesterday's Order of Business that a debate would be provided for today on the implications of last week's Supreme Court decision. It would be wrong of this House to go about its business today without providing an hour or two for such a debate. We would prefer to have a debate with the Minister for Justice, Equality and Law Reform but if that is not possible we will debate the matter ourselves.

Mr. Coghlan: Hear, hear.

Mr. B. Hayes: All sides of the House share this view. Since yesterday's High Court decision the blame game has started. It is extraordinary that the Minister for Justice, Equality and Law Reform was blissfully unaware of the Supreme Court case pending in last week's list. I find it difficult to believe that the Minister, who was a leading criminal lawyer, was for a time Attorney General and has sat at the Cabinet table for the past seven years, was unaware that this case was coming up, despite, as he admitted yesterday, the existence of channels of communication between the Director of Public Prosecutions, his office and the Office of the Attorney General.

The Minister has significant questions to answer about the Government's handling of this case. Those questions and answers need to be aired in this House. The Minister needs to show some leadership on this issue and tell people he knows what he knows, as he famously said of himself. He has characterised himself as the great "I am" of Irish politics. It is time for him to be frank with this House and the other House and tell us why such a major decision, that had implications for many cases before the courts was not brought to his attention and that of his Department at an earlier stage.

Let us not forget that the Minister told Pat Kenny on the radio last Thursday that there is no gaping black hole in the legislation. That changed yesterday afternoon. He needs to come to the House today to explain himself.

Mr. O'Toole: In line with what I said yesterday when I seconded Senator Brian Hayes's proposal, I agreed to its withdrawal on the basis that the Leader would do her utmost to get a debate on the issue today. She has failed to do that. I accept

[Mr. O'Toole.]

that she said she would try her best, however, she did not succeed.

I wish to be clear on this without playing politics. It would be seriously irresponsible and an abrogation of our responsibility as public representatives to leave the House today without having a discussion on this issue. I agree with Senator Brian Hayes that we have the debate in our gift. Even if there is no Minister available, I want to go on the record and I am certain people on the Government side of the House feel as strongly about the issue as Members on this side. It is only fair to have a debate to allow our constituents see that we know what is going on and that we are connected enough to their concerns to at least put our views on the record.

Yesterday, I asked for three things. I asked the Government to outline its plan on this issue so that we can at least answer the question as to what will happen next. I also asked about closing the loophole and about the age of consent. It is even more difficult today to see our way through from where we are now. I called yesterday for immediate legislation to close the loophole and suggested we wait for a time before dealing with the age of consent. As I am not a legal mind I do not know now whether the constitutional appeal being lodged by the DPP, the Government or the governor of Mountjoy Prison, impacts on the situation or on whether we should bring forward the legislation to close the loophole. However, I want to hear the case one way or the other.

The crucial issue is that ordinary people want to know who is affected. I cannot answer that question. I know there are six people in prison who are clearly affected to some extent, but I do not know whether they can simply take their case to court and walk free. Is it possible for the State to bring alternative charges and if it does, is there an issue of double jeopardy? People need to know the answers to these questions. Where cases are currently being investigated, what charges are available to the DPP? Can he bring forward charges of serious sexual assault that attract the same incarceration penalty as the charge of statutory rape? Can the old charge of rape, as opposed to statutory rape, be brought? I want to know the answers to these questions.

Also, if cases are currently due before the court on particular charges, can those charges be changed now to reflect the new circumstances? With regard to the Supreme Court decision, what date of implementation are we tied to? Are we tied to the date of the Constitution or are we tied to the date the law was enacted by us? If the law enacted by us is wiped from the Statute Book, does that mean amendments to it which changed previous legislation are also wiped and that the previous legislation stands?

I have exceeded my time, but I want to make the case for a debate on the issue. I do not want the debate now, but I want it today. I think I am making the case on behalf of all Members of the House. I spoke to Members on the Government side last night and they are dismayed by what is going on. We are answerable to the people and must be able to answer their questions. I demand some opportunity to put our views forward today. If the Government chooses not to send in somebody to talk to us, we can interpret that as we like. I want to go on the record on the issue. All Members are entitled to do the same so that they can show afterwards where they stood on the issue and what proposals they made. We can then measure or benchmark ourselves against that.

Mr. Ryan: I would not disagree with a word Senator O'Toole has said, except to add that while it is extremely important that the Minister for Justice, Equality and Law Reform should come to the House to explain the situation, it is more important that something be done immediately to protect our children. It is important to separate the issue of the protection of our children from the more complicated issue of the age of consent.

It is for that reason the Labour Party has published a Bill to deal specifically with the issue raised by the Supreme Court. As leader of my group I would have the right to introduce that Bill, but even if I signed it today, under Standing Orders it would not appear on the Order Paper until next week. The situation is that we could not deal with it for a fortnight. Therefore, I propose an amendment to the Order of Business to the effect that notwithstanding anything in Standing Orders, leave be hereby given to immediately introduce a Bill entitled Sexual Offences (Age of Consent) (Temporary Provisions) Bill 2006, and that the aforesaid Bill be debated in Seanad Éireann at the conclusion of all other business today.

It is important that the people, who are extremely concerned about this issue, know the level of sexual predatory behaviour commonplace in the country. They are aware of the vulnerability of children and want action immediately. I and other Members were summoned back from summer holidays on one occasion to bail out a well-known businessman.

Ms O'Meara: A beef baron.

Mr. Ryan: I was here too when amendments to the Offences against the State Act were rushed through both Houses in hours because an individual was suspected of having hot money. I do not understand why the limited amending legislation to deal specifically with the issue raised by the Supreme Court could not have been passed through the Houses of the Oireachtas by now. Therefore, I appeal to the Government to take the unusual step and allow the Labour Party to publish its Bill today and debate it tonight so that if no other solution emerges, it can go to the Dáil and be passed tomorrow.

Mr. Leyden: First, we must ensure that the Judiciary is independent. Second, I understand Government lawyers lodged an appeal to the Supreme Court with regard to the Mr. A case and requested the judge not to release Mr. A until the appeal was heard. Therefore, it has taken very quick action——

Mr. B. Hayes: On a point of order, it is proper and right that this House would debate decisions of the Supreme Court. It is the only court of interpretation in the land.

Mr. Leyden: It is likely both Houses will be recalled next week to deal with emergency legislation. The Government has taken whatever action it could take in the circumstances.

I wish to make a request to the Leader of the House. This is the 100th anniversary of the death of Michael Davitt, the great founder of the Land League from County Mayo.

Mr. Ryan: The Senator should be ashamed to mention his name.

Mr. Leyden: In the circumstances, I call for a debate on the ninth progress report on private property produced by the All-Party Committee on the Constitution chaired by Senator O'Donovan. It would be appropriate to discuss this at this time, the 100th anniversary of the death of Michael Davitt and 160 years since his birth in Straide, County Mayo. This important report deals with private property and its use. I ask that the Minister for the Environment, Heritage and Local Government come to the House to outline what progress has been made on the implementation of the report. The Planning and Development (Strategic Infrastructure) Bill, which arose from the report, is now progressing through the Houses. That is good, but the question of the use and cost of private property and housing should be addressed in the context of the ninth report. I understand a constitutional amendment will not be required.

The "Prime Time" programme of 29 May referred to a legal shambles. As long as solicitors are allowed to police themselves the public will suffer. I take exception to a document I received from the Law Society with regard to my Private Members' Bill, the Registration of Wills Bill 2005. The document stated that the Society is concerned that my Bill may become law. The Bill will introduce restrictions on the abuse of the system operated by solicitors with the support of the Law Society. The society is trying to impede the work of the Oireachtas by opposing the Bill on a number of grounds, including its practical implementation.

An Leas-Chathaoirleach: Does the Senator seek a debate?

Mr. Leyden: I want Committee and Remaining Stages of the Bill, which the Law Society wants withdrawn, to be debated. The Law Society is suggesting there is an infringement of certain legal principles. The only infringement is that they will have to comply with a regulation of this House to ensure that wills are properly registered and implemented. It is the unanimous wish of this House that the wills Bill should be passed.

Mr. Feighan: The Government has the numbers to vote it through.

Mr. Leyden: I resent the actions of the Law Society of Ireland in trying to thwart the democratic rights of this House. I intend to ensure, with the support of my colleagues, that the Bill is finalised. The matters which were exposed on "Prime Time Investigates" on Monday night were scandalous.

An Leas-Cheann Comhairle: Senator, you have made your point.

Mr. Leyden: Some people from the Senator's own county were implicated in that programme as well.

Ms Terry: I support Senators Brian Hayes and Ryan in calling for this important issue to be debated in this House today. We are all extremely concerned about the ramifications of the recent court judgments for the young people of this country. When I listened to the radio yesterday afternoon and this morning, I sensed the concern, anger and fear of parents and the other law-abiding citizens of this State. They are angry that their legislators — all of us here, especially the Minister for Justice, Equality and Law Reform — allowed this to happen. We need to have faith in ourselves as legislators. In particular, we need to have faith in the Minister, Deputy McDowell, who always seems to claim to have knowledge of everything but has let us down in this instance. The Government has let the people of this country down by failing to foresee what was about to happen on foot of the Supreme Court decision last week. We now know that it should have been aware of the problems which existed. One has to question whether it was aware of them but decided instead to bury its head in the sand. I fully support those who have called on the Minister for Justice, Equality and Law Reform to come to this House this afternoon to outline exactly how we arrived at this stage, to state whether it is possible to try to alleviate the problems we face today and to explain how the children of this country will be protected.

Dr. Mansergh: Farming is still an important activity in this country. Our public service broadcaster should be asked, if necessary, to make sure that an adequate farming news service is supplied not only to farmers but also to those who depend

[Dr. Mansergh.]

downstream on farming activity in any way. There are several business news items in every news bulletin. It is not too much to ask that there should be one item of farming news in at least one bulletin.

Mr. Cummins: There would not be much good news.

Mr. Norris: I support my colleagues who have called for an urgent debate on the implications of last week's Supreme Court decision and yesterday's decision in the Mr. A case. The man involved has admitted and acknowledged that he fed drink to a 12 year old girl before violating her. The State has failed to protect the young girl in question, who has said she is in fear as a result of the release of this man. We have known about this problem since the publication of a Law Reform Commission report 16 years ago. I wonder whether this is yet another example of the Government using the commission as a long-fingering device.

Mr. Ryan: Hear, hear.

Mr. Norris: I wonder whether the members of the Government read the reports of the Law Reform Commission. If so, do they act on them? They seem to do so in a pathetically small number of cases. If what I read in the newspapers is correct, it seems, with the greatest respect to the Supreme Court, that there is a little degree of timidity in that court. It could have struck down one section of the legislation and left the rest of it intact, but it indicated that it did not want to engage in something akin to legislation. I understand that and I understand the separation of powers, but a more important principle is at stake. Under the Constitution, individuals have the right to go to court to get justice, but the girl in the A case did not get justice. It would be a mistake, however, to think we can use a sticking plaster solution to resolve this difficulty. I will support Senator Ryan's excellent attempt to cure the situation through legislation. I am sure most Senators, including those on the Government side, will do likewise, at least in principle.

We cannot just leave it there, however, because some important, difficult and complex issues need to be faced. I raised the question of a principle of consent in this House a number of years ago. When an age of consent is nakedly instituted in legislation, there will be people who will be caught. There is a case on record of a teenage youth who was sent to jail for having a consensual sexual relationship with a girl who was slightly younger then him. We need to ask questions about such a case. For example, we should re-examine the question of a principle of consent even though this may be a difficult area. When I made this argument previously, some of the more scurrilous elements of the media suggested that I was supporting paedophilia, which I was not doing. I was trying to find a way of protecting the rights and well-being of young people. As legislators, it is our responsibility to face this difficult issue with a certain amount of moral courage. This kind of problem gives everyone a chance to score points but it would be a mistake to do so. I do not think this should be a partisan issue.

Senators: Hear, hear.

Mr. Norris: I do not think the media should engage in the kind of commentary I heard this morning, when a responsible broadcaster read what was described as a very important comment, which was "we are being governed by a crowd of eejits in Leinster House". That is not responsible commentary, in my opinion. We should examine the issues in a calm manner, not in the interests of political advantage but in the interests of the welfare of the citizens of this State, particularly its young people and children.

Senators: Hear, hear.

Mr. J. Walsh: I fully concur with almost everything Senator Norris said about this matter, which involves some complex legal issues. There is no monopoly of concern on either side of the House. We are concerned because a loophole has been opened and needs to be closed as quickly and effectively as possible. It is important that we have a debate on it. It is equally important, given the complexity of the issue, that a member of the Cabinet should be present for the debate. I would like to think we could put party politics aside, speak with one voice and give some leadership on this issue. While there is widespread public concern about recent developments, we do not need to follow some of the alarmist and knee-jerk comments which have been made. This House often examines issue of public concern in a constructive manner and I would like to think we can do so in this case. I join those who have asked the Acting Leader to endeavour to have a debate on this subject at some stage today, if at all possible. I hope the legislation which is now necessary to deal with this problem can be brought to the House as soon as possible.

Ms O'Meara: I agree with Senator Walsh's comments. I ask him, in the context of his remarks, to support the Private Members' Bill that was mentioned by Senator Ryan. I would like to formally second the proposal to debate that Bill in the House today. Like other speakers, Senator Walsh rightly pointed out that complex legal issues arise from last week's Supreme Court decision. The simple legislative issue at the heart of this matter can be dealt with quickly, however. We can start that process today. People see this as an urgent issue and I hope Government Senators see it as an urgent issue. The country is outraged not at the Supreme Court decision but

at the failure of the Government to anticipate this problem — it has known for a considerable time that it might happen — and to deal with it. People are also outraged that there seems to be a "blame game" going on, as Senator Brian Hayes said. I can inform those who are trying to work out who is responsible that the Government is responsible — that is why it was elected. The Government needs to act quickly.

It is not enough to state that this matter will wait until next week. A man has been released by the High Court who is known to have offended in a particular manner. This has outraged people throughout the country and cannot be allowed to continue. This is a serious issue and I hope Government Senators will take it on board. In the spirit of putting politics aside, as Senator Jim Walsh put it, they should support this Bill, which would permit the public to see that as legislators, Members take their duties seriously and share people's outrage on this extraordinarily serious matter.

11 o'clock

Dr. M. Hayes: Most of what I had wished to say has already been said by Senators Jim Walsh and Norris, both of whom I strongly support in this regard. It would be a pity if the House divided on this matter, because I sense that the same sense of shock and concern is felt on all sides. Nevertheless, it would give a strange signal to the public, which is convulsed by this matter, if this House, of all the fora in which it might be discussed, were to take a vow of silence. It would send an even worse signal if it were seen that Members were even divided as to the manner in which this subject might be discussed. For that reason, I appeal to the Acting Leader to establish whether it is possible to accede to the wishes of a large number of Members to at least have a debate on this matter today.

No matter what is done, I do not believe it will be possible to recapture or lasso people who, because of a defect in the legal process, have been found to be wrongly tried and convicted. That is water under the bridge. However, it is important that Members seek to protect children. An informed debate in this House might be helpful, in which Members did not try to score points, but perhaps tried to reassure the public that by and large, children are not in greater danger today than they were yesterday and that people are not waiting to harm every 15 year old. While it is important that the law is in place, I am unsure that predators, rapists and people like that go around with a copy of the Constitution or the criminal law in their pockets.

Mr. Finucane: All Members have listened to some of the programmes broadcast which have galvanised and concerned the entire nation. Everyone acknowledges the Minister's legal ability and he has a quite significant stature, both as a senior counsel and as a former Attorney General. The matter which concerned people when he appeared on the "Today with Pat Kenny" radio show after the Supreme Court judgment is that he stated there was no black hole and no urgency with regard to legislation. This surprised people, because everyone realises the implication of what happened yesterday, with the release of Mr. A, as he has been described. It will be followed by similar releases of other people who have been jailed.

I will remind Members of what is happening at present. In my native County Limerick, the gardaí had prepared a case and the book of evidence in respect of a person who had carnal knowledge of a person under 17 years of age. However, they have been instructed by the Director of Public Prosecutions to drop the proceedings. Hence, the stories which Members have read are only the tip of the iceberg. This is happening on a national basis and a gaping black hole does exist.

I acknowledge Deputy McDowell's legal ability. However, while I do not read the *Law Society Gazette*, I presume it is the bible for those engaged in the business of law-making and in the October 2005 edition, it warned about the implications of this issue. I would be surprised if the Minister did not read it. I have also been surprised that in recent days, Deputy McDowell has stated that neither he, the Attorney General nor the Department of Justice, Equality and Law Reform was aware of what was happening, but that some people in the Office of the Attorney General may have been aware of developments. I find this incredible and it reminds me of the time when Deputy Martin was Minister for Health and Children and did not remember anything regarding nursing home charges either. Therefore, urgent action is required. I am pleased that the House will return next week and that there may be legislation with which to plug the existing gaps.

However, I wish to raise briefly another issue, which is probably closer to home. I am aware that the chief executive of the Health Service Executive will receive a bonus of €32,000. While I heard a Member mutter something, perhaps he will permit me to finish. I remind the house that the starting salary for a junior nurse is €28,000 per year, rising to €32,000 after four years. Much is heard about primary care and the importance of keeping older people in our community. I wish to illustrate the hypocrisy of the situation by way of an example. I know a man from my own locality who is 85 years of age. Although he has a medical condition, because he has a second pension with the county council, he is debarred from even a single hour of home help. I argue this point with the Health Service Executive because I hate such hypocrisy. Because he has a second pension, that poor man from a rural area cannot get a single hour. This is why I do not accept that an individual deserves a bonus of €32,000. Moreover, the Taoiseach spends something like €500 per week

[Mr. Finucane.]

on make-up. Members should cop themselves on and should consider the reality of rural Ireland.

Mr. Morrissey: I propose an amendment to the Order of Business in order that First Stage of No. 7 on the Order Paper may be moved. I seek the House's permission to have this Bill printed. The Bill is entitled Defence of Life and Property Bill 2006.

Mr. Coghlan: I support all my colleagues who have raised the matter under discussion on foot of yesterday's High Court decision. As Members are all aware, yesterday's High Court decision was merely consequential to the Supreme Court decision. Hence, there has been an amazing gap and breakdown in communication. Undoubtedly, while the Minister for Justice, Equality and Law Reform is an eminent and capable senior counsel, I do not understand how he could have been in the dark to such an extent.

However, as several speakers have noted, Members must get on with the matter. As legislators, they have a duty to close the loophole off quickly and effectively. I agree with Senators Maurice and Brian Hayes and others, that the House should have a debate today, even if the Government is unable to provide the Minister or a Deputy. However, even if the Minister is unavailable, I suggest that a deputy could be provided. It would be desirable, if possible, to hear from the Government in respect of the advice it has received from the Attorney General and others. Hence, I wish to be supportive.

Mr. Fitzgerald: I welcome the opportunity to share in the sense of outrage, horror and deep shock which all Members feel at the potential consequences arising from the recent legal decisions of the Supreme and High Courts. I wholeheartedly support the principle behind the approaches of Senators Maurice Hayes, Jim Walsh and Norris.

Members on the other side of the House are making one of the most fundamental mistakes possible at present. To proceed hastily——

Ms O'Meara: We are protecting our children.

Mr. Fitzgerald: ——to address what is being described as a potential licence for predators to rush out and continue the kind of despicable practices——

Ms O'Meara: They are out there.

(Interruptions).

Mr. Fitzgerald: I invoke the protection of the Leas-Chathaoirleach. Senator Maurice Hayes has rightly described them as predators. However, to depict a story whereby such people——

Mr. U. Burke: They are out there.

Ms O'Meara: The Senator is in denial.

Mr. Fitzgerald: —— armed with a licence arising from these two decisions, would inflict such despicable practices on the children, juveniles and minors of the nation is not only untrue and wrong, it is scaremongering.

Mr. Ryan: The Senator should consider what Mr. A admitted to.

Mr. Fitzgerald: A Leas-Chathaoirligh, may I speak? The House should invoke the wisdom of Senators Maurice Hayes, Norris and my good friend and colleague, Senator Jim Walsh and should hasten slowly. While this should not be a shot in the dark, Members should hasten slowly with a partnership approach.

Mr. Ryan: When Larry Goodman was in trouble, the Government had no difficulty in bailing him out.

An Leas-Chathaoirleach: Senator Ryan should allow Senator Fitzgerald to speak without interruption.

Mr. Fitzgerald: I am about to finish. Red herrings from Senator Ryan do a serious injustice to him and the concern he has articulated about the matter. We should proceed immediately but carefully to invoke a partnership approach to address an issue that goes to the very core of society, the value and dignity we place on each individual human being and, in particular, on the protection of our minors. I plead with the House to fully support the approaches articulated by my three colleagues.

Mr. U. Burke: I find it difficult to accept what Senator Maurice Hayes said earlier. He said there are victims in the world who are not in danger from predators.

Mr. Norris: He did not say that.

Mr. U. Burke: We can check the record. It is important that the victims are protected immediately. Whatever legislation is necessary should be introduced. Following the High Court decision, Mr. A has been released. It is difficult for me to accept that this person, who was found guilty, will now be removed from the register of sex offenders, which is appalling. If all the others are supposedly to be released, will they not represent a danger to the victims and the public at large? If something is not done immediately to curtail the situation, many people will continue to live in fear.

Where does the register of sex offenders exist? Other than with a particular Garda district on the PULSE system, is there a physical register of these offenders? If it exists, some people do not know where it is or how to get access to it. I would be grateful if the Acting Leader could con-

firm that there is a physical register of sex offenders.

Mr. Brennan: I second Senator Morrissey's proposal regarding No. 7, the Defence of Life and Property Bill 2006. I agree that householders should not be penalised for acts of self-defence carried out on their own property.

Over the past 12 months all sides of the House have welcomed the €5.1 billion water services investment programme. I call on the Acting Leader to invite the Minister for the Environment, Heritage and Local Government to the House for an update on the schemes scheduled to start in 2006 and 2007. Local authorities and the community in general are dependent on those developments taking place. Where development has not taken place, it is time for the Minister to review the situation and take remedial action.

Mr. Browne: I was going to raise the point made by Senator Finucane, whereby not alone has Mr. A been released from jail, but the DPP has dropped cases that were pending because of the ruling, which is of great concern to the families concerned. All they received was a phone call from the DPP and no counselling or advice was given to them. I call on the Minister for Justice, Equality and Law Reform to give whatever facilities are needed to the families who were facing very traumatic court cases and now face the horrible scenario of being in no-man's land due to this fiasco.

I would not have confidence in the Minister. Last Saturday's *Irish Independent* reported that the Minister had leaked a Fine Gael document.

Senators: Hear, hear.

Mr. B. Hayes: It is true.

Mr. Browne: Fine Gael went to the bother of producing a Private Members' Bill on the matter and as a matter of courtesy and precedent, gave it to the Department of Justice, Equality and Law Reform for perusal. The Minister, Deputy McDowell, leaked the document to the *Irish Independent* to try to damage Fine Gael. Meanwhile he was doing nothing on the issue and I understand he did not even have the heads of a Bill prepared for the Cabinet meeting yesterday. A debate would be very welcome. I would like to hear from the other side of the House as to whether Fianna Fáil has full confidence in the Minister for Justice, Equality and Law Reform. Private utterances would suggest otherwise.

Following the release of Mr. A, we face the appalling scenario of pending court cases being dropped and people names, which should be on the register of sex offenders, being removed from it. It is also possible that people will now sue the State for wrongful imprisonment which is outrageous, especially in the case of Mr. A who raped a 12 year old girl and admitted having done so.

On a related issue, I am aware that in cases of legal ambiguity some barristers may suggest that one has a good case while others may suggest that one has a bad case. The difficulty is that one does not know where one stands until the case goes to court. We had the same scenario with nursing home charges. While the Government felt they were legal, the Supreme Court ruled otherwise. Does the State have the ability to take a test case in the courts? For example, when it received advice that there was ambiguity over the section of the Act, could the State have taken a test case, rather than leave it to an actual case that has resulted in the current scenario?

Mr. Kitt: I would welcome a debate on the outcome of the Supreme Court and High Court decisions. There is widespread concern about these issues and we need legislation, which I hope can be brought to the House soon. The worst thing we could do would be to remain silent on two very serious decisions that have been handed down and an informed debate would be very welcome.

Approximately two weeks ago we discussed the availability of parish radio. I was under the impression that the Oireachtas Joint Committee on Communications, Marine and Natural Resources would deal with the matter on 14 June. However, I understand this is not the case. Many issues need to be raised regarding the legality or illegality of the present service. Are people supposed to close down the radio service? Do they need new equipment, which is expensive for parish communities? I would hope the Minister could come to the House to discuss the issue and that new regulations could be made as quickly as possible to allow a radio service to be provided in every parish wishing to do so.

Mr. Hanafin: I share the view that we need legislation very quickly. However, as a very inadequate student in the Kings Inns for the past two years, I would not dare to go into the detail of the legal course of action undertaken. It has been suggested that the DPP put certain cases forward ahead of others. I understand the DPP would have had no choice but to take these cases first because an order of *habeas corpus* would be issued on the basis of conviction under faulty legislation. It is inadequate for people to elaborate beyond their capability on legal matters.

Mr. Dardis: Approximately one third of the membership of the House have spoken seeking a debate on the issues arising from the Supreme Court decision. While I could deal with the matter at some length, for the purposes of brevity the following Members spoke on the matter: Senators Brian Hayes, O'Toole, Ryan, Leyden, Terry, Norris, Jim Walsh, O'Meara, Maurice Hayes, Finucane, Coghlan, Fitzgerald, Ulick

[Mr. Dardis.]

Burke, Browne, Kitt and Hanafin. While there has been a wide divergence of views, there is unanimity that the matter needs to be discussed. Nobody in the House has a monopoly on outrage. We are all outraged by what has taken place.

Ms White: Hear, hear.

Mr. Dardis: Considerable blame has been distributed by those who claim they do not want any blame game.

Dr. Mansergh: Quite true.

Mr. Dardis: I am as anxious as anybody to have the matter discussed. The Leader gave a commitment yesterday. Serious efforts were made overnight and again this morning to ensure the Minister for Justice, Equality and Law Reform would come to the House. The Minister has always been amenable to coming to the House. As recently as five minutes before the Order of Business, he indicated to me personally that he would attend if at all possible. People must understand that the priority is to rectify the matter. He must have a lead role in this matter. It is a simple issue in one sense but, as Senator Hanafin pointed out, it is an extremely complicated legal issue. The Minister's primary focus must be on that. If he can at all, he will come to the House and I give the House an assurance that I will endeavour to ensure that he comes here. I will set aside an hour between 7 p.m. and 8 p.m. to discuss the matter on the basis of contributions by one spokesperson for each group. Hopefully the Minister will be present to put his point of view but I cannot guarantee that. I will make every effort to ensure that happens.

The will of the House is clear and it would be wrong not to be in accord with it. A lady who represents the Dublin Rape Crisis Centre stated on radio earlier it would be wrong to be reactive about this matter. There is a great deal of truth in that and we need to be calm and reflective. The House has a very good record of debating difficult issues such as Northern Ireland and abortion in a calm, reasoned and non-partisan way and I hope that will be in evidence again during the discussion on this matter later. Clarity is needed but I do not agree with the proposition that there is a black hole. The issue hinges on section 11 of the 1935 Act, which concerns whether a person knows his or her victim is under age and everything flows from that. It is obvious to every Member that it must be rectified quickly. The Dáil will deal with this matter next Wednesday. We have no control over that House and I do not know how long the legislation will take but if it comes out of the Dáil next Wednesday or Thursday, the House will sit to deal with it.

There is no disagreement about the need to protect our children and all parties have done that over the years. The legislation in question has stood for 70 years without challenge and the Constitution is in place almost as long. As Senator Maurice Hayes stated, we are where we are for good or ill and we must deal with this issue. I hope this proposal is satisfactory. Victims must be protected and there is no disagreement about that. The Minister has primary responsibility to rectify the problem together with the Government and the Oireachtas. I am sure the Houses will dispose of the legislation as expeditiously as possible.

I am in the Leas-Chathaoirleach's hands regarding Senator Ryan's amendment because I am not sure about the procedure involved but it is not my intention to accept it.

Senator Leyden referred to the 100th anniversary of the death of Michael Davitt, which is an important occasion. I was a member of the All-Party Committee on the Constitution that issued a report on private property, which should be debated. The committee's primary responsibility is to report to the Taoiseach and, therefore, I am not sure about the role of the Minister for the Environment, Heritage and Local Government in the matter but that can be teased out. However, the issue could be usefully debated by the House. The Senator also referred to the Registration of Wills Bill 2005 and the Law Society. Similar to other groups in society, if legislation is passed, the society has a responsibility to implement the will of the Oireachtas and I am confident that it will do so.

Senator Mansergh raised the issue of the broadcasting of farming issues. I must declare a vested interest, as I broadcasted about farming for quite a while. It has been evident over a long period that the attention our national broadcasting station pays to the industry is declining rapidly. Numbers in the industry have also declined but it is central to our economy and society. It would be regrettable if the work of Michael Dillon, Joe Murray and others in RTE was not sustained into the future. The Senator has made a good point and I will communicate his views to the RTE Authority.

I share Senator Finucane's distaste on the matter concerning the chief executive officer of the Health Service Executive. It is a matter of contract and the executive must decide whether it awards bonuses but, in the context of what the Senator described, it is difficult to take. The best people deserve the best pay and that is the way to attract them but that is a separate issue.

The Leas-Chathaoirleach must decide whether No. 7 can be moved.

An Leas-Chathaoirleach: It must be decided whether it can be included in the Order of Business.

Mr. Dardis: It can be.

Senator Brennan raised the water service investment programme and it would be useful if the Minister for the Environment, Heritage and

Local Government were to come to the House to discuss it.

I do not have an answer for Senator Browne regarding test cases but, in general, citizens who are contesting matters against the State take such cases rather than the Government. I will find out the answer for the Senator.

Mr. Browne: It should be examined

Mr. Dardis: Senator Ulick Burke raised a matter relating to the sex offender's register but I am not sure about it and I will check it for him.

I agree with Senator Kitt's comments on parish radio. We are all keen that this facility be expanded because it is important for elderly people and those who are ill. I will see what I can do to progress the matter.

Mr. B. Hayes: Is the Acting Leader proposing an amendment to the Order of Business, given his commitment to a debate between 7 p.m. and 8 p.m., which I very much welcome?

Mr. Dardis: I propose that we discuss the issue raised by the Senator between 7 p.m. and 8 p.m., hopefully, in the presence of the Minister for Justice, Equality and Law Reform.

Mr. B. Hayes: I am grateful for that.

An Leas-Chathaoirleach: There are two amendments to the Order of Business. Senator Ryan has moved amendment No. 1: "That the following motion be taken today: 'That, notwithstanding in Standing Orders, leave is hereby given to introduce a Bill entitled Sexual Offence (Age of Consent)(Temporary Provisions) Bill 2006 immediately and that the aforesaid Bill be debated in Seanad Éireann at the conclusion of all other business today'.". The amendment is out of order, as the Chair cannot accept a motion that seeks to introduce a Bill in a manner contrary to the established procedure. The Chair has not been given an opportunity to examine the text of the Bill and rule on its admissibility. The House cannot be required to debate a Bill that has not been subjected to that scrutiny. The Bill should be lodged in the manner provided by Standing Orders.

Mr. Ryan: I moved an amendment to the Order of Business that the motion be taken. The Chair did not rule——

An Leas-Chathaoirleach: I have explained the terms of the motion and I have ruled it out of order. If the Senator would like to meet me in my office afterwards, I will oblige him.

Mr. Ryan: The Chair should rule on the material in the motion and not on my amendment to the Order of Business.

An Leas-Chathaoirleach: I must rule on the terms of the motion and I have refused the amendment on that basis.

Mr. Ryan: I was being courteous by providing a written copy of the motion.

An Leas-Chathaoirleach: I have ruled on this. I did not have an opportunity——

Mr. Ryan: It should surely be the position that we would decide to amend the Order of Business, at which stage the Chair would rule the motion was out of order rather than rule on something that is not properly before the House.

An Leas-Chathaoirleach: I have ruled on the terms of the motion.

Mr. Ryan: I appreciate that but I want to record my dismay.

An Leas-Chathaoirleach: Senator Morrissey has moved amendment No. 2 to the Order of Business: "That No. 7 be taken before No. 1". Is the amendment agreed to? Agreed.

It is further proposed to amend the Order of Business to take statements on the legal loophole created by the recent Supreme Court judgment between 7 p.m. and 8 p.m.

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

Defence of Life and Property Bill 2006: First Stage.

Mr. Morrissey: I move:

That leave be granted to introduce a Bill entitled an Act to provide a full defence in criminal and civil law in cases where force is reasonably used by occupiers in dwellings to defend life or property against persons trespassing with criminal intent.

An Leas-Chathaoirleach: Is the Bill opposed?

Mr. Moylan: No.

Question put and agreed to.

An Leas-Chathaoirleach: Since this is a Private Members' Bill, Second Stage must, under Standing Orders, be taken in Private Members' time.

Mr. Morrissey: I move: "That the Bill be taken in Private Members' time."

Question put and agreed to.

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

Mr. Morrissey: Next week.

[Mr. Morrissey.]

Second Stage ordered for Tuesday, 6 June 2006.

Treaty of Amsterdam: Motion.

Mr. Moylan: I move:

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

a proposal for a Council decision concerning the signing of the agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the member states of the European Union and Iceland and Norway,

a copy of which proposed measure was laid before Seanad Éireann on 12 May 2006, 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 June 2006, 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.

Employment Permits Bill 2005: Committee and Remaining Stages.

Sections 1 and 2 agreed to.

NEW SECTION.

Acting Chairman (Mr. Brady): Amendment No. 13 is consequential on amendment No. 1, therefore, amendments Nos. 1 and 13 may be discussed together by agreement.

Government amendment No. 1:

In page 8, before section 3, to insert the following new section:

"3. The Act of 2003 is further amended—

(*a*) in subsection (3) of section 2—

(i) by inserting, after 'subsection (1) or (2)', 'or fails to take the steps specified in subsection (2B)', and

(ii) by inserting in paragraph (*b*), after 'subsection (2)', 'or a failure to take the steps specified in subsection (2B)',

(*b*) by substituting the following subsections for subsections (10) and (11) of section 2:

(10) Without prejudice to the other provisions of this Act, this section does not apply to a foreign national—

(*a*) in respect of whom a declaration under section 17 of the Refugee Act 1996 is in force,

(*b*) who is entitled to enter the State pursuant to section 18 or 24 of that Act,

(*c*) who is entitled to enter the State and to be in employment in the State pursuant to the treaties governing the European Communities (within the meaning of the European Communities Acts 1972 to 2003), or

(*d*) who is permitted to remain in the State by the Minister for Justice, Equality and Law Reform and who is in employment in the State pursuant to a condition of that permission that the person may be in employment in the State without an employment permit referred to in subsection (1),

but this section, subject to section 2A and any order under section 3A(1) for the time being in force, does apply to a foreign national who is a national of the Republic of Bulgaria or Romania (including at a time subsequent to the accession of the Republic of Bulgaria or Romania to the European Union).

(11) The Minister, when determining which applications for employment permits should be granted, shall give preference to each of the following, namely—

(*a*) applications in respect of nationals of a state in relation to which an order under section 3 is in force, and

(*b*) applications in respect of nationals of the Republic of Bulgaria or Romania to whom this section for the time being applies.

(*c*) by inserting the following section after section 2:

2A.—(1) Notwithstanding subsection (10) of that section, section 2 does not apply to—

(*a*) a national of the Republic of Bulgaria or Romania who falls within the second or third subparagraph of paragraph 2 of Annex VI of the Treaty of Accession with the Republic of Bulgaria and Romania,

(*b*) a person, whatever his or her nationality, who falls within paragraph 8 of that Annex.

(2) Irrespective of whether the person falls within the second or third subparagraph of paragraph 2 of Annex VI of the Treaty of Accession with the Republic of Bulgaria and Romania, section 2 does not apply to

a national of the Republic of Bulgaria or Romania on and from the expiration of—

(*a*) unless paragraph (*b*) applies, 5 years from the date that the Republic of Bulgaria and Romania become members of the European Union (the "accession date"), or

(*b*) if at, or during the 2 months before, the end of the period of 5 years referred to in paragraph (*a*) an order under subsection (1) of section 3A is revoked by a subsequent order under that subsection, 7 years from the accession date.

(3) In this section "Treaty of Accession with the Republic of Bulgaria and Romania" means the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union signed at Luxembourg on the 25th day of April 2005.',

and

(*d*) by inserting the following sections after section 3:

3A.—(1) Notwithstanding section 2(10), the Minister may, subject to subsection (2), make an order providing that section 2 shall apply neither to nationals of the Republic of Bulgaria nor to nationals of Romania and for so long as such an order remains in force that section shall not apply to such nationals accordingly.

(2) The Minister shall not make an order under subsection (1) at a particular time unless, having regard to the conditions of the labour market in the State at that time, the Minister is of the opinion—

(*a*) that it is desirable in the interests of the proper functioning of the economy to make such an order, and

(*b*) that, in the 24 months following the making of the order, employment in the State is likely to become available on a continuous basis for nationals of the states referred to in subsection (1) contemplating entry into employment in the State.

(3) An order under subsection (1) may not be revoked by a subsequent order under that subsection unless, in the opinion of the Minister, the labour market, at the time of the making of the second-mentioned order, is experiencing a disturbance or is likely thereafter to experience a disturbance.

(4) Notwithstanding section 2(10), where an order under subsection (1) is revoked by a subsequent order under that subsection section 2 shall not apply to a national of the Republic of Bulgaria or Romania if he or she has been in employment in the State for a period of not less than 6 weeks immediately before the commencement of the second-mentioned order and has been in receipt of remuneration for such employment.

(5) In this section—

"disturbance" shall be construed in accordance with the Treaty of Accession with the Republic of Bulgaria and Romania;

"labour market" shall be construed in accordance with the Treaty of Accession with the Republic of Bulgaria and Romania;

"Treaty of Accession with the Republic of Bulgaria and Romania" has the same meaning as it has in section 2A.

3B.—(1) The Minister may, subject to subsection (2), by order provide that *section 10* of the *Employment Permits Act 2006* shall not apply to an application for an employment permit in respect of a national of the Republic of Bulgaria or Romania and for so long as such an order remains in force—

(*a*) that *section 10* shall not apply to such an application accordingly, and

(*b*) the other the other provisions of the *Employment Permits Act 2006* shall be construed and have effect subject to the order,

but without prejudice to any regulations for the time being in force under *section 14* of that Act.

(2) The Minister shall not make an order under subsection (1) at a particular time unless, having regard to the conditions of the labour market in the State at that time, the Minister is of the opinion that it is desirable in the interests of the proper functioning of the economy to make such an order.".

Minister for Enterprise, Trade and Employment (Mr. Martin): On Report Stage in the Dáil, I indicated my intention to propose that an enabling provision be included in this Bill to allow the Government's decision on granting labour market access to nationals of Bulgaria and Romania on the accession of those countries to the European Union to be implemented by ministerial order. Amendment No. 1 proposes to make such a provision.

This autumn, the EU Council of Ministers will review the preparedness of Bulgaria and Romania to accede to the EU. There are three options as regards access to the Irish labour market by nationals of Bulgaria and Romania, namely to continue to require nationals of these states to obtain employment permits from the date of accession, to grant these nationals access to the labour market without the need to acquire an employment permit or to grant permits without a labour market test on foot of a job offer.

The Government will take a decision on this issue before accession and to avoid having to bring forward additional primary legislation for this purpose, this amendment enables the decision to be implemented by ministerial order at the appropriate time. The amendment achieves this by replacing the existing section 3 of the Bill with new text which facilitates the first option I described of retaining the requirement for Bulgarian or Romanian nationals to obtain employment permits by replacing section 2(10) of the Employment Permits Act 2003 with a wording which makes it clear that Bulgarian or Romanian nationals are not exempt from the requirement to have work permits unless, as specified in the supplemental provisions of section 2(*a*)(i), they have already been working here for an uninterrupted period of at least 12 months. If employment permits are required by nationals of Bulgaria and Romania, the amendment to section 2(11) of the Employment Permits Act 2003 provides that preference must be given to these nationals over nationals of third countries.

The second option of granting access to the labour market by Bulgarian or Romanian nationals is facilitated by the making of a ministerial order under section 3(*a*)(i) exempting them from obtaining employment permits. Such an order may be made only if it is desirable in the interests of the proper functioning of the economy and if employment opportunities will be available for nationals of these states. Such an order may be revoked only if the labour market experiences a disturbance or is likely to do so thereafter.

The third option of granting nationals of Bulgaria and-or Romania employment permits without a labour market test is catered for by section 3(*b*), which provides for the possible introduction of such an arrangement by ministerial order. This arrangement will be primarily intended for the purpose of monitoring the flow of workers from these countries into the Irish labour market.

Amendment No. 13 is a technical amendment which I propose on the advice of the Parliamentary Counsel. This new section is to put into primary legislation the mechanism that would enable the Government to make decisions at the appropriate time as to whether to continue the existing situation on Bulgarian and Romanian citizens or to change it. If we want to change it we would have to do so by ministerial regulation.

Amendment agreed to.

Section 3 deleted.

SECTION 4.

Acting Chairman: Amendments Nos. 2, 5, 6, 7 and 10 are related and may be discussed together by agreement. Is that agreed? Agreed.

Mr. Coghlan: I move amendment No. 2:

In page 8, lines 27 to 31, to delete *subsection (3)*.

I welcome the Minister to the House. These amendments seek to deal with the restrictions the Minister is putting on work permits. While sections 3 to 6, inclusive, cover the application for an employment permit by a prospective employer or a non-national, if an employer applies he or she must show the offer of employment with all the terms and conditions of employment under section 5(1)(*a*). If a non-national applies, he or she must merely show the offer of employment under section 6(*f*) but what should be contained in the offer of employment is not specifically stated. I am advised that this could be overcome by adopting the provisions of section 3 of the Terms of Employment (Information) Act 1994. Is section 8 included in this discussion?

Acting Chairman: No.

Mr. Coghlan: I have an amendment to section 8, which I will come to later.

Mr. Martin: During my Second Stage speech in the Seanad I reiterated the key point that the offer of a job is central to this legislation. The work permit follows the existence of a job vacancy or the offer of a job. That arrangement is superior to a points or quota system because it is directly related to labour market needs and is more efficient and less bureaucratic.

We have opted for this approach based on the work undertaken by the expert skills group and Forfás on economic migration and it is the correct policy response to the current situation. The Bill is flexible enough to facilitate future Governments to implement a points or quota system. Given all the discussion that has taken place, the offer of a job, the fact that the employer applies for a work permit, and that the employee can also

apply for a work permit, gives the best of both worlds. It allows traceability, puts us in a reasonable position to police any abuses of the system and empowers the employee to a greater extent in that he or she will be in possession of the work permit, will be able to apply for a work permit and will be able to move on quickly. There is flexibility over time. The offer of a job should remain a centrepiece of the new economic migration arrangements and for that reason I am not in a position to accept the amendments.

Mr. Coghlan: I take the Minister's point, but another section provides that where an employer applies for a permit the period shall be for 12 months or less, while where the prospective non-national employee applies it shall be for a two-year period or longer as provided under section 13. This might put an unnecessary administrative burden on employers who have to apply on a number of occasions. The amendments seek to tidy up the provisions whereby an unnecessary administrative burden will be placed on those applying for such permits.

Mr. Martin: The section that deals with the 12-month period provides that if the employee wishes to leave the employment within the first 12 months, perhaps due to abuse or other difficulties, he or she has the freedom to do so. If everything is fine, as it will be in the majority of cases because employers want to retain staff if they behave properly, it is also two years. Many have argued that we need to give more freedom to employees so they are not tied to an unacceptable situation for too long.

Amendment, by leave, withdrawn.

Section 4 agreed to.

SECTION 5.

Acting Chairman: Amendments Nos. 3 and 8 are related and may be discussed together by agreement. Is that agreed? Agreed.

Mr. Coghlan: I move amendment No. 3:

In page 9, between lines 2 and 3, to insert the following subsection:

"(2) In respect of answers, by a foreign national in an application for an employment permit, given in *paragraph (f)(i)* of this section, nothing shall automatically disqualify an applicant from gaining an employment in and of itself, but may be taken into account when his or her application is being considered.".

As was pointed out on Committee Stage in the other House, the one interesting feature of the provisions outlined here is that the provisions of the Protection of Employees (Fixed-Term Work) Act 2003 may become applicable as a permit holder may be employed on a fixed-term contract. After four years the employee permit holder may become entitled to a contract of indefinite duration. Employers will probably not apply for renewal of the work permit of a mere permit holder and it could be open to abuse. It would be difficult for people holding work permits to be classified as employees and come under the definition of permanent employment although they may have contributed to the employment concern for four or more years. Such foreign nationals are at a disadvantage even if they complete a number of years service. Implicitly foreign nationals do not have the same right to security of employment under employment protection legislation as EU and EEA nationals. For that reason I have put down this amendment to include the changes necessary to provide security of employment or permanent employment status for people who have worked for a significant number of years under existing Irish legislation.

The Bill sets up a special system of adjudication of work permits although tried and tested State machinery for industrial relations already exists. Why not use one of those systems instead of creating a new model? If the Minister wants to use a system internal to the Department why not use one of those provided under the Redundancy Payments Acts 1967-2003, with deciding officers, a right of appeal to the Employment Appeals Tribunal and a further appeal on a point of law to the High Court, as exists under the current system? This would prevent unnecessary duplication and expense to the State. Perhaps the Minister might have a word or two on that issue.

Mr. Martin: Senator Coghlan's comments relate to amendment No. 9. Maybe I can deal with that later.

Mr. Coghlan: I apologise.

Mr. Martin: I will comment on amendments Nos. 3 and 8 first and then deal with the substantive point the Senator has raised on amendment No. 9. I presume Senator Coghlan's amendment No. 3 is to section 6(*f*) and section 7(*b*) dealing with permission to remain in the State. The powers granted to me under section 12(1), to refuse to grant an employment permit where the foreign national concerned has been in the State without permission, are discretionary, not mandatory. Any minor irregularity would not automatically disqualify the applicant from being granted an employment permit. Accordingly, this amendment is unnecessary.

With regard to the substantive issue addressed by amendment No. 9, employment permit holders are, by definition, given permission to work for a fixed period. It would be inappropriate to grant them permanency of employment because this would undermine the work permit edifice.

The same protection of employment rights is available to non-national workers as Irish

[Mr. Martin.]

workers. Section 6 of the Protection of Employees (Fixed-Term Work) Act 2003 provides that a fixed-term employee shall not be treated any less favourably than a permanent employee, irrespective of nationality. By their nature, those with employment permits cannot be granted permanency of employment because the basis for the permit is that the holder can work for a defined period. Is the Senator satisfied that no anomaly exists?

Mr. Coghlan: Point taken.

Amendment, by leave, withdrawn.

Section 5 agreed to.

SECTION 6.

Mr. Coghlan: I move amendment No. 4:

In page 9, line 14, to delete "concerned" and substitute "in respect of which an application for an employment permit is made".

Mr. Martin: I understand what the Senator is endeavouring to achieve but I believe it is covered by section 6(*a*), which describes the employment concerned as "employment in respect of which the application is made".

Amendment, by leave, withdrawn.

Amendments Nos. 5 to 7, inclusive, not moved.

Section 6 agreed to.

Amendment No. 8 not moved.

Section 7 agreed to.

Amendment No. 9 not moved.

Section 8 agreed to.

SECTION 9.

Amendment No. 10 not moved.

Mr. Coghlan: I move amendment No. 11:

In page 11, subsection (2), lines 21 to 25, to delete paragraph (*c*) and substitute the following:

"(*c*) a statement—

(i) of the requirement under the National Minimum Wage Act 2000 that the foreign national concerned be paid at least the national minimum hourly rate of pay by his or her employer and the effect of *subsections (1)*, *(3)* and *(4)* of *section 22*, or

(ii) where better terms and conditions of employment in an employment regulation order or registered employment agreement are in effect, of what the applicable terms and conditions of employment for the foreign national are;

and".

The wording of section 9(2)(*a*) through (*c*) provides a statement of the requirement under the National Minimum Wage Act 2000 that the foreign nationals concerned should be paid the national minimum hourly rate. I table this amendment because the terminology in the Bill could be too restrictive. Various registered employment agreements and employment regulation orders under the Industrial Relations Act provide greater protection for employees. This amendment would provide clarity and remove certain restrictions under the current arrangements.

Mr. Martin: That issue is covered by the legislation. It would not be feasible to include terms and conditions for each type of employment under registered employment agreements and employment regulation orders. Some 18 employment regulation orders and 45 registered employment agreements cover various types of employment.

Section 12(1)(*j*) specifically provides that an employment permit application may be refused if the proposed pay is less than the standard working week remuneration, defined in section 12(6) as the national minimum wage or the pay set out in applicable employment regulation orders or registered employment agreements.

An employment permit will be refused if the proposed pay is less than the national minimum wage of the applicable employment regulation orders or registered employment agreements. In addition, section 9 states that the permit must include a statement of the remuneration payable. Thus, the employee knows what he or she should be paid. The arrangements in place achieve the result Senator Coghlan is seeking.

Amendment, by leave, withdrawn.

Government amendment No. 12:

In page 11, subsection (4), line 32, to delete "*Subsection (2)* is" and substitute "*Subsections (2)* and *(3)* are".

Mr. Martin: Subsections (2) and (3) relate to the information accompanying or included on an employment permit. I table this amendment on the advice of the Chief Parliamentary Counsel because it is necessary to take account of an amendment agreed on Report Stage in the Dáil to the effect that an employment permit shall include or be accompanied by a summary of the principal employment rights of the employee. Deputies were anxious that this measure be included so a permit will be accompanied by a

notice or circular detailing employee rights under employment law.

Amendment No. 12 agreed to.

Section 9, as amended, agreed to.

SECTION 10.

Government amendment No. 13:

In page 11, subsection (2)(*a*), line 42, after "in" to insert "any of paragraphs (*a*) to (*d*) of".

Amendment agreed to.

Section 10, as amended, agreed to.

Sections 11 and 12 agreed to.

NEW SECTION.

Mr. Coghlan: I move amendment No. 14:

In page 14, before section 13, to insert the following new section:

13.—(1) Where the grant of an employment permit is refused under section 11 of this Act, applicants for employment permits may appeal such a decision by way of either—

(*a*) the mechanism set out in the Redundancy Payments Acts 1967-2003 for such appeals, or

(*b*) the process set out in the Protection of Employees (Fixed-Term Work) Act 2003 for such matters.

(2) Where an appeal is refused under subsection (1)(*a*) of this section, the applicant shall have a right of appeal to the Employment Appeals Tribunal, and subsequently, on a point of law only, to the High Court.

(3) Where an appeal is refused under subsection (1)(*b*) of this section, the applicant shall have a right of appeal to the Labour Court, and subsequently, on a point of law only, to the High Court.".

Mr. Martin: This issue was discussed at considerable length in the Dáil. The mechanisms and processes of the legislation referred to are inappropriate for employment permit appeals, for which we have defined arrangements in sections 13 and 17 of the Bill. If a work permit is refused, an appeal mechanism exists for redress. Redress for whistleblowers and complainants is also covered in the Bill. The Redundancy Payment Acts have no relevance to the work permit situation.

Amendment, by leave, withdrawn.

Section 13 agreed to.

Sections 14 and 15 agreed to.

NEW SECTION.

Acting Chairman: Amendments Nos. 15, 16 and 22 are related and may be discussed together by agreement.

Mr. Coghlan: I move amendment No. 15:

In page 16, before section 16, to insert the following new section:

"16.—The Minister may make regulations to allow any one of the following to join a foreign national employment permit holder:

(*a*) his or her spouse or partner;

(*b*) his or her children;

(*c*) any other members of his or her family.".

Mr. Martin: The problem with amendments Nos. 15 and 16 is that the Minister for Justice, Equality and Law Reform, and not me, is responsible for naturalisation and immigration law. However, I can inform the Senator and the House that this legislation will dovetail with legislation that the Minister for Justice, Equality and Law Reform will introduce on immigration generally. We are working in concert in that regard.

The legislation will also facilitate holders of green cards in particular to enjoy immediate family reunification. The Minister for Justice, Equality and Law Reform has stated that a fair number of work permit applicants will also have that provision. There are several qualifications, one relating to whether one earns above or below the family income threshold. If one earns less than that, a longer period of three years applies before there can be family reunification.

12 o'clock

We have made significant progress on the issue. The Minister for Justice, Equality and Law Reform has already announced that, but I am not able to accept the amendments in the context of this Bill, since they are outside my legislative domain.

Amendment, by leave, withdrawn.

Amendment No. 16 not moved.

SECTION 16.

Government amendment No. 17:

In page 16, subsection (1)(*a*), line 25, to delete "*2*" and substitute "*(2)*".

Mr. Martin: This is a technical amendment proposed on the advice of the Parliamentary Counsel.

Amendment agreed to.

Amendments Nos. 18 and 19 not moved.

Section 16, as amended, agreed to.

Amendment No. 20 not moved.

Sections 17 to 19, inclusive, agreed to.

SECTION 20.

Government amendment No. 21:

In page 19, lines 15 and 16, to delete *subsection (5)*.

Mr. Martin: This amendment was tabled by Deputy Howlin on Report Stage in the Dáil but was not moved. I was disposed to accept it and now put it forward accordingly. Its effect is that there will be uniformity in the entitlements to permits of unlimited duration after five years, irrespective of whether the employee or employer is the applicant. If subsection (5) remained, it would have the unintended effect that if original and renewal permit applications were made by the employee, he or she would not be entitled to a permit of unlimited duration after five years, whereas if those applications were made by the employer, such a permit could be granted after that time. Essentially, it corrects an anomaly that was never intended. It was pointed out in the other House, and we were disposed to accept it.

Amendment agreed to.

Section 20, as amended, agreed to.

Sections 21 to 23, inclusive, agreed to.

SECTION 24.

Question proposed: "That section 24 stand part of the Bill."

Mr. Coghlan: Perhaps the Minister might comment briefly on this section.

Mr. Martin: Section 24 provides for the surrender of the employment permit to the Minister within four weeks of the date of the cessation or termination of the employment concerned. A person who fails to comply may be guilty of an offence. The section is necessary since were the permit not surrendered within that time period, there would be a significant risk of its falling into other hands, thereby facilitating abuse or fraudulent use.

It should also be noted that subsection (3) includes defences enshrined in the Bill, including that the person took reasonable steps to surrender the permit that may be adduced by the defendant should he or she fail to meet the four-week deadline. Essentially, it provides a check and ensures we have a system in place that helps avoid potential abuse. The employees should return the permits within a reasonable timeframe. If there are genuine reasons why that did not happen, the Bill covers them too.

Question put and agreed to.

NEW SECTION.

Mr. Coghlan: I move amendment No. 22:

In page 23, before section 25, to insert the following new section:

25.—(1) Whereupon the employment permit of a foreign national who is not

(*a*) a citizen of a European Union,

(*b*) a citizen of a European Economic Area country, or

(*c*) in possession of any permit that allows him or her to remain legally within the State,

expires or is revoked, he or she shall cease to be permitted to remain legally within the State after a period of 8 weeks has elapsed after the expiration or revocation of his or her employment permit, unless he or she obtains a permit under *paragraph* (*c*).

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

It was correctly pointed out on Committee Stage in the other House that a time period should elapse to allow people reasonable time to tidy up their affairs before leaving the country. I hope that, by tabling this amendment, which provides for an eight-week period, I may encourage the Minister to table an amendment going some way towards our position, rather than allowing no such time period.

At present, the legislation effectively states that one must leave within the hour as soon as one's permit lapses. While Departments' interpretations may vary, that is the law. Members must try to ensure that safeguards are put in place to allow people a reasonable length of time in which to renew their permit or, where the permit has lapsed and all avenues have been exhausted, to return home or go elsewhere.

My colleague, Deputy Hogan, tabled an amendment with an eight-week period for discussion on Committee Stage and Report Stage in the other House. I had hoped that the Minister might have taken the opportunity to insert a period of three or four weeks to allow some leeway to those caught in such a situation, often through no fault of their own. The employer might decide to terminate the employment, and the administrative process in the Departments might be to blame for the way that people are treated. Perhaps the Minister, in the absence of his own amendment, might be disposed to accept this one.

Mr. Martin: I regret that I am not so disposed. These amendments, which have already been discussed in the other House, are not appropriate to the legislation. They are more appropriate to the immigration and residence Bill that my colleague, the Minister for Justice, Equality and Law Reform, intends bringing forward this year. Anything to do with residence, naturalisation or permission to remain in the State is fundamentally a matter for the Department of Justice, Equality and Law Reform under the present legislative template.

Mr. Coghlan: On the basis that the Minister has assured the House that the question would be more relevant to upcoming legislation, perhaps we should await it.

Amendment, by leave, withdrawn.

Sections 25 and 26 agreed to.

Amendments Nos. 23 and 24 not moved.

Sections 27 and 28 agreed to.

Amendment No. 25 not moved.

Sections 29 to 38, inclusive, agreed to.

SECTION 39.

Question proposed: "That section 39 stand part of the Bill."

Acting Chairman (Mr. Moylan): Senator Coghlan has indicated his opposition to section 39.

Mr. Coghlan: I would like to hear the Minister speak briefly on the section.

Mr. Martin: I am surprised at Senator Coghlan.

Mr. Coghlan: I surprise myself at times.

Mr. Martin: The wording of section 39 reflects an amendment relating to the definition of the term "foreign national" in the Employment Permits Act 2003 which was agreed on Report Stage in the Dáil. This definition was put forward by way of an amendment by Deputy Hogan on Committee Stage in the Dáil and I accepted an amendment that the term "non-national" be changed to "foreign national".

Mr. Coghlan: I agree with that and I said so on Second Stage, that is why I was slightly confused.

Question put and agreed to.

Sections 40 and 41 agreed to.

Schedules 1 and 2 agreed to.

Title agreed to.

Bill reported with amendments and received for final consideration.

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

Mr. Hanafin: : I thank the Minister for attending the House and for expediting this legislation.

Mr. Coghlan: I concur with those remarks. I thank the Minister and his officials for the expeditious manner in which they dealt with this Bill. I hope it will serve our society and the people who come to work here and help to further grow our economy. I wish the legislation well.

Minister for Enterprise, Trade and Employment (Mr. Martin): I thank the Senators for their constructive engagement with this legislation. We are very satisfied with its content as for the first time policy on economic migration has been put on a sound statutory footing. It will provide a positive framework for the further development of the economy and significant protection for workers so that they may not be exploited or abused. If they are the penalties will be considerable.

The Bill provides for more flexible arrangements as it is tied in to labour market trends and allows the Government to respond appropriately to such trends in the years to come. Overall it will have a beneficial impact on the economic fabric of the State. I also thank my officials for the detailed work they put into the amendments in both Houses.

Mr. Coghlan: I also thank the Minister's officials.

Question put and agreed to.

Sitting suspended at 12:15 p.m. and resumed at 3.30 p.m.

National Economic and Social Development Office Bill 2002: Committee Stage.

Sections 1 and 2 agreed to.

SECTION 3.

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

Mr. B. Hayes: The section states "The Taoiseach may by order appoint a day to be the establishment day for the purposes of this Act." Can the Minister of State indicate when the office will be established, given that this Bill was first published in 2002 and we are only now, some four years later, getting around to dealing with it in its entirety? What is the current position?

Minister of State at the Department of the Taoiseach (Mr. T. Kitt): As Senator Brian Hayes is aware, the bodies in question are all up and running and what is involved is simply a matter of formalising the position. There is nothing controversial about this legislation. The three bodies, the NESC, the NESF and the NCPP will become the National Economic and Social Development Office. A date needs to be appointed for this to take effect. The Bill states that the Taoiseach may appoint the date. The matter is straightforward, but I have no news for the Senator as to such a date.

Mr. B. Hayes: Effectively the Minister of State is saying the legal framework surrounding the composition of the new body will have no effect until such time as this legislation goes through both Houses of the Oireachtas and that the people in these organisations are working in circumstances where no legal certainty applies to those offices.

Mr. T. Kitt: They are all working legally on an independent basis. From a legal perspective, this Bill will bring the bodies together as one entity.

Mr. B. Hayes: As a new entity.

Mr. T. Kitt: Yes.

Question put and agreed to.

Section 4 agreed to.

SECTION 5.

Question proposed: "That section 5 stand part of the Bill."

Mr. Ryan: This section dealing with expenses is a standard provision included in every Bill but it usually refers to a Minister. The normal wording of such a section is "The expenses incurred by the Minister....shall, to such extent as may be sanctioned by the Minister for Finance....". The requirement that sanction for expenses incurred by the Taoiseach must be approved by a Minister whom the Taoiseach can sack seems contradictory and is probably unconstitutional. I do not want to start a major row about this, but I believe this requirement is unconstitutional.

The Taoiseach cannot be subject to the sanction of the Minister for Finance whom he or she has appointed and whom he or she can dismiss. He or she can simply ask the Minister to resign. The Taoiseach can sack the Minister at any time. Therefore, how can the Taoiseach be subject to the sanction of somebody over whom he or she has absolute authority? Perhaps the Minister of State can explain the position.

Mr. T. Kitt: This is a standard provision regarding the expenses incurred in the administration of the Act and their payment out of moneys provided by the Oireachtas. As the Senator said, it is a standard provision in legislation.

Mr. Ryan: It is not standard for the reference to be to the Taoiseach.

Mr. T. Kitt: I can only presume that the reference is to the Taoiseach because the legislation is sponsored by the Taoiseach's office. The Taoiseach's Department is the one involved. This is a standard section.

Mr. Ryan: I do not want to delay the House unnecessarily but this is not a standard provision in terms of applying to the Taoiseach. We are dealing with a different position in this Bill. The Taoiseach is the boss. He or she is the one who appoints and who can, without any reason, sack the Minister for Finance. There is the absolute right of a Taoiseach to seek a Minister's resignation. The Taoiseach does not have to give a reason and many a Minister or ex-Ministers has said that.

What happened here is that a standard clause, which goes into all legislation dealing with expenditure, names the Taoiseach whereas normally the Minister would be named. It is a mistake but I will not start a row about it. I simply invite the Minister of State to ask whether the Attorney General's office approved this phrase or whether it was slipped through by a junior official in that Department without thinking about it because I do not believe it has any validity in law.

Mr. B. Hayes: Senator Ryan makes a valid point, particularly in the context of section 7. Section 7 gives absolute power to the Taoiseach to establish a new body under his discretion and control even though he must consult the Minister for Finance and other Ministers. There seems to be a discrepancy between both sections. In section 5, the sanction of the Minister for Finance is required in regard to expenses while in section 7, the Taoiseach has absolute power to establish a new body or group of bodies. There is inconsistency between both sections. In one section, the sanction of the Minister for Finance is required but in the other, the Taoiseach has absolute discretion even though he might have to consult the Minister.

Mr. T. Kitt: I have been assured this was approved and drafted by the parliamentary counsel. I have been told it follows the normal procedure but I will double check it. I must press ahead with the Bill but again I assure the House I will double check it.

Question put and agreed to.

Section 6 agreed to.

SECTION 7.

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

Mr. B. Hayes: Section 7 seems to be an all-embracing one which, as I said, gives absolute power to the Taoiseach to establish new bodies. Will the Minister of State inform the House what new bodies would be considered by the office? Given that this office has been up and running for some years, does the Government have an idea as to what other new bodies need to be established? A Member of the other House said this is the quango to beat all quangos given the new overarching body we are putting in place to bring the other three bodies together.

Section 7 gives the Taoiseach considerable power to establish new bodies without coming before either House of the Oireachtas. From my reading of the section, as a layman, section 7 gives the Taoiseach a very all-embracing power. Has the Government ideas on new bodies which will be established? If such bodies are established, why is the approval of either House of the Oireachtas not required before their establishment?

Mr. T. Kitt: We do not have any specific ideas or proposals at this stage. What the Taoiseach and the Government would have in mind is that if there was a need for the establishment of a new body in the social-economic area, for example, following a national agreement and after consultation with the various parties, the option would be there. This is not something the Taoiseach would do lightly or unilaterally. The thrust of the Bill is based on partnership and consultation and it leaves that option open.

Mr. B. Hayes: In that scenario, I presume it is the Government's view that neither House of the Oireachtas would need to be consulted or asked to provide a statutory framework for the new office as is the case with the new office being provided for in this Bill.

Mr. T. Kitt: This issue emerges later with regard to consultation and the democratic deficit which has been referred to in the other House and we can deal with it then. The same answer applies here. Governments are there to govern but there is always provision for debate and for matters to be brought before the Houses. Issues such as this would be well aired and well signalled. Regardless of who is in Government, there would be no possibility of an abuse of power in such a situation. It would be done on the basis of transparent consultation.

Question put and agreed to.

Section 8 agreed to.

SECTION 9.

Mr. B. Hayes: I move amendment No. 1:

In page 8, between lines 8 and 9, to insert the following new subsection:

"(2) The Council shall, prior to the commencement of negotiation of agreements between the Government and the social partners, present to the Oireachtas an assessment of key strategic challenges relating to the efficient development of the economy and the achievement of social justice and set out a strategic framework for endorsement or amendment by the Oireachtas before the negotiations commence.".

This is the only amendment I tabled which has not been ruled out of order. It is an important amendment and Deputy Bruton brought this matter to the attention of the other House on Committee and Report Stages. I know the Government's position on this matter. We are sitting at a time when the potential of the next phase of partnership may or may not be realised. There is a type of brinkmanship taking place as to whether we will have a deal. Let us hope we have a deal because it would be good for everyone, whether employer or employee.

The significant issue of democratic accountability around this entire process should be provided for and we have the opportunity to do so in the context of this Bill. The Minister of State knows from my comments on Second Stage that I, and my party, are concerned about the failure of the Government to involve the Oireachtas in a meaningful and significant way in not only the pay talks, but in the entire partnership process. This amendment inserts a new subsection into section 9 which gives the Oireachtas a significant role in demanding that the Government of the day shall, prior to the commencement of negotiation of agreements between the Government and the social partners, present to the Oireachtas an assessment of key strategic challenges relating to the efficient development of the economy and the achievement of social justice and set out a strategic framework for endorsement or amendment by the Oireachtas before the negotiations commence.

It is crucial that before the Government of the day embarks on the process of negotiation in these deals, such an assessment is presented to the Houses of the Oireachtas and that each House has the opportunity to shape those discussions and the way in which the key ingredients to any such deal are put on the table. It is important it is done at the start rather than at the end of the process. There has been criticism that a resolution of both Houses of the Oireachtas is not required for a partnership agreement to be ratified and that should be dealt with. However, our concern relates to the start of the process. Members of the Oireachtas should have an opportunity at the start of the process to put their

[Mr. B. Hayes.]

views on the table in terms of what they hear in their constituencies and elsewhere and to shape the discussions and negotiations.

There is not a sufficient degree of ownership of the process within the Oireachtas. Significant powers of policy-making over a five-year or even a ten-year period have been conceded to the partnership process. It is often the case that not only Opposition Members but Government backbenchers feel frustrated by a process which seems to give so much power to a very small group of people even though they represent a significant number of people through the trade unions, employer groups and so on. Ownership of this process needs to be rooted in the Oireachtas. That is why it is very important that type of critical assessment is done at the start rather than at the end of the process.

The process has been insulated from the Oireachtas. While 15 Oireachtas Members play an important role in one of the research bodies in the process, the Oireachtas is not involved in a plenary session. It would be useful for the process if such an assessment were made.

We must re-engineer and refocus partnership so that all consumers of public services, such as parents and people who deal with the health service, have a vested interest in the process equal to that of the people who are paid to provide the service and their employers. This is necessary for partnership to succeed.

The process went badly wrong in the first benchmarking deal which was clandestine, had no accountability, and there were no genuine practical advances for consumers in terms of the service they would receive. That went wrong because the process was neither democratically constructed in, nor reported to, the Oireachtas. The critical issue is that we must make the process more consumer-focused and friendly so that those who need the public services feel their voice is respected and reflected in the process. We believe that our amendment achieves that end.

The last partnership deal included many commitments regarding social housing, none of which has been delivered. The Oireachtas does not undertake an effective survey of the implementation of this deal but is continually sidelined. Too often the vested interests within the process dominate it to the exclusion of the people to whom public services are delivered.

Our amendment puts the Oireachtas centre stage in this process and allows a better economic and strategic assessment of how we can shape the talks. We are more concerned about the start of the process than the end product, to ensure that the voice of the people is included, rather than that of those who represent one third of all workers or big business. The way to do that is to give the Oireachtas a key defining role in the start of each partnership deal. Accepting this new subsection would give the Oireachtas the kind of control we outline and would help the process.

Mr. Ryan: Isupport everything Senator Brian Hayes said except his remarks on benchmarking on which we have a long recorded difference. The fundamental problem with benchmarking was that many of the participants in the private sector demanded that all the records be destroyed because they did not want what they regarded as confidential information about wages to enter the public domain.

Senator Brian Hayes is right to say that it is important for trade unions in the public sector to recognise that their function is to serve the public. This should not have to be said but it is sometimes ignored. If one starts from that position one can negotiate all sorts of deals which are reasonable.

Social partnership has depoliticised everything of significance. The natural instinct of that most suppliant of public bodies, RTE, is to ask the Government and a social partner to debate issues while the Opposition is left fulminating on the sidelines. It is rare to hear Opposition members giving the first reaction to the Government decision. That is profoundly wrong. The Oireachtas needs to reappropriate ownership — not control — of this process. For example, the 15 Members who are members of the forum should be set up as an Oireachtas joint committee on the partnership process, with the same powers as all other Oireachtas committees to require these agencies to report to it about the partnership process.

I support the amendment and believe it would advance the process of returning democratic accountability to centre stage, instead of the relationship between Government and other interest groups in which the Oireachtas, the most fundamental of our democratic institutions, is marginalised.

Mr. T. Kitt: I also warmly support the principle of Oireachtas reform to achieve the greatest possible degree of accountability and democracy. We are considering some initiatives regarding committees and interaction with the public via the Internet.

I have, however, to disagree with the case well made by Senators Brian Hayes and Ryan. The Government has a duty to implement its programme for Government. I cannot accept the amendment.

The function of the council under section 9 of the Bill is to analyse and report to the Taoiseach on strategic issues and it would not therefore be appropriate for it to report to the Oireachtas in advance of this reporting mechanism. However, we could undertake that the Government make arrangements when the reports are published for the Oireachtas to discuss them. This is a good idea. My colleague, the party Whip for this House and I have discussed this and agree that we would be more than happy to arrange for discussions at that stage. That is as far as I can go to meet the points made by the Senators.

I do not believe there is a democratic deficit in the relationship between the process of social partnership and interaction with the Oireachtas, which withstands close scrutiny. Each of our six social partnership agreements has been based on the primacy of the then programme for Government and within the framework of the NESC three-year strategic economic and social overview.

I do not often make partisan points but I assume the negotiations leading to Partnership 2000 between 1997 and 1999, overseen by the then rainbow coalition Government, were conducted on a similar basis. The current negotiations are being conducted on that basis. The monitoring and review of the implementation of the social partnership agreements operates at several levels within the Oireachtas. Detailed quarterly progress reports on implementation, keynote speeches and other relevant documents are laid before the Oireachtas for closer scrutiny and probing. In excess of 40 key documents were laid before both Houses in respect of the current agreement.

Senator Brian Hayes mentioned the current partnership agreement which is relevant to this discussion. I understand the talks to discuss a new national pay agreement have resumed this afternoon after they adjourned last night, without agreement, despite the intervention of the Taoiseach. The Taoiseach, accompanied by the Tánaiste and the Minister for Enterprise, Trade and Employment, Deputy Martin, held direct discussions with the parties last night in an attempt to finalise an agreement. The parties are considering an outline pay agreement put to them by the Government.

Commenting on the proposals for a new national pay agreement, the Taoiseach said "From my own discussions with both sides, I believe that they meet the demands of the unions for adequate pay increases, while providing certainty about pay costs for a reasonable period for employers." He also said the proposals represented the best terms that could be achieved and urged the parties to accept them as a basis for continuing the partnership process which has the potential to provide solutions to problems which may arise in the future. He hopes that both sides will accept the proposals. It must be recognised that we are dealing with difficult issues which will have an important bearing on the future development of the economy. It is a question of getting the right balance. We must ensure we have decent employment standards and maintain our competitiveness and attractiveness as regards investment. This is just a brief reference to the pay talks. We wish those involved well and both Houses would like to see an agreement. Following the remarks made by Senator Brian Hayes, I wanted to put that on the record.

4 o'clock

That is my position. I regret I cannot move beyond saying that we could undertake to make arrangements for the Oireachtas to discuss reports when they are published. My colleague, Senator Moylan, would obviously give a similar undertaking.

Mr. B. Hayes: The problem is we are talking about two different things. The Minister of State has rightly said that either House of the Oireachtas can debate any of the reports that come from the NESF, but that is not the issue. What we attempt to do with our amendment is to re-engineer the process so that at its start both Houses will concentrate on its priorities. We have complete control as to what reports from the NESF can be debated, but that is not the issue. The issue is that we need some control at the start of the process. By doing that we will have much greater ownership over the process.

The Minister of State made the point that a key aspect of a programme for Government would be an agreement between the Government and the social partners. In a sense, with the election of a Taoiseach to any new Dáil, we are electing a programme for Government. However, what happens midway through the life of a Dáil when a new deal is formed between the social partners and the Government? At that point the Government is not seeking a new mandate, but simply putting into effect an agreement made with the social partners.

In so far as the work of both Houses is concerned, it would be more sensible, realistic and inclusive to have a process whereby the Houses of the Oireachtas could set the terms upon which the general framework of an agreement is formed. This would be more inclusive as it would not just involve the Government and backbenchers, but also the Opposition. It would get over the difficulty we have had since the beginning, the sense that the people do not have ownership of the process. That is the intention behind our amendment, which would re-engineer the process and give greater control to both Houses.

I do not wish to take away from the excellent work done by the 15 Oireachtas Members of research groups already involved. Their work is very important. They inform themselves and their colleagues about the issues involved in partnership, but that is not the point. We do not want to be just a debating chamber for any report that comes from the NESF. We want some ownership of the process. By not accepting our amendment, the Government fails to re-engineer the process and make it more inclusive and democratic.

Mr. O'Toole: I have listened to the debate with great interest and wish Members would have the same interest in the social partnership process as they always have when it comes towards a conclusion.

I have raised this issue time and again and during peace time while no negotiations were taking place. On at least three occasions in the past year I asked in this House for a process to be estab-

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lished whereby the Houses would have an involvement in the process of national partnership negotiations. The matter was considered by the Seanad reform committee and is currently under consideration by the committee established by the Government to examine the implementation of Seanad reform. Both committees wrote to the Department of the Taoiseach on the issue and we have had three communications from that Department, all affirming that the Department would be more than happy to facilitate whatever level of discussion Oireachtas Members require on the social partnership.

I also raised the issue of regular reports as a member of the Joint Committee on Finance and the Public Service. This too was brought to the attention of the Department of the Taoiseach and Dermot McCarthy, the Secretary General of the Department, replied in positive and open terms that it was prepared to do that.

Senator Ryan's suggestion that the members of the forum should form a committee of the Houses of the Oireachtas is interesting and makes sense. However, the reality is — this will not suit anybody outside the Government parties — that when an agreement in which people have played a part is made, it is written in blood and everybody is tied into it. That would not be of much help to Opposition or non-Government Members.

It is no party defending a national programme or partnership, as generally a programme will find more opposition than otherwise. Members were in a comfortable position in terms of defending the issue of benchmarking, although it was criticised at all levels, particularly by those benefiting from it who were barely convinced they should accept it. Convincing people of the benefit is one of the great difficulties.

Senator Ryan made the point that it was not the beneficiaries, the unions nor the negotiators who wanted to keep the basis on which benchmarking was done a secret. The private sector which provided the information to the benchmarking body which enabled it to establish the benchmarks, did so only on the basis that it would not be made available to anybody else. It was not made available to the trade union negotiators. I tried to get and argued for access to those papers many times, but they were not made available. One of the problems of negotiations is that there is always this cloak of confidentiality.

I have raised this issue with the trade unions and with the farmers' representatives. They are happy, and I am sure IBEC would be too, to come and discuss their issues at the start of a programme. I agree with the point made by Senator Brian Hayes about the Government setting out its strategic objectives. That would be useful and helpful.

Something which is not understood about the partnership process is who is represented at the talks. Perhaps Deputy Kitt should arrange for a photograph to be taken of the different groups represented before they leave. I defy anybody to name a voluntary, social or community group not represented at the talks or without a strong voice there. However, the only people the media and politicians in general are interested in are the trade unions, IBEC and the Government. The other groups are represented and need to be there.

Everybody I know involved in partnership, the Government, the trade unions, the social and community pillar, the farmers and IBEC, is in favour of involving the Oireachtas as far as possible, but nothing comes of that. If people are involved, they are tied into the outcome to some extent. There is nothing wrong with the points put forward by Senator Brian Hayes, but when people go to Government Buildings to discuss the issue, it is not just Oireachtas Members who are not involved. Every shop steward in the country would also like to be there to represent his or her union. However, the reality is that trade union members elect their representatives and it is they who go to the talks. The same is true for the business and farming communities and the many bodies in the social and community pillar. These groups elect people such as Fr. Seán Healy as their spokespersons. These various groups say that we do the same, and that we elect the Government and send it to the talks on our behalf. They would argue strongly that the strongest representation is the representation by the Members of these Houses. Senator Brian Hayes's argument, which is not without merit, is that only the Government side is represented. That is a fair point.

There should be discussion in these Houses on partnership issues as they arise and develop. I would be in favour of being involved in such discussion. I have pleaded for it time and time again. Nobody is opposing it, but it just does not seem to fit the business of the Houses or the committees. It is not very sexy to be dealing with an issue that is not the subject of significant media interest. I do not know where we can get to. I completely agree and have no problem with the strategic framework, which is normally very public anyway. The process is built on that basis.

Mr. T. Kitt: I note there is a vote in the Dáil.

Acting Chairman (Mr. J. Walsh): Is the Minister of State paired?

Mr. T. Kitt: Somebody is checking it for me.

Acting Chairman: Perhaps the Whip will check.

Mr. T. Kitt: Yes.

Mr. Ryan: We do not mind if the Government falls.

Mr. B. Hayes: It would be for a good cause.

Mr. Ryan: It would suit us, given the present state of the opinion polls.

Mr. Moylan: Perhaps the House will agree to a ten-minute suspension because an unexpected vote has been called in the Dáil and the Minister of State is not paired.

Acting Chairman: Is that agreed? Agreed.

Mr. Moylan: I thank the Members for their co-operation.

Mr. T. Kitt: It seems that I am paired after all.

Mr. Moylan: We can proceed with our business because the Minister of State can stay. I thank Members for their courtesy and help.

Acting Chairman: Is that agreed by the House? Agreed.

Mr. T. Kitt: I thank the Acting Chairman for his co-operation.

I welcome Senator O'Toole's participation in the debate on amendment No. 1 because he has been involved in the social partnership process for many years. I value his contribution and the contributions of others to this discussion. I have listened to the comments which have been made.

As I said earlier, I am keen to examine the proposals for Dáil and Seanad reform. Senators have mentioned the efforts they have made to try to make progress in the area of scrutiny, for example. I am prepared to consider such suggestions in the context of the Dáil reform programme I have been pursuing. Some very good scrutiny is taking place in many Oireachtas committees. I am undertaking some reforms involving public consultation on the Internet in the context of forthcoming legislation like the broadcasting Bill, which will be before the Houses soon.

I am keen to give every member of the public, rather than just the Members of these Houses, a chance to make an input into legislation. I hope to facilitate the use of modern technology to allow people to comment on the heads of Bills as they are proposed. That is something I am very keen to pursue. The point that we need to examine this entire area in an organised way is well made. I suggest that we should do it through a different forum.

I am holding firm in my position on this amendment. It is the duty of Governments to govern. Senator O'Toole asked whether it would necessarily suit the Opposition to be internally involved in important matters of this nature. I have heard members of Fine Gael arguing against social partnership in the past. They have made the point that it is too inclusive and that there is a need for a healthy alternative view.

Mr. B. Hayes: We are paid to give the alternative view.

Mr. T. Kitt: Of course. A genuine argument has been made for better scrutiny of the many complex aspects of national agreements. Such agreements now extend into many areas, including child care and parts of the social and voluntary pillars. I understand the argument made by many Opposition Deputies and Senators that they need to be involved in this process. If there is something I can do in this regard in the context of Dáil reform, I will be glad to consult my ministerial colleagues about it. We have not made great progress in some of the areas of Dáil reform because of a lack of consensus. We try to deal with these issues on the basis of consensus. To say I will consider the ideas which have been expressed here is as far as I can go. It is important that I hold firm on the basic point, which is that when a Government is elected with a programme for Government, it has a responsibility to follow through on that programme.

Mr. B. Hayes: The amendment regarding this important issue has been moved by Fine Gael in both Houses. The Opposition and the Government recognise that something has to happen in the social partnership process to ensure not only that it is more representative but also that more life is brought into it. When I have listened to the debate over recent weeks, I have noted a sense of *déjà vu*. I have heard people making the argument, "If it does not happen, so what?" It is a great shame that people are taking such an approach. Very important matters are being discussed as part of this process. We need to have some ownership of it.

I do not believe the Opposition's job is to represent anyone at the social partnership talks. It is the job of the Government and the Taoiseach who were elected on the first day of the new Dáil to ensure they do their best in those talks. Nobody is suggesting that we want to be part of the talks, but we are suggesting that a framework should be set out, as part of the Government's agenda going in to those talks, under which everyone can express their views. Such a framework should involve a process whereby the views of Fine Gael and other parties, as well as Independent Members, can be reflected in public and in plenary session.

Our difficulty is that many key groups of people have been excluded from the current process to date. We do not have a sufficient starting point from which the Government can then reflect a position as it goes through the Houses. The Government's position regularly changes as matters go through both Houses when proper consultation takes place on all sides. That is a normal part of political life. We are suggesting that the Government's initial strategic objectives — what it wants to achieve during the talks — could change as a result of proper dialogue with all Members of the Oireachtas. Not only would that be of benefit to the Government, but it would also ensure that the views of both of these

[Mr. B. Hayes.]

Houses would be represented. The views might well be in conflict, but at least there would be some debate on them. It is accepted on all sides that something has to give during this process.

Senator O'Toole referred to the work that was done by the Seanad reform committee. The Senator rightly pointed out that the Department of the Taoiseach did not object at the time to the committee's view that the Seanad needs to have a much more meaningful role in the scrutiny of the social partnership process. Am I right in saying that this Bill was first proposed in 2002?

Mr. O'Toole: Yes.

Mr. B. Hayes: We have had four years to get this right. One deal has been concluded in that time and it is hoped that another deal is about to be concluded. We have had four years to change, but nothing has happened. There is frustration in Fine Gael that the necessary re-engineering of the parliamentary scrutiny and accountability process is not taking place in this Bill, even though the Government has had four years in which to do it. We feel strongly that our position offers at least one way of doing that.

It is fine if there are other views — we should hear them. People should put their amendments on the table so that we can see the colour of their money. Fine Gael's proposal, which will not cost the Government anything, will allow the Houses to be involved at the start of the process. It would be foolish to suggest that the Houses should ultimately sanction any social partnership deal, it would be ridiculous to get involved after the horse has bolted. We need to be involved at the start of the process, rather than at the end of it.

Mr. O'Toole: There is a great deal of merit in the points which have been made by Senator Brian Hayes. I would like to point out, for the information of the Minister, that I raised this issue the last time we discussed this matter, which I think was in January. I spoke in the House at that time about the issues to which Senator Hayes now refers, namely, strategic economic and social justice challenges. I explained how that is done, how the partnership process is kicked off and what happens on the first day.

The answers are contained in a public document and I asked that it be discussed in this House. I refer to the NESC report, which contains the strategic objectives which have formed the basis of every agreement in which I have been involved. I raised this point in the House four or five months ago and asked for a debate on the report, which subsequently took place. The next step to take place in the first days of the partnership process, during which partners meet in full plenary session, is a presentation by the Taoiseach and the Minister for Finance regarding the more narrow economic objectives.

Senator Brian Hayes is correct to suggest this issue should be debated and I have asked for such debates in this House. I cannot recall whether the presentations made by the Taoiseach and the Minister for Finance at the early kick-off sessions are publically available. As they are not confidential documents, I suspect they are. From the Government's perspective, these constitute the three documents in which its strategic objectives are set out. This took place in 1987, the early 1990s and throughout the period.

While this Bill has plans for the NESC and the NESF, this is why the NESC report is the basis on which the partnership process is carried out. It is not a three-card trick. However, what happens subsequently is hard to describe because, as Senator Brian Hayes has noted, everything changes, even as one looks at it. It is like a three-card trick, in that while one sees it happening, one cannot see what is happening.

I accept the Senator's point. Although the House has already had a debate on the NESC report, I would welcome a debate on the report, as well as the other two documents. Moreover, the other social partners make their presentations available and they are worth hearing.

However, this boils down to a simple issue regarding the nation's wealth. While I do not wish to coin a 200 year old phrase, this concerns the redistribution of wealth. I have seen a million different ways to approach this issue. I recall discussing a simple way to do so with a former Taoiseach and a former Secretary General of the Department of the Taoiseach. Can a formula be agreed as to how the wealth of the country should be distributed? In other words, if there is 5% growth, where does it go to? Of course no one wants to get into that. It would be many bridges too far for all concerned and will not be done.

This suggestion does not require an amendment and could and should be done. This House has already had a debate on the NESC report and there could easily have been a debate on the other two documents to which I referred. They do not differ greatly from the Minister for Finance's budget speech. While I have not sought access to them, I do not believe they are confidential documents and they do exist.

I am unsure whether this would advance the cause of transparency very far because after the presentations, everyone gets to grips with the different issues. In one sense, the documents are simply for guidance purposes and in another, they constitute the opening gambit in negotiations. There is no comparison between the original documents and what emerges subsequently. While I do not know how this would help the Houses, I would welcome any debate on any aspect of social partnership. The more people who are involved in such a debate, the greater the visibility of social partnership.

Senator Brian Hayes correctly referred to the nonsensical discussion as to whether we should have social partnership. The issue is not whether

we should have social partnership, but concerns its contents. Does it have any benefits? I will repeat a point which I have made three or four times in the House. In simple terms, to see its benefits one should re-run television images of Brussels, Paris, Rome and parts of Germany in the past year, showing public service strikes which entirely closed down all those countries for one to three days. As an aside, the issues involved were the same as those which are under discussion in Ireland today. Members may recall that the issue was pensions in Germany and Italy, while in France the issues concerned pensions and other matters. There were also a variety of other issues such as workers' rights, the protection of workers and the quality of public services. That is how it should be.

All Members agree with a point made by Senator Brian Hayes before I entered the Chamber as to who monitors what is happening. Committees have been established to deal with sectors such as education, health and the Civil Service, in order to monitor the review. Their function is meant to be to prevent payment of the money in the absence of delivery. For example, one month ago, the relevant committee spoke out when it was suggested that the INTO would not support whole school evaluations. The union was immediately told its members would not receive the 2.5% salary rise. Hence, the process works and the connection is clear. This also happened in the health service. Two months ago, people decided not to co-operate with a change and were told that the money would not be forthcoming. It was not the Minister that spoke, but the group that evaluates quality in each sector.

What has partnership achieved? I will give one example, because people assert that our public services are backward and have not done this, that or the other. While it is true that major reforms must be made, in the area of education a completely new curriculum has been introduced at both primary and post-primary levels, with full co-operation and agreement. This has not happened in any other European country, although all have tried to do so. While they have introduced such reforms, they have resulted in war and spilled blood in every one of them.

Moreover, there has been a reorganisation of the school year at both levels. While this may not have been to everyone's satisfaction, it was done. Ministers and secretaries of state for education in other European countries have been unable to introduce whole school evaluations. Some have introduced measures which have caused problems at all levels. Hence, progress is being made.

I accept the point made by Senator Brian Hayes. Matters such as proposed developments and what people get back for their money should be spelled out. Undoubtedly, some people would then assert that having spent €1 billion, we were not getting enough back. However, when €1 billion was spent on benchmarking, the prize, in the words of the previous Minister for Finance, was that there would not be strikes and industrial disputes within the public service. That was the desired prize and the most significant goal. This explains why everyone was rather annoyed and upset by the unofficial rail strike that took place in recent weeks. Members should recall that the first groups to state that such action was wrong and unacceptable were the unions of which those people were part. That is the price of partnership. It is difficult to achieve it and I do not have a problem with Senator Brian Hayes's proposal. However, I wish that a full House discussed such matters.

Mr. Ryan: Since the issue of the value of social partnership has been raised, I am entirely sick of the way in which vested interest economists selectively pick small items and state they would have been achieved without social partnership. Social partnership stabilised this country in the period between 1987 and 1989. Whatever might have been asserted subsequently about wage agreements and other matters, stability was achieved by the institution of an agreement whereby, uniquely, and entirely differently from the neighbouring island, enlightened trade unions accepted there was no point in demanding 15% wage increases when inflation was 14%. Many other things developed from that basis. Subsequently, social partnership has extended so far beyond wage agreements that its institutional framework requires an examination.

I am always intrigued by the allegation that the public sector had to be dragged into the use of modern methods, etc. While I will discuss third level teaching shortly, every teacher that I know at primary and secondary level has demanded for years that he or she be properly equipped to teach using modern technology. They have not sought special pay agreements or productivity deals. Instead, they have sought to have the equipment provided, in order that they could use modern technology as part of teaching. There were no hidden agendas, they did not seek extra money and they were not given it.

In the sector in which I work, all innovation in teaching, whether in the use of information technology, modern teaching or audio-visual methods, has been dragged out of the system by teachers' innovation. The teachers did not hamper innovation. If anything, innovation has been held back by the inability of the State and the funding agencies to respond rapidly. I was using e-mail before any part of the private sector had discovered electronic mail. The same is true for the Internet. We were held back in the use of information technology because for a long time our private sector was quite primitive about such matters. The image of the slow public sector and the thrusting private sector is contradicted by the facts and we should move on from it.

I support Senator Brian Hayes's amendment because we need to create an institutional way to re-establish the primacy of politics in how our

[Mr. Ryan.]

country develops. Without that primacy we cannot have a genuine democracy.

Mr. T. Kitt: I welcome this debate, a crucial part of which is getting Houses that are as full as possible. This is an area in which I have a significant interest, having been very privileged to be Minister of State with responsibility for labour affairs some years ago. In that role I got to know many of the parties in the partnership process. I echo the words of Senator Ryan, who has rightly commented on some commentators who chip away and are inclined to continually criticise those involved in the partnership process on the basis that they are involved in some sort of elitist process as if those who walk through the gates of Government Buildings feel elitist or act in an elitist way, which is not true.

Those I know from all sides, in particular those from the trade union movement who have given enlightened leadership over many years, are involved because they are very tough and good negotiators. They give much of their time for the betterment of their own particular sectors and more importantly for the betterment of the nation and our people, which this debate has reflected. We should applaud those involved from all sides who represent various sectors.

We have strayed somewhat from the amendment. I cannot go any further except to say that very legitimate points have been made about the need for greater involvement of Oireachtas Members. For a period in the past I was involved in the NESF, which does tremendous work. Some suggestions have been made about the committee process. I cannot give any commitments other than to say that as Chief Whip working with the Opposition Senators' colleagues I will consider the committee structure. I cannot give a commitment except to say that we will look at it under the umbrella of the process of Dáil and Seanad reform.

I echo some of comments of Senator O'Toole who asked whether we need this amendment to deal with many of the issues raised. For example, I have responsibility for the CSO and today I answered parliamentary questions on the figures released today on employment and how many non-Irish nationals now form part of our workforce. I believe the workforce has increased by approximately 90,000, of which 50,000 are non-Irish nationals. While I have not done so, others have raised issues regarding possible displacement, which are legitimate issues for debate. Extensive information is available from the CSO reports. I arranged for a debate in the past on one such report on the household survey and the economy. Those reports contain issues central to social partnership debates and there are huge opportunities for us as Members of these Houses to debate such basic issues.

This morning on the Order of Business, the Tánaiste gave a commitment to a debate on decentralisation, which has obviously also become part and parcel of the partnership process. There are many opportunities for both Houses to debate these issues, not for the sake of debating them, but because at a given time they are very important issues that form part of the partnership negotiations. We should be able to arrange to do that without putting it into a legislative process.

I can go no further except to say that I hold my position. I am more than open to looking at other options, working closely with colleagues in this House to see whether we can deal with the case made by Opposition Members for greater involvement of Oireachtas Members. There are huge opportunities to hold debates here and in the other House on all these issues. Partnership has become a very wide area of dialogue with many issues. Today the CSO also released new figures on child care. These issues are central to the negotiations and both Houses should have an opportunity to debate them when they see fit.

An Leas-Chathaoirleach: Amendment No. 1 has had a good airing at this stage.

Mr. B. Hayes: I agree. I will not detain the House much longer. I have spoken on the record on this matter for as long as I have been in this House and the other House. My party's position is that this amendment is needed because despite all the talk about Seanad and Dáil reform, nothing seems to happen. Despite all the promises made about new ways of approaching such issues, nothing happens.

Mr. T. Kitt: The problem is that we need consensus.

Mr. B. Hayes: The dilemma is that I am faced with a Bill on which I am doing a job. I am trying to put into the Bill precisely what people say should happen. The intention of the amendment is to have within our grasp in both Houses of the Oireachtas the ability to change the agenda as far as the Oireachtas is concerned for the start of the process of talks. This is the net point in our amendment. I have repeatedly said that Governments of various descriptions — although Fianna Fáil has been in power more than Fine Gael has been of late — have continually dumbed down the Dáil and Seanad in terms of debate. Every major Government statement is made, not in this House or the other House, but in the press briefing section of the Department of the Taoiseach and some stupendous other location.

Mr. Ryan: As we are not allowed to use PowerPoint, we cannot do them here.

Mr. B. Hayes: Correct. Westminster would not put up with that. The Speaker of the House would intervene and rap the Government across the knuckles——

Mr. Ryan: She did.

Mr. B. Hayes: —— at the notion that a major policy announcement would be made outside the House. We must reassert the authority and primacy of politics. Last September at the start of these talks when going into Dublin Castle the Taoiseach said that his key objectives were health and education because those were the latest buzzwords coming from focus groups. As Fianna Fáil was in trouble, health and education were the priority matters last September. When I heard that interview, I wondered why the Taoiseach needed to go social partnership to address health and education. These matters should be addressed here. If we are serious about Dáil reform, we should be serious about this amendment. It would send out the right signal that we intended to re-engineer the process and do something more by encouraging more people into the House to debate these matters.

People do not come into this House and the other one as they feel it makes no difference. I speak as much on behalf of Government backbenchers as I do on behalf of Opposition spokespeople. We need to reassert the authority and primacy of politics in this country. The only way to do so is by forcing Governments into the Houses of the Oireachtas to face their responsibility there. I was not aware that it had originally been planned not to sit next week. Where did that come from? It makes no sense for the Government to do this four weeks before a summer recess. While the amendment is specific to social partnership, it is more important in terms of establishing, as I have described it, the primacy of politics in this country. We need to get back to basics.

Amendment put.

The Committee divided: Tá, 14; Níl, 26.

Tá

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Ulick.
Coghlan, Paul.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.
Hayes, Brian.
McHugh, Joe.
Norris, David.
Quinn, Feargal.
Ross, Shane.
Ryan, Brendan.

Níl

Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Daly, Brendan.
Dooley, Timmy.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
Mansergh, Martin.
Minihan, John.
Morrissey, Tom.
Moylan, Pat.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Toole, Joe.
Ormonde, Ann.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

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

Amendment declared lost.

Section 9 agreed to.

Sections 10 to 13, inclusive, agreed to.

SECTION 14.

An Leas-Chathaoirleach: Amendments Nos. 2 and 3 have been ruled out of order as they involve potential charges on the Exchequer.

Amendments Nos. 2 and 3 not moved.

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

Mr. Ryan: Sections 14 to 16, inclusive, do not provide for somebody who can represent unorganised workers. Anybody working in agriculture is free to join a representative body and every employer is equally free to join IBEC. However, a significant number of people in this country are effectively being prevented by their employers from joining trade unions. A study carried out by UCD suggests that 70% of those at work would join a trade union if their employers allowed

[Mr. Ryan.]

them to do so. It is extraordinary that one branch of partnership, namely employers, is preventing part of another branch of partnership from taking part in an institutional arrangement.

There is no simple solution to this issue but it needs to be put on the agenda. Many people in this country have reservations about how their employers would react if they joined a union. I refer to small businesses which employ three people. My experience of employers in the voluntary and charity sectors is that many of these would also take exception to trade union membership among their employees.

At present, there is nobody to represent those who are not allowed by their employers to join a union. The trade union movement does its best but it would be preferable that every worker could feel free to join a union.

Mr. Moylan: The Minister of State might give further consideration on Report Stage to the gender balance of members of boards. If people are to be appointed to boards, they should be appointed in a gender balanced way.

Mr. T. Kitt: On Senator Ryan's point about representation, section 14(2)(*f*) provides that the Taoiseach may nominate a person to represent the category in question. I will convey the Senator's remarks to the Taoiseach in the context of that provision.

With regard to gender balance, the Taoiseach wrote to all parties on foot of a previous debate on that issue. The letter, which I will forward to Senator Moylan if he so wishes, calls on all parties to ensure a gender balance on bodies.

According to the information I have to hand on female representation, women comprise 50% of NESDO, 90% of NESC, 44% of NESF and 29% of the NCCP.

Question put and agreed to.

SECTION 15.

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

Mr. Ryan: With regard to subsection (3)(*a*), I am somewhat disappointed that no legislative statement has been made on the appropriate proportion of Deputies and Senators. It would appear that the normal proportion is ten and five, respectively, but apparently the proportion could be 14 and one if the Taoiseach so wished. I do not know the current proportion but I presume that every joint Oireachtas committee should comprise proportionate numbers of Members from both Houses, including at least one Senator.

Mr. T. Kitt: I understand that criteria for membership are based on the ability and commitment of individual Members. The issue of gender balance has also been raised in this regard.

Mr. Ryan: I was never asked.

Mr. B. Hayes: It is a question of proportionality.

Mr. Ryan: I was never asked.

Mr. T. Kitt: The party leaders are involved in selections there. Senator Ryan kindly informed me of a possible amendment to a section later on for which I thank him. I understand we are concluding approximately now. We would be glad to examine that in the meantime. I am preempting something that may happen. The Senator knows what I am talking about. I see a reference to Dáil and Seanad Members. It relates to that area and I will examine it between now and the next time we meet.

An Leas-Chathaoirleach: I ask Senator Ryan to report progress.

Mr. Ryan: I have only a small problem, that the House ordered that the debate would finish now. I am happy to report progress. I am a stickler for procedure, contrary to what people think.

An Leas-Chathaoirleach: It is not the Chair's fault.

Mr. Ryan: I never said it was. I move that we report progress.

An Leas-Chathaoirleach: I ask the Acting Leader to clarify the situation.

Mr. Moylan: We will resume debate on this Bill on Tuesday, 13 June 2006.

Progress reported; Committee to sit again.

Public Hospital Land: Motion.

An Leas-Chathaoirleach: I welcome the Minister of State at the Department of Health and Children, Deputy Tim O'Malley.

Mr. Browne: I welcome the Minister of State to the House. I move:

> That Seanad Éireann condemns the Government for pursuing a policy which will give away the lands of public hospitals to private hospital developers; and calls on the Government to:
>
> — abandon its plans to give the lands of public hospitals to private developers;
>
> — ensure that the lands on public hospitals are kept for public health facilities; and
>
> — instead use the public lands to build much needed public health facilities such as more in-patient beds and more step-down and rehabilitation facilities for the elderly.

While Fine Gael is not against the concept of the private sector being involved in health care, we

have a difficulty with public land being given to the private sector. We have a difficulty with this approach for a number of reasons. Given this Government's inability to manage projects we have every reason to be concerned. At Beaumont Hospital a public private partnership involving a carpark went way over budget and time. It benefitted only the private developer and was not of use to the public or the taxpayer.

My colleague, Deputy Paul McGrath, has done much work on the area of the Kinnegad and Kilcock motorway bypasses. The company involved invested €40 million and borrowed a further €150 million. The taxpayer has put €268 million into the project and is liable for tolls estimated in the region of €600 million over the next 30 years. That cost will rise considerably.

5 o'clock

This Government has not negotiated good deals with the private sector in the past and in this case, because public land is being handed over, it will restrict the future development of hospitals. We have a simple ideology, that public hospitals and lands should be kept for public beds and facilities. We do not agree with the Government's policy and I do not believe that Fianna Fáil agrees with it. It is being pushed by the PDs. In the *Sunday Independent* recently Mr. John Drennan wrote about the privatisation of the health service by stealth under the Tánaiste and Minister for Health and Children, Deputy Harney, and he is not far wrong.

There have been many announcements about public and private bed levels and most people are confused. In November 2001, the Government's national health strategy promised an additional 3,000 beds and 650 beds by the end of 2002. In January 2002, four months before the general election, we had a bed review report. The then Minister, Deputy Martin, promised 3,000 acute hospital beds over ten years, and this was due to be "the largest ever expansion of acute beds for public patients".

In June 2002, the Fianna Fáil-PD programme for Government referred to expanding the number of public hospital beds in line with a programme to increase total capacity by 3,000 during the period of the strategy. By October 2004, the Taoiseach told the Dáil that 900 beds had been funded, but had the embarrassment of having to admit that the 900 beds of which he spoke may not have been beds and it later emerged that this figure included trolleys. The next day the Tánaiste told the Dáil that none of the 900 beds was a trolley. This was contradicted the following month when a journalist, Ms Maev-Ann Wren, made an FOI request which revealed that a bed or a day place is "a device or arrangement that may be used to permit a patient to lie down, recline or recover in the course of an elective day admission".

By May 2005, the Department of Health and Children progress report on the 2001 health strategy referred to provision being made for 900 additional inpatient or day beds. In early 2005, Professor Brendan Drumm of the HSE stated that we do not need more beds, which contradicts everything that has been said so far. In July 2005, the Tánaiste told the Oireachtas Joint Committee on Health and Children that she intends to provide 1,000 of those beds by decanting 1,000 private beds in public hospitals into private facilities on public hospital grounds. It is worth noting that 2,500 of the 12,900 beds in the acute hospital system in public hospitals are private beds. One can understand why the public is confused, as is the Government, I suspect.

While Fine Gael is not opposed to private individuals being involved in health care, we have a problem with them using public land. The Tánaiste justifies this by saying that by freeing up public land she will remove private beds from the public health system. There have been quite a few mixed reports on that issue. I was interested that Dr. Fergus O'Ferrall, director of the Adelaide Hospital Society, the Adelaide and Meath Hospital, Incorporating the National Children's Hospital in Tallaght, stated that this proposal makes neither health policy sense nor economic sense. He states that patients will not have the same quality of care because they will not have the comprehensive teams and services available to those in private beds in our public hospital systems. He said that those occupying public beds will also get poorer care because consultants will not be around as much as they are when public and private beds are in the same hospital. That is an important point. The Tánaiste's plan is to free up 1,000 beds by moving 1,000 of 2,500 private beds in public hospitals into new "for-profit" private hospitals over the next five years. These hospitals will be required to offer at least 20% of beds to public patients at a discount of 10% or more. Fine Gael and the Labour Party believe that public land belongs to the people. We will use that land for public beds, particularly step-down beds.

Senators expressed differing opinions during a recent debate on accident and emergency units. Those in hospital should be allowed to move home or to a step-down facility in order to recover after operations. They should not clog up hospitals. Fine Gael has pledged 600 beds in the Dublin area. This can be done within 30 months and would help to alleviate the scandalous situation of people on trolleys in accident and emergency units.

The Finance Acts of 2002 and 2003 were altered to allow investors to write off the entire cost of the construction or refurbishment of private hospitals against their tax bill using accelerated capital allowances. For every €100 million invested, the taxpayer will contribute €42 million. This is effectively a gift from the State and will not result in the public ownership of the hospital. Families will inevitably end up paying more.

The proposed new hospital beds will attract a subsidy of €190,000 per bed in tax relief. The

[Mr. Browne.]

Tánaiste admits that VHI members could face an increase of 66% in hospital charges as a result of this policy. Fine Gael asks what ordinary families receive in return for the extra cost burden. We have seen examples of public private partnerships that did not work in the field of education. They were completed late and over the budget allocated, which cannot be justified. The average household pays €3,000 to fund public hospitals but the Tánaiste has failed to provide a full hospital service. As a result, she has collected some €1,800 more per family than in 1997. Furthermore, families have been forced to pay €1,300 on private health insurance because they cannot guarantee a health service without it.

The key to public private partnerships is that risk is transferred to the private sector. These private hospitals will receive a 42% subsidy on the building and a 20% subsidy on its operation. No accident and emergency units will be included because the hospital will concentrate on routine work rather than complicated, costly cases. The Comptroller and Auditor General did not give a glowing report of the handling of the saga involving the car park at Beaumont Hospital.

The hospitals to which the Tánaiste refers depend on generous tax relief and massive indirect public subsidies through reliance on the public hospital system. The Tánaiste does not refer to the separate laboratory or X-ray facilities, CT and MRSI scans, or post-operative intensive care units to be provided in the hospitals. If public facilities continue to be used for private patients, the public patient may have to wait longer for diagnostic tests and procedures.

Furthermore, the Tánaiste stated that consultants in public hospitals will be permitted to treat private patients in new private hospitals. In order to maximise income, consultants will have to spend more time in private hospitals and less with those in public beds. Accident and emergency units are expensive and no private hospital in the country provides accident and emergency services similar to public hospitals. Private hospitals tend to choose services that are most cost effective and easy to manage. Fine Gael has no problem with private hospitals but questions why land from public hospitals is given away for such a minor return. It does not represent value for money.

Last week representatives of the Medical Council appeared before the Joint Committee on Health and Children. It stated that private hospitals are not subject to the same degree of regulation as other hospitals. One does not require a licence to operate a private hospital, a situation that has inherent risks. Fine Gael objects to public land being given to private developers for their gain, not for the taxpayers' gain or that of the patient.

Mr. Ryan: I welcome the Minister of State, although he may not welcome what I have to say.

The Civil Service, and particularly the Department of Finance, is awash with accountants whose function is to account for money. There is not a single qualified project manager working in the Civil Service. Most people would not know that there is such a qualification but hundreds of young people train as project managers and it is time they were employed in the public sector. The ESB should be in charge of public sector project management. It does so all over the world, on time and within the budget. It would do a better job than the dead hand of the Department of Finance, holding up matters and intermittently causing overruns.

On an intellectual level, I am intrigued by what the Progressive Democrats, effectively the Government, are attempting. Is there insufficient money to provide beds? Why are extra beds being provided if, as we are being told, there is no need for them? The Tánaiste and the chief executive of the HSE agree that we do not need extra beds despite much objective evidence to the contrary. Do we need these beds because the private sector promised to provide them?

At the end of this year the Government could have a surplus of up to €1.5 billion. This would build all the hospitals we need and, when the capital investment was finished, the surplus would fund the staff costs. It is impossible to believe a shortage of money is the problem. Will we save money by following this path? We may save some in the short term but we are effectively giving money away, enabling rich people to increase their wealth at the expense of our health service. We are providing them with much money and valuable sites. If we need further public health facilities, the State will have to buy sites because it has given these away. The hospitals will remain private. Will the private sector deliver a more efficient system?

There is an ideological issue, since most economic consultants build into their measurements a presumption of greater efficiency on the part of private provision. They believe that to be true universally; it is not a matter to be discussed by mere mortals such as me, since they know best. The only way to deal with that argument is to examine the question of whether private health provision is more efficient. I do not know how one measures efficiency in health provision, but I have two indices. The first is the outcomes, and the second is the cost.

In Ireland, we spend approximately 7% or 8% of GDP on health care. It is not quite as much as we like to say, since we add in things that other countries leave out. The Nordic countries and Canada achieve levels of approximately 10% of GDP. They have life expectancies among the highest in the world and infant mortality rates among the lowest, two very important indices of performance.

No one disputes that the most privatised of all health services is in the United States. The glossy image is of middle-class people attending posh

hospitals with wonderful backup, but it is the most expensive health service in the world, by a factor of 60%. It takes up approximately 16% of the United States' GDP. One dollar in every six generated in the US every year goes into health care. At the end of it all, they have a lower life expectancy than the Nordic countries and a higher infant mortality rate. The baby of a Spanish-speaking mother in the United States has a lower prospect of survival than one born in Cuba, owing to the appalling American system.

Private health care does not deliver better health, and it is extraordinarily expensive. If we had time, I could explain why. Health is not a commodity regarding which the laws of supply and demand work, owing to all sorts of factors. The presumption of the Competition Authority that if consultants had no agreement on fees, people would shop around for the cheapest is a classic example. If people are seriously ill, they will shop around for the most expensive consultant, believing him or her to be the best.

Money does not work. There is no argument on the basis of funding or delivery of services anywhere in the world to show that private health care is more efficient. There is an ideological assumption that it is, since the private sector is known to be more efficient. The inconvenient fact is that the biggest health market in the world, the US, where market forces run health services to the greatest possible extent, is least efficient and poorest at delivering quality in the western world. However, that fact is conveniently left out because we all know that the market is more efficient.

I need not go into the fact that most sane people, including my wife, who is a doctor, would in most instances decline to attend a private maternity hospital. My wife would not go near a private maternity hospital when our three children were born, since she knew that if anything went wrong, they would promptly call an ambulance and ship her off to a public maternity hospital. That is true of entire areas, and as Senator Browne has said, private hospitals provide a service and serve a purpose, but they leave out the hard parts most of time. Many private hospitals have a policy of leaving out what is difficult. They will deal with routine psychiatry but not with the seriously psychotic. They will deal with what they call accident and emergency, but it will not include the seriously ill. They will deal with many other issues, and at least one private hospital to my knowledge is more of a rest home for comparatively well-off people funded through VHI than a genuine hospital, and there are many of those around the country.

I do not understand why the Government is so set on this route. I regret to say that ideology rather than delivery of a service is the bottom line. Ideology has touched the Tánaiste, in the same way that the hand of God touches people, and told her that this is better. I find it astonishing that a sensible party such as Fianna Fáil, which knows this is a bad idea and will provide bad value for money rather than better health care, has allowed itself to be bounced into this by the party that seems increasingly to be driving the Government. I am very happy to second the motion.

Mr. Glynn: I move amendment No. 1:

To delete all words after "That" and substitute the following:

Seanad Éireann

— commends the Government on the measures it is promoting to improve access for public patients to acute hospital care;

— supports the Tánaiste's policy to develop private hospitals on the campuses of public hospitals in order that up to 1,000 beds currently reserved for private patients may be redesignated for use by public patients in the most cost-effective way;

— notes that the Health Service Executive has invited expressions of interest from developers who are interested in developing private hospitals at 11 public hospital sites;

— notes that the process is being conducted in accordance with the relevant EU law and will adhere to public procurement rules and best practice and will fully protect the public interest; and

— supports the Government's policy of encouraging public and private sectors to work together in the provision of health care for the benefit of the entire population and encourages further innovation and initiative in this regard.

Tá fáilte roimh an Aire. I welcome the opportunity to debate this motion.

As someone who was involved with the health board system for some time, both before and after its demise, it seems that one advantage it still has under the aegis of the HSE is that it holds a fair amount of property. I am in favour of the proposal that properties surplus to the HSE's established requirements should be devolved to another sector or arm of the health services.

The public private mix in public hospitals has long been a feature of the health service. While it has advantages when it comes to sharing clinical expertise, it has been recognised that inequities have arisen for public patients. That is a fact. This initiative will improve access for public patients while providing insured patients with new, purpose-built hospital facilities.

It is also a central element of the policy as set out in the Finance Acts that public patients should be able to access new private facilities. That can be done through the National Treat-

[Mr. Glynn.]

ment Purchase Fund or by direct arrangement with the HSE. The Tánaiste has given very clear reasons to pursue that objective, to which there is a strong degree of logic. Whether we like it or not, all consultants employed in hospitals, irrespective of discipline, have several private patients and a private practice.

In 2001, the health strategy contained a commitment to increase acute beds by 3,000 over a ten-year period. That year, the average number of inpatient beds and day places available for the treatment of patients in public acute hospitals was 12,145. Hospital returns for 2005 show that the number has now risen to 13,255, an increase of 1,110 inpatient beds and day places. Some 90% of treatment places in acute hospitals are overnight inpatient beds. In addition, a further 450 acute beds or day places are at various stages of planning and development under the capital investment framework for 2005-09.

In July 2005, the Government announced an initiative to have private beds built on the campuses of public hospitals. The aim of the initiative is to enable up to 1,000 beds in public hospitals that are currently being used by private patients to be redesignated for use by public patients. I do not see anything wrong with that, I think it is a good initiative.

By allowing a new private hospital to take a substantial number of private and semi-private beds out of our public hospitals we will create new beds for public patients in the fastest and most cost effective way over the next five years. This will bring together different areas of Government policy in a coherent and practical way in order to increase bed capacity for public patients in public hospitals.

Encouraging the participation of the private sector in generating extra capacity maximises the potential use of public hospital sites, promotes efficiency in public and private acute service providers, promotes greater competition in the supply of hospital services and offers improved quality and choice to all patients. Choice is a very important element of our health service. The public-private mix has proven difficult to manage and resource and cost sharing is not as clear as it should be. Separating the management and financing of a substantial portion of private beds will bring greater clarity to such issues.

Since 1999, it has been Government policy that the full cost of private beds in public hospitals should be paid by insurance companies. This initiative, which incorporates the policy of full economic charging, will bring about an increase in the number of public beds and new hospital facilities. This is a realistic and achievable objective. It will offer tax breaks on private hospital investment and there is an important rationale behind this concession. By locating new private hospitals adjacent to existing public hospitals we will make their roles complementary. The initiative is designed to support the policy of building regional self sufficiency in our hospital services. Team-based working arrangements in the hospital are required to ensure best patient care and will be introduced.

This policy is a key part of the context for a new consultants' contract, which has been overlooked. Most Members of the House would agree a new contract must be negotiated.

Cost effectiveness is of great importance because we are all long-suffering taxpayers. This plan is designed to be a cost effective way of expanding the supply of beds for public patients. The scheme of capital allowances for the construction of private hospitals was reviewed by Indecon Economic Consultants as part of the overall review of property tax incentives in 2005. Indecon consulted widely in the course of its review which was published in February 2006, including consultations with the Department of Health and Children and the HSE.

When a new public bed is provided in the traditional way, the Exchequer bears 100% of the capital cost. By moving private beds into a new facility and thus allowing for new public beds, the State bears less than 50% of the capital cost. The running costs of the private beds would no longer be subsidised or managed by the State and taxpayers' money is saved. These beds are currently staffed by nurses paid through public funds, therefore, all that is required is the relocation of the private beds to a new facility financed by private investors. These facilities would be co-located, so consultant staff would be on site for both public and private patients. Consultants can use their time more effectively if they work in one place only, as opposed to many different sites.

Mr. Browne: Is the Senator joking? Consultants spend equal time in public and private health care.

Mr. Glynn: It is all about delivering services to more people. This initiative will increase the delivery of services and reduce the cost to the Exchequer. I appreciate that there will be concerns and some people may be afraid of what is new, but this has the capacity to work. It will increase the number of public beds and the savings made can be used elsewhere in the health service.

Mr. Quinn: I welcome the Minister of State and congratulate Fine Gael on putting down this worthwhile motion. For two reasons, I am tempted to say that in an ideal world we would not allow private medicine to exist at all.

The first reason is perhaps of lesser importance, but it is significant nonetheless. The existence of private medicine means that none of the movers and shakers in our society need experience the difficulties that public medicine can bring. I doubt very much if any Member of this House, or indeed of the other House, fully depends on public medicine for his or her needs.

This allows us to tolerate shortcomings in the provision of public medicine that we would never tolerate if we had to go through the public system. It is one thing to read about and to empathise with the situation that other people find themselves in, it is quite another to experience these things for oneself. The existence of private medicine is something that allows us to wring our hands at what goes on in the public area, while at the same time we tolerate its continuance.

The second reason is that a two-tier medical structure creates a two-tier society with life or death consequences. It is a shocking indictment of this country that the further up the socio-economic scale one happens to be, the healthier a person one is. This applies to the ultimate sanction of death. The better off one is, the longer, on average, one lives. The further down the socio-economic scale one is, the more likely one is to contract and die of a whole range of diseases.

Professor Ron Hill of the department of political science in Trinity College spoke to the Committee on European Affairs today and pointed out that life expectancy in Russia has dropped dramatically in the past 20 years. In Russia, a man's life expectancy is now in the late 50s and a woman's in the mid 60s. It appears that this is a result of the destruction of the state health system after the collapse of communism. Similarly infant mortality has jumped in this period.

There are many reasons for the disparity in Ireland, but some of the most important relate to the availability and quality of medical care. I do not mean to suggest that the quality of medical care in public hospitals is in any way inferior to that in private ones, but a crucial element in successful medical care is identifying and treating problems early. A public system that makes one wait for diagnosis and treatment is a system that will inevitably have worse outcomes than one which offers instant diagnosis and immediate treatment.

Both of these are good arguments against private medicine, but there are arguments on the other side as well. An important point is that private medicine creates competition in the provision of services. I believe that competition is a good thing and is a necessary factor if we are to provide efficiency and quality in any marketplace. I disagree with Senator Ryan on this point. I have had experience of attending private hospitals in the United States and I was impressed by the service delivered. I was also impressed that, unlike what I expected to be the case, I was not overcharged when I had to go to hospital there.

If we banned private medicine in the morning and brought it all under the umbrella of the State, we would create a monster monopoly, which I very much doubt would be in the public interest. Another argument is the difficulty of getting from where we are now to that point. We have a mixed public-private medical system here and it has served us for many years, although I am not sure it has served us well. Even if we wanted to, I am not sure that in practice it would be possible to move from what we have to a single system. All of this leads me to conclude that our mixture of private and public medicine is something that is probably desirable and is not likely to change in the foreseeable future.

However, that does not imply we should sit back and allow the balance between the two sectors to take any shape the marketplace may determine. In other words, I would be worried about the marketplace being the only element determining that. We need a to establish a careful balance to ensure that, to the maximum possible extent, the two parts of our medical provision complement each other in the interests of the country as a whole.

I welcome the Tánaiste to the House. I recall from my university days a principle in economics called Gresham's law. Gresham's law argues that bad money will always in the end drive out good money. When it comes to co-operation between the public and private sectors, the same kind of principle applies. Marketplace economics tends to win out in the end. When we reflect on what has happened here in the past decade or so, we tend to find that when the public and private sectors get into bed together, the private sector always fares best in any such encounter. Whether such partnerships apply to airlines, hotels or other sectors, invariably the private sector wins.

Therefore, we are right to be wary of partnerships between the public and private sectors. We do not seem to have yet devised a way of operating that guarantees the public interest will not end up being sacrificed on the altar of private profit. I am sure there are as much brains in the public sector as in the private sector, yet the public sector does not yet seem to have found a way to manage this issue successfully. I am not only referring to medicine but to public-private partnerships in sectors in general.

We need to be particularly careful when it comes to making available to the private sector public sector assets that are in short supply. This is a crucial aspect. This is a dangerous game, because it usually tends to have a zero-sum outcome in that what one side gains, the other side loses.

When we talk about using public hospital lands to build private businesses we are not, therefore, talking about a normal commercial operation. Those lands are a rare and valuable asset, which may not be fully used by the public sector now but may very well be needed at some point in the future. There can be no doubt in anyone's mind that in the future the public medicine sector will need to expand greatly, even if it is only to keep step with the increasing demands an ageing population inevitably will bring. Our population is ageing, and the signs are that our people will need more medical treatment. Even though we may not need public hospital lands now, we may need them in the future.

[Mr. Quinn.]

For public hospitals to sell off some of their lands now for a short-term gain, which will largely profit private rather than public interests, appears to be a policy that sells future generations short. While Senator Glynn made a good case for doing that, I take a long-term view. We risk creating a situation in which we undercut what our children and grandchildren will wish to do by giving away what should have been an asset that was preserved for their needs.

We need to establish a careful balance between the private and public medical sectors. Preserving such a balance is best achieved by refusing to sell off public hospital lands, and for that reason I am pleased to support this motion. I understand the other point of view, which Senator Glynn explained very well, but on balance we need to be careful in regard to such a policy, and taking account of the long term, I support the motion.

Tánaiste and Minister for Health and Children (Ms Harney): I welcome the opportunity to set out the motivation, facts and benefits of the policy initiative I have brought forward to achieve 1,000 new public hospital beds by encouraging private sector investment. I must say, with regret, that the motion before the House is inaccurate. Not one square inch of public land will be given away to anyone. Public land will be leased or sold at commercial rates in order to achieve new public hospital beds. I would like to think that this inaccurate motion arose from a genuine misreading of the policy initiative, but objections from the Opposition on other occasions leads me to conclude that the language of the motion was chosen for its pejorative effect. If we are to have a debate, let it at least be on the basis of an accurate reading of what the policy is about.

This initiative is about creating 1,000 new public hospital beds in the most cost effective way, at less than half the capital cost of traditional procurement. It will be done in a way that will mean all patients in the relevant publicly-funded hospitals can be treated on the basis of medical need and not financial payment. It will be done by building on public and private roles in co-operation. It is not about the privatisation of our hospital services. No existing public service will be made private. Inother countries such as Sweden this has happened recently and more than 11% of their hospitals are now run by the private sector. That is not on the agenda here and it is definitely not part of this initiative.

The policy I am promoting is all about improving access for public patients to beds in public hospitals which are currently reserved exclusively for private patients. It is also a call and a stimulus to innovation from both public sector and the private sector to work together to develop coherent services, managed separately, but integrated strategically, on the one hospital campus.

This initiative invites ideas and innovation at local level at 11 hospitals for the development of hospital services. Already the signals are that many consultants, hospital managers and independent hospital operators will rise to this challenge to use the potential of this initiative to develop new services and new ways of public and private investment working together for the benefit of patients. The policy brings together different elements of Government policy in a coherent and practical way with the ultimate aim of increasing bed capacity for public patients in public hospitals; encouraging the participation of the private sector in generating that extra capacity; maximising the potential use of public hospital sites; promoting contestability among acute service providers; and offering improved quality and choice to all patients.

There are currently 13,255 acute public hospital beds. Approximately 2,500 of these beds are designated for private use. My plan is to transfer up to 1,000 of these beds to private facilities over a period of five years. Under this policy we will still retain a significant number of private beds within our public hospital system. I am of the view that this offers a practical and cost effective method of providing significant additional capacity for public patients.

To those who would say that this initiative is somehow foreign to our health system, I point out that the co-location of private facilities on public hospital sites is already a feature of a number of public hospital campuses. The experiences of these will be taken on board under this new initiative.

I also point out that we have a long tradition of independent hospital services here, which started with Dean Swift in the 1700s and institutions such as the Bons Secours Group and the Highfield Group have been providing services valued by the public for many decades and centuries. They have been joined in recent years by newer providers such as the Mater Private Hospital, Beacon, the Blackrock and Galway Clinics, Harlequin Healthcare and others.

Diversity of health care financing and health care provision is the norm in Ireland and internationally. The reality is clear — we have always had a diversity of providers of hospital services, just as we have long had a diversity of public and private finance. This policy builds on that track record of diversity; it encourages the private sector to manage private beds and the public sector to manage public beds, and the two to work together to create coherent campus services, rather than have completely separate developments on separate sites with no possible integration.

To dispel another myth, we already have a diversity among independent hospital providers of both not-for-profit and for-profit operators. There is nothing in this policy that requires a new operator to organise itself on a for-profit basis. The finance raised to build new hospital beds in this way can fund not-for-profit facilities as well as for-profit facilities.If Opposition parties wish

to propose a policy to the electorate that our State should prohibit for-profit hospital operators, let them say so. That is a choice open to them. Short of that, it is disingenuous to suggest, as an objection to this policy initiative, that the standard of patient care is less in for-profit hospitals than public or not-for-profit hospitals in our country. If that were the case, it would be incumbent on those who believe it to prohibit private for-profit hospitals altogether.

It is scaremongering to suggest that patient safety is necessarily compromised in hospitals in this country that operate on a for-profit basis solely because they are for-profit. The bottom line is that patient safety must be systematically assured in all hospitals, both public and private. Quality care is driven by factors such as clinical standards, volume and specialisation and not by the corporate status of the hospital operator. I will promote accreditation and clinical audit for all settings, irrespective of their financial structure. In Ireland the same consultants, largely, have treated patients in both public and private settings. I do not believe hospital consultants would accept that their patient care is lower in one location than another.

Since I announced this initiative for 1,000 new public beds I have heard confused and confusing objections to it. I now hear that the Fine Gael Party is in favour of private investment in new hospital wings, as if that were a major distinction from the policy. It is not a distinction at all. The policy allows for any type of facility to be built — a wing, a floor, a building or an annex. The architectural term is not the point. It is an essential of the policy that there will be close co-operation and connection between the new privately-financed and managed facility and the existing public hospital. How this is achieved will be for the HSE to decide in each location but I am clear that there will be training of junior doctors available on all campus buildings, that consultants' commitment to their public duties will be delivered and managed transparently and that patients will receive the treatment they require whether they enter through accident and emergency or through a planned admission.

The policy makes intelligent use of the capital allowances for investment in private hospitals. Under the Finance Acts, capital allowances are available for the construction or refurbishment of buildings used as private hospital facilities under conditions which will also benefit public patients. This scheme was reviewed by Indecon consultants as part of the overall review of property tax incentives in 2005 by the Department of Finance. The consultants recommended that this scheme should continue as there was a need for ongoing investment in private hospitals. The consultants also observed that the Government plan for private hospitals on the grounds of public hospitals is designed to be a cost effective way of expanding supply and, if properly managed, will increase supply and competition.

The capital allowance scheme has already incentivised the building of new hospitals. What this policy does is to provide a channel for that welcome new investment into hospital facilities that will be more closely integrated with existing public hospitals and create new public beds.

If the public sector builds 100 new beds at a hospital, the full capital cost must be met from the Exchequer, which is approximately €100 million. However, if the private sector builds the new facility, the capital cost to the Exchequer is reduced to a maximum of 48% with full capital allowances used — that is, €48 million for 100 beds. The public hospital gains 1,000 freed-up, new public beds for all patients, without a direct capital cost. For 1,000 new public beds, the saving to the Exchequer will be at least €520 million. This is nearly the equivalent of one year's health capital budget. l cannot see a more cost effective way of providing additional capacity to the public system. The HSE and the National Treatment Purchase Fund will be in a position to contract for services from the new private facilities. Any transaction regarding public land, whether lease or sale, will be done on a commercial basis and will fully protect the public interest.

The amount of private work carried out in public hospitals is in excess of the designated ratio of 20%. It amounts to approximately 25% of all activity but in some public hospitals it is higher; it was 46% last year in Tallaght. This cannot be sustained. It is not equitable for public patients and it is not the best use of public funding. The cost of a newly freed up public hospital bed will still be much less than the full running cost of new acute hospital beds. This policy is good value for money as it saves taxpayers €520 million in capital costs and there is also a substantial saving in running costs. Those beds are staffed by nurses who are paid by the public purse and they are subsidised to the tune of approximately 48% to 50% on an ongoing basis.

The Health Service Executive has advertised for expressions of interest for the construction and operation of private hospitals on the campuses of 11 publicly-funded hospitals before the end of June 2006. The 11 hospitals are as follows: Limerick Regional Hospital; Waterford Regional Hospital; Cork University Hospital; St. James's Hospital; Beaumont; Connolly Hospital, Blanchardstown; Adelaide and Meath Hospital, incorporating the National Children's Hospital, Tallaght; Sligo General; University College Hospital, Galway; Letterkenny General Hospital; and Our Lady of Lourdes, Drogheda.

The projects will be procured by utilising the new competitive dialogue tendering process in accordance with the procedures set out in the EU directive. It involves a three stage process, namely, pre-qualification; competitive dialogue phase within which solution are identified, discussed and eliminated or brought forward to tender stage; and a final tendering stage. It is proposed that at least three candidates will be shortl-

[Ms Harney.]

isted for each hospital and each of those candidates will be invited to participate in the competitive dialogue. It is intended that the project will involve making available the site to the successful tenderer at the full market value, subject to certain restrictions on the use and management of the site. The hospitals will be private hospitals which, in addition to providing private medical health care services, may enter into contractual arrangements with the various contracting authorities for the provision of medical services to the contracting authorities. All options will be discussed in detail as part of the tender process**.**

Government health policy is about health care provision for the whole population. It is centrally about publicly funded and publicly provided health care. In Ireland, 75% of money spent on health care comes from the public purse — €13 billion in 2006. Approximately €4 billion, or 25%, comes from private sources, including the insurers. This initiative is about much more than that. It is about the full range of health care provision and standards for the whole population no matter who provides it, whether public, private, for-profit or not-for-profit. This is the future of health care policy — policy for all the people, policy that invites innovation and works with flexibility, policy that builds on diversity of finance and management and policy that meets every person's health care need with quality services open and available to patients.

In most public hospitals, there is a considerable amount of private enterprise and private activity — 100% of which, from a capital perspective, is being funded by the Exchequer and which is subsidised to the tune of 50% on an ongoing basis by the Exchequer. That is not in the public interest when only certain patients can access those facilities, namely, patients who have private health care insurance or who can pay from their own resources. The idea of reducing the number of private beds in the public hospital system is to provide more beds for public patients based on medical need and not to provide a cohort of beds exclusively for one group of patients over another. This is a fair policy and one which will deliver additional capacity for the public hospital system without the taxpayer having to expend the capital cost of providing these additional resources.

Mr. Cummins: I welcome the Tánaiste. Many consultants and developers have come together in many parts of the country to build private hospitals mainly because of the tax breaks which emanated from the 2002 and 2003 Finance Acts. My colleague, Senator Browne, alluded to the fact that for every €100 million invested, the taxpayer will contribute €42 million. This is a massive gift from the taxpayer. The State will not own one brick in these hospitals. This may seem a bad deal for the taxpayer but to have a policy where private hospitals can be built on the land of existing public hospitals is a step too far. As Senator Quinn mentioned, this land may be required for the development of public services in the future. Did the Tánaiste consider that when she announced her policy?

This policy deserves careful scrutiny not alone by the Houses of the Oireachtas but by the Comptroller and Auditor General before any further commitments are made on it.

6 o'clock

This is the people's land and should be used for public beds for the people. We need more public beds, especially step-down beds, particularly in Dublin. My party has made it clear that lands in public hospitals should be used to provide public health facilities. The State lands should not be given to the developers of private hospitals.

The key to public private partnership initiatives is that the risk is genuinely transferred to the private sector. There will be a 42% subsidy for the hospital buildings and 20% subsidies for their operation. I doubt they will provide accident and emergency departments. All the routine work will be moved to the private sector, the most lucrative area within the system.

It is estimated by investment promoters for these projects that every €75,000 invested will yield a cash profit of €62,000. This will go to high income earners, particularly those with large rental incomes. No wonder this proposal is being presented as an attractive property deal. Will the Tánaiste spell out whether separate facilities such as laboratory services, x-ray services, CT and MRI scanning facilities as well as intensive care units will be provided in these for-profit hospitals adjacent to our public hospitals? If the public facilities continue to be used for private patients the public patients will have to wait longer for diagnostic tests and procedures.

Despite the Tánaiste's plan to introduce public-only contracts for hospital consultants she recently stated that consultants in public hospitals will be allowed to treat their private patients in the new private hospitals. Will this also mean that the private consultancy rooms they occupy in public hospitals will also be transferred to the private hospitals?

Studies in medical journals have demonstrated that for-profit care is expensive and the health outcomes compare unfavourably with those for non-profit care. The plan to have private hospitals on the grounds of public hospitals makes neither good health policy sense nor economic sense. There is a fundamental difference between building 1,000 new public beds and the plan which the Tánaiste has announced.

The not-for-profit governance model for acute hospitals in Europe is based on a commitment to patient care rather than profit. Dr. Fergus O'Farrell recently suggested that such a model is cheaper for the taxpayer, will lead to better care for all patients through a single high quality stan-

dard of care provided by the same health care teams within one hospital.

Market forces seem to dictate everything nowadays. Dr. O'Farrell says some aspects of life, such as care for the sick are too precious to entrust to the market. The Minister has failed to solve the crisis in accident and emergency units although she has been in office for some time. This policy will also result in failure.

Mr. Minihan: I second the amendment and welcome the Minister of State at the Department of Health and Children, Deputy Tim O'Malley to the House. I also thank the Tánaiste for her comments and her address to the House. In reaction to the Tánaiste's speech I offer Senator Browne the opportunity to amend or withdraw his motion.

Mr. Browne: Definitely not.

Mr. Minihan: On that note I will continue.

Mr. Browne: I am more convinced than ever.

Mr. Minihan: I am delighted that this subject is before us this evening. I was very disappointed in the motion moved by Fine Gael and the Labour Party. As the Tánaiste said, rarely has there been in this House such a poorly thought-out or worded motion. I do not know whether this is a result of Labour's influence on Fine Gael or the other way around but if this is the standard that is the result of the Mullingar accord——

Mr. Cummins: The Senator will know a lot about it in the future.

Mr. Minihan: ——the voters, and most importantly the patients will be rightly nervous about what is coming down the track. The wording of the motion denies the reality which is in fact known to Members opposite. Seldom does useful or quality work emanate from wilful self-delusion. This is no exception. The opening line of Senator Browne's motion refers to the giving away of public land to private developers. Only 22 days ago, on 9 May, Senator Browne was in his seat when I stated the following:

> The Opposition bizarrely objects to the plan to deliver 1,000 new public beds by private sector investment. Typically clouded leftist Labour thinking managed to describe this as privatisation. Fine Gael seems to base its opposition on the mistaken view that public land will simply be given away. It will not. Public land will, of course, have to be leased or bought at commercial rates.

The Tánaiste reiterated this a few minutes ago.

Mr. Browne: What will happen when the lease is up?

Mr. Minihan: Althoughthis was made crystal clear three weeks ago, Fine Gael does not want to let the facts get in the way of its agenda. It is sad that we cannot have a clear and realistic debate.

The Opposition's motion deliberately gives the impression that land is being made available, with no strings attached to private developers. It is not. Even if the Opposition dosed not want to listen to me or to the Tánaiste the tender notice published by the HSE on 19 May, prior to the tabling of this motion makes the conditions clear. The e-tenders website is open to the public. The tender document states that the contract will include:

> . . . restrictions in relation to the use and management of the site. Tenderers will bear full risk, cost and responsibility for the construction and operation of the new hospital facilities. The hospitals will be private hospitals who, in addition to providing private medical health care services, will be required at the discretion of the contracting authorities to enter into contractual arrangements for the provision of medical services to the contracting authorities.

The Labour Party base its objection on the nonsensical belief that this initiative is some form of privatisation. That is incredible. How can anyone describe getting the private sector to create 1,000 additional public hospital beds as privatisation? It beggars belief. The party has some problem with both the private and public sectors investing in new hospitals and new public beds. The Labour Party's rusty statism creates an automatic reflex against private investment, without recourse to analysis or the application of logic. The taxpayers must be made awarethat the Labour Party is determined that they alone must pay for every single new public hospital bed, including those beds reserved for private patients.

While the Labour Party's position on this worthy and commendable initiative is typically and unsurprisingly potty, Fine Gael's position is a little more puzzling. The former Fine Gael health spokesperson, Deputy Olivia Mitchell, said in May 2004:

> It is only with the introduction of competition that we can capture for patients the benefits of the market and ensure that the health services benefit from innovation, from financial and operational efficiencies, from the use of technologies, has the incentives to control costs, improve standards and of all of the other dynamic benefits that operate automatically in the system in which competition flourishes . . . I believe [private provision] is the direction in which we must go. Otherwise there are simply no inbuilt incentives to provide value for money, to innovate, to respond to changing demands, changing circumstances.

Mr. Browne: She did not mention public lands.

Mr. Minihan: There we have the Fine Gael view. Not only are Fine Gael's new health ideas bad ideas, but as Deputy Olivia Mitchell's statement shows, it has totally abandoned any good ideas it had on health.

Mr. Browne: No it has not.

Mr. Minihan: l will conclude with the following questions. When, at the cost of the private sector, 105 additional public beds become available in Tallaght, will the local Fine Gael and Labour representatives object? Will they object when the 118 additional beds become available at Limerick regional hospital or when the additional 85 beds for public patients become available at Waterford regional hospital? Will Senators Cummins and Browne oppose them? When the 118 additional beds for public patients become available at Cork University Hospital, I will commend the Tánaiste and not let blind ideology convince me good is bad. Will Senator Ryan be flaunting this motion then? I suspect not.

How will the public look back on this Fine Gael and Labour motion when 99 beds are freed up for public patients at St James's Hospital or 106 beds at Beaumont or 21 in Blanchardstown? What will it think when Sligo general gets 78 additional public beds, Galway 116, Letterkenny 58 and Drogheda 112, all provided by the private sector? Where will the Fine Gael and Labour Deputies, Senators, councillors and representatives be when these additional 1,000 beds are opened in their local hospitals? They will be welcoming the fruits of the initiative they oppose today.

This is a worthwhile and correct policy. Members need not just take my word for it. A recent letter to *The Irish Times* from a consultant at Waterford general hospital read: "This co-location strategy is not only the antithesis of privatisation but is a sophisticated political mechanism to get the independent sector to fund improvement of the Irish health service and to do it rapidly". I commend the Tánaiste and the Government on this great initiative and encourage all Members to do likewise for the sake of the thousands of public patients it will benefit.

Mr. Finucane: Was the Senator's speech written by himself or was it handed to him by the Department of Health and Children?

Mr. Minihan: On a point of order, for the record, I spoke to no official from the Department of Health and Children nor was I handed any script by anyone from the Department. I ask for the Senator's suggestive comment to be withdrawn.

Mr. Finucane: All right, the Senator has answered the question.

Acting Chairman (Ms O'Meara): That is not a point of order.

Mr. Finucane: I do not need a script for what I have to say on the motion.

Mr. Minihan: It was a false accusation. I make no apologies for my preparation. If Fine Gael had prepared its motion, it would not be in the mess it is in now.

Mr. Finucane: If I had my way, I would ban the use of scripts in the House. Many years ago I was on the joint committee dealing with State sponsored bodies, as was an eminent Limerickman, former Deputy Desmond O'Malley. At the time, we were reviewing the operation and performance of the voluntary health insurance board. We were disappointed that people did not have freedom of choice in the Mid-Western Health Board Area because there was no private facility in the area. We felt this was unfair and that there should be a private hospital facility in the area so that people would not have to travel long distances.

Now the area has a very good facility in Barrington's hospital, although this is just a short-term surgical day care type facility. It is run well and does much work for the national treatment purchase fund. As well as that, there are also proposals for a private facility development on the campus of Adare Manor and for a private health facility at Blackberry Park outside Limerick. On top of these we now have a proposal from the Department of Health and Children for a facility on the campus of the regional hospital. Having suffered the embarrassment of a dearth of private beds in the past, if these proposals go ahead, we will have an embarrassing richness of private beds.

My only regret about this motion is that I do not think the Department is looking at the issue properly. When people go to hospital they are often there for three or four days longer than they should be. It would be more effective to have a step-down facility in the campus of the regional hospital to accommodate people for a while to free up beds in the hospital proper. The same could be done in many hospitals around the country. This was brought home to me forcefully last January by the situation in Cork University Hospital where there was congestion in the accident and emergency unit. The cardiac surgeon came into the hospital several days to do scheduled operations, but all the intensive care beds were occupied by accident and emergency patients. It is not rocket science to know what should happen in such situations. There should be a convalescent facility on the campus to ensure people vacate these beds and they are available.

Most of the private hospitals operating around the country have been incentivised by generous largesse from the Government, introduced originally after a private conversation between the former Minister for Finance, Mr. McCreevy, and

a prominent person involved in private hospitals. The seed sown by this idea has been taken up and is now very much profit driven. Capital costs can be paid off within seven years as a result of tax-based concessions and this costs the Exchequer significant amounts of money. We need to consider whether all the private hospitals we have currently operate to full capacity and whether we need the type of private hospitals projected. We also need to find out whether we will get an imbalance within the system to the detriment of public beds in favour of private beds. This could happen.

Despite the fact we know our elderly population is growing, we have already seen that it is physically impossible for many of them to get places in homes for the elderly — St. Ita's and St. Camillus's in my region — because of the shortage of beds. These public beds are not increasing in number because the same incentive operates in the case of private nursing homes and people are encouraged to use those facilities. No recognition is made of the cost of a nursing home for a person with a pension. The onus is supposed to fall on the elderly person, but in many cases it falls on their families to make up the difference. Often people who recognise the excellence of the facilities in St. Ita's and St. Camillus's request places there, but they cannot get in. I am sure the same is true throughout the rest of the country. It is becoming impossible for people to get into the public nursing homes and hospitals. We have a contraction in the number of public beds despite the demographic trends of our exploding population.

For example, a private hospital in Galway that made a facility available to the National Treatment Purchase Fund was extremely disappointed. I understand that just 7% of clients have come through the NTPF mechanism, even though it has been made available, if possible, to approximately 50% of patients.

I wonder what will be the reaction to the creation of a private hospital within the campus. We heard a great deal of talk about such matters in recent times. The Taoiseach had to apologise for his statement that Willie Walsh was trying to "steal" the assets of Aer Lingus. Such criticisms have been made in many cases. In this case, are we trying to strip the assets of a public facility in the form of our hospital network? I am concerned about the direction in which we are going. I would not be as discouraged by this approach if I thought fewer private hospitals were being made available by private companies. As I pointed out at the outset, we could end up having an embarrassment of private beds in Limerick Regional Hospital.

I believe we are going down a dangerous road. I was contacted at a clinic last Monday by a person who told me about an elderly gentleman in his 80s who is being discharged after four weeks in hospital. I was informed that he cannot afford to go to a private nursing home, but he has to be discharged nonetheless. I was told that it would be good if the man in question, who has suffered a minor stroke, could be kept in the facility for another few weeks. He will not be considered by the hospitals for the elderly even if he can sustain it financially and medically. Financially, his income would have to be taken into consideration, and on the medical side, he would have to be in category 1 or category 2 to be considered.

One has to have a serious stroke or be deemed incapable before one can be considered for our public hospitals. One does not have to be a rocket scientist or have a great deal of imagination to know why beds are being taken up within our hospitals system and why there are not enough step-down facilities. We would have addressed the shortage of beds in our hospitals if we had realised this.

There has been a great deal of talk about primary care, but it needs to be borne out by action. On the Order of Business this morning, I raised the case of an 85 year old man with a serious medical condition who lives at home. It is wrong that he is not considered for an hour of home help because he has two pensions. I ask the Minister of State, Deputy Tim O'Malley, who is familiar with the mid-west region, to examine the pilot nursing home care package project.

I will conclude by highlighting the case of a person who is eligible for home help, is means tested by the local community welfare officer and is validated on the medical and financial sides. If that person wants to get extra help through a nursing home care package, he or she will be financially means tested all over again by different people within the health system. That does not accelerate the long process that is involved. There was never a greater amount of duplication or more of a need for simplification. It is a pity that it cannot be examined. We should not be hypocritical by saying we are spending €150 million per annum on primary care at a time when an 85 year old man cannot be considered for an hour of home help because he receives a second pension from the county council. That is wrong.

I do not know the means testing criteria which are used. I would like to see some flexibility and common sense in the system, which has become layered with bureaucracy and administration. There are not enough people at the coal face.

Mr. Lydon: Mr. Charles Haughey said once that the job of the Opposition is to oppose. I understand that the Opposition has to submit various motions on various topics. I would like to examine this motion in a little detail. While some of it is good, I want to make clear that some of it is not so good.

This debate was started by the Tánaiste's announcement in July of last year of an initiative that will provide private beds on the campuses of public hospitals. The aim of the initiative was to enable up to 1,000 beds in public hospitals which are currently used by private patients to be redes-

[Mr. Lydon.]

ignated for use by public patients. How could anyone disagree with that? As a number of speakers have said, the initiative brings together a number of Government policies. Co-location is already a feature of a number of hospital campuses. The experience of the co-existing bodies will be taken into account.

The motion before the House "condemns the Government for pursuing a policy which will give away the lands of public hospitals to private hospital developers". That is not what will happen, however. As the Tánaiste said earlier in this debate: "Not one square inch of public land will be given away to anyone. Public land will be leased or sold at commercial rates in order to achieve new public hospital beds". That does not mean that land will be given away.

The Opposition motion also calls on the Government to "abandon its plans to give the lands of public hospitals to private developers". Lands are not being given to private developers. That is not what this is about. It is about providing 1,000 additional beds for public patients over the next five years.

I do not believe anybody in this country doubts the Tánaiste's bona fides. When she took on the role of Minister for Health and Children, which is one of the most difficult ministries, she went straight at it in a sensible and rational way. As she knows she cannot fix everything in a week, she is planning ahead. She has adduced her plans and made radical changes so far and will continue to do so. She is determined and intelligent and she will get the job done. It might take her five years to do it, but I am sure she will continue her work over the next five years. While she might change her portfolio, I hope she will still have the same job after the next general election.

The Tánaiste mentioned many of the advantages of her approach in her speech. It encourages the participation of the private sector in generating extra capacity and maximises the potential use of public hospital sites. I know of many hospital sites where many acres of land were not being used. They were lying vacant without any plans to build on them. This measure will encourage such construction.

The Fine Gael motion says that public lands should be used "to build much needed public health facilities", to provide "more in-patient beds" and to make "more step-down and rehabilitation facilities for the elderly" available. That seems laudable until one remembers that 1,000 more inpatient beds are being provided. I must confess that I do not know whether more step-down and rehabilitation facilities for the elderly will be made available, but such facilities may well result from the Tánaiste's approach.

The additional revenue cost to the Exchequer of 1,000 beds is the result of having to replace the income lost by public hospitals in transferring private work to the new private hospitals and a small increase in consultant numbers. The staffing of the beds will remain in place in the public hospitals, there will be no change in that. The tax foregone in relation to capital allowances in respect of investment in private hospitals is available whether private hospitals are on green field sites, hospital campuses or elsewhere. The tax breaks are the same.

What is the advantage of this approach? The two hospitals will be located together. The transfer of staff, expertise and training will be linked. That is what it is about. I do not want anyone to say there will not be a link because there will be. Doctors will move from one facility to the other, etc. To provide 1,000 hospital beds in public hospitals would cost the Exchequer in excess of €500 million capital and €300 million revenue per annum, but that will not happen in this case. I do not need to restate the figures the Tánaiste gave in her speech, but I will do so:

> If the public sector builds 100 new beds at a hospital, the full capital cost must be met from the Exchequer, which is approximately €100 million. However, if the private sector builds the new facility, the capital cost to the Exchequer is reduced to a maximum of 48% with full capital allowances used.

How could one not agree with that? This is a good deal. Any businessman who looks at such a deal would say we are getting more beds for half price, or almost nothing. We hear complaints about the scarcity of beds every day, but we are providing them now in this way. I cannot understand how anyone can attack the Tánaiste, who has the backing of the Government in this regard, for her plans.

The only aspect of the Opposition motion that is important is the reference to meeting the need for "more step-down and rehabilitation facilities for the elderly". We are not discussing such services, but I am sure they will be provided. However, the main thrust of this motion, about giving away land, is somewhat disingenuous. It is good that the Opposition opposes by tabling such motions, because it provides an opportunity to put the real facts before the public. The Health Service Executive has advertised and has received many expressions of interest in this regard.

There is a philosophical argument to the effect that we should not have private medicine at all and that everyone should be catered for by the health services. While that is all very well, I ask whether a single Member on the Opposition benches does not have insurance from VHI or BUPA? Members should be frank.

People will use such facilities, if they exist for private care, and in the meantime, public hospital beds will also be available. Moreover, this initiative will provide an opportunity for a value for money assessment of any proposal. It will take account of all developments, as well as the cost of the tax expenditure and so on. In addition,

there will be full adherence to public procurement law and best practice.

When one listens to debates on such matters without going into details, one might come to believe that the land is simply being given away and that some developers will buy it to put money in their pockets and so on. Of course such developers will make a profit. While people assert that profits should not be made in health, there is a profit to be made in this sector. It is usually ploughed back into the services and I do not see anything wrong with that. I see a need for beds and I see the Tánaiste providing these beds through a unique scheme. She proposes to use land that was lying derelict, not by giving it away, but by selling or leasing it on normal commercial terms. She is to be lauded and praised for this initiative, and not condemned.

Ms O'Meara: With the agreement of the House, I wish to share my time with Senator O'Toole.

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

Ms O'Meara: I welcome the motion and the opportunity to debate an important matter, namely, the use of public resources in the health area. I commend the Fine Gael Party for tabling the motion and the Labour Party is happy to support it. The other aspect of the issue pertains to the question of the development of private health facilities and the impact it is having and will continue to have on public provision in respect of health. This is a matter of enormous interest to the public, given the present state of our health services and, in particular, given the concern about public facilities such as accident and emergency departments in many publically-funded hospitals.

The public knows that at some levels, the public system is underfunded and examples are not hard to find. For instance, it emerged last week that Nenagh General Hospital is short of money and is underfunded to the tune of approximately €1 million this year. This means that cleaners are not being brought into some parts of the hospital and one nurse will be let go from the surgical ward. There are several other implications for the hospital, including the non-renewal of short-term contracts. Such measures have a severe impact on the delivery and quality of service in a public hospital.

Meanwhile, as Senator Finucane has pointed out, private health care facilities are popping up everywhere in the mid-west region. As he noted, this did not happen 20 years ago. Such developments have only begun to happen since the country, happily, has developed great resources and has become prosperous. At present, Ireland has the capacity to fund its public health service to a desirable level. It has the capacity, as private developers have clearly discerned, to develop private facilities in a profitable environment. As Senator Quinn observed earlier, this inevitably leads to the development of a two-tier system. This is a major public policy issue and consequently, a debate is very important.

I have a major concern regarding the underfunding and under-development of public facilities and in respect of the dependence on private facilities to shore up public facilities in some way. The Minister of State at the Department of Health and Children, Deputy Tim O'Malley, is familiar with the situation in Limerick. When I query the Health Service Executive locally about matters such as overcrowding in the accident and emergency department in Limerick Regional Hospital or the length of time for which people must wait for service, I am informed that the private hospital is coming on stream and that thereafter, there will be no difficulties.

However, I will respond to this assertion with a quick example. It refers to someone to whom I spoke recently, who was being treated for cancer in Galway. During the course of his treatment, which, happily, has been a success, a certain medical problem developed and a top consultant told him that he needed to go to University College Hospital, Galway. He needed to be admitted to a general hospital which provided an entire range of acute medical services. He spent a day and a half in the accident and emergency department of University College Hospital, Galway, trying to gain admission. Although this man was quite willing to pay for his care entirely privately, at one stage he required admission to a public hospital.

This simply illustrates my argument and that of other Members, namely, private hospitals do not and will never provide the full range of services provided by general hospitals, and in particular by acute general hospitals, because many such services are not profitable. Accident and emergency services are not profitable. Hence, private hospitals will cherry-pick those areas of care which can be provided at a profit. Clearly, that is what they do. It is not hidden and no one operates under any illusions. However, health care should not be about profit. If one is dependent on private hospitals, one is dependant on developers and this leads to the introduction of a two-tier and divided system. As other Members have argued, this is not a good use of public resources.

Mr. O'Toole: I thank Senator O'Meara for sharing her time with me. I deeply appreciate it. I also welcome the Minister of State to the House. I had fully intended to speak strongly and vehemently in support of the Fine Gael motion. However, having listened to the Tánaiste's views, my position has changed quite substantially, albeit perhaps not completely. My opposition had been on the basis that something was to be given away to the private sector. I shared the view of

[Mr. O'Toole.]

the Fine Gael Members — as they understood it to be — that this was completely unacceptable.

Where does this leave me? While I have had many differences of opinion with the Tánaiste over the years, she has never been less than truthful in her dealings with me. I take people as I find them and I accept the point she clearly made to the House to the effect that not a square inch of public land will be given away and that any land to be used for private purposes will be sold or leased at the going rate. I appreciate that and it changes matters significantly.

That said, I still do not like this development. Having listened carefully to the arguments put forward by the Tánaiste, her position is logical. Nevertheless, I do not see why it must be on land which is available at present in hospitals. I take the point made by a number of speakers that the private sector should look after its own business. However, I do not object to private investment in the health services, if that is what people want. I object to taxpayers' money subsidising it in any way.

I have been infuriated by the idea that up to the present, certain public beds owned by the State in public hospitals were under the control of private consultants. If I was obliged to make a choice between that practice and the Tánaiste's proposals, I would prefer the latter. The idea that there is an empty bed in a hospital which the hospital authorities cannot assign to anyone because it is under the control of a consultant is one of the reasons why I believe the consultants' contracts should be changed completely.

This measure should be fitted together with the renegotiation of the consultants' contracts. The Minister of State may recall this point, as he was in the House on the last occasion when this issue was discussed. Enough money should be paid to new consultants to attract the best people possible into the public health service. My suggestion, which is on the record, is that an opening offer well in excess of €300,000 should be made. Senator O'Meara's point is correct. If only one of these measures is adopted, Members will be supporting the introduction of a two-tier system.

However, I have seen such a system work in other countries where the consultants in public hospitals were being paid at a rate that attracted the very best people who wanted to stay in well-paid secure employment where they could give a good service. The amount of money offered is insufficient to allow this to happen. We should move all those on existing consultant contracts to the private sector, where they can grow old, doing that business. Let us attract new energetic enthusiastic and ambitious consultants into the public health service and give us back the beds we own.

I like much of what the Tánaiste has proposed, provided that everything mentioned in her speech actually happens. If public lands are given away to private interests I strongly support the point made by Opposition parties. It is our duty to ensure this does not happen. I have seen the reverse happen in education, where the State built public schools in private land owned by the churches. I also objected to that as we invested money into facilities that we did not own afterwards, which no right-thinking person would do. It has nothing to do with the church; we should not do it in any circumstances. If we are to have a variation of this in health I would be equally opposed.

However, the suggestion that this is a cost effective manner of releasing or producing an additional 1,000 beds in the public sector is an attractive proposition. It will only work if it is matched by consultants of quality. If this is not so, what Senator O'Meara suggested will undoubtedly happen. We will simply have a two-tier system in which the consultants will leave the public sector. We will have given them the best start-up with brand new hospitals, etc., and we will ultimately lose out.

Mr. Moylan: I welcome the Minister of State, Deputy O'Malley. I compliment the Tánaiste and Minister for Health and Children, Deputy Harney, on her statement which spelt out clearly the Government's intent. I support the Government amendment to the motion. The Fine Gael motion condemned the Government. It would be very hard to support a motion that condemns anyone for providing extra beds in the system. It is immaterial whether the hospitals are public or private once the beds are available to care for patients.

I support the building of private hospitals adjacent to public hospitals, as it would attract to both the general and private hospitals the very best professional people. We want to attract back to this country the very best professionals. Irish professional people are doing a great job throughout the world. We want to have hospitals that will encourage them to come back here to practice.

I support adding private wings to general hospitals. Patients will all go in the front door to be treated. The Minister of State has supported the area of psychiatric services. We have added wings for psychiatric patients to our general hospitals and closed down the big units with high walls. We now find that patients no longer spend as much time in these wings as was the case and are far better when discharged.

The professionals can be available regardless of whether they are in private or public hospitals once they are in close proximity. I speak from personal experience. Last year I was taken by ambulance from Tullamore to the public hospital in Dublin where my consultant worked. Within minutes he was available in the private setting. This is why we can have the very best available to us in either public or private once they are in close proximity.

The Tánaiste spoke about 1,000 new beds and a saving to the Exchequer of €520 million which can be put to good use elsewhere in the health services. She mentioned 11 new developments of private hospitals. In addition some private developers are looking to provide other units close to general hospitals. Where people must pay for hospital car parking, with the private and public hospitals adjacent to each other that car park can be utilised for both. There were some exceptions such as the private nursing homes, which have done an excellent job in providing step-down facilities. The more beds we have the better will be the care for our patients.

The Tánaiste spoke of in excess of 13,000 public beds and 2,500 private beds. Why not add another 1,000 beds to the system? Patients do not worry about being in public or private beds. They want top class care and I know we will be able to give them such care in any new developments that take place.

I compliment the Tánaiste and the Health Service Executive on developments taking place in day procedures in our hospitals. A few years ago I went to a major hospital in Buffalo in America. Adjacent to the hospital was a hotel where patients stayed prior to day procedures and then stayed in the hotel for a few days when recuperating. We may need to consider such an option here. There is an opportunity for the private sector to provide such facilities to allow us to maximise the use of the expensive facilities in our general hospitals.

Any extra public or private beds are welcome. We now have many more hundreds of thousands of people who because of their financial position can afford private health care cover. In these circumstances why not let the private sector provide the facilities in which they can be treated? I compliment the Tánaiste for her work. Throughout the years we have had problems with the health service. At the same time, great strides have been taken. I support the amendment. It is a good amendment but while I am a little disappointed with the motion, every Member of the House is entitled to table one. I wish the Minister of State well.

Ms Terry: I welcome the Minister of State to the House. I support the motion. While we are all interested in providing additional hospital beds and I am supportive of any individual who would like to build a private hospital, our objection is that the Government proposes to provide public land to developers to build such hospitals. These lands are in public ownership and the people have a right to demand that they should be retained in public ownership or should be used to deliver public services. The best use the land could be put to is to provide step down beds, which are badly needed. This, in turn, would release beds in public hospitals. We have spoken *ad nauseam* in the House about the need for step down beds but the best way to provide them is to use public lands, thus reducing the cost of doing so. By giving land to private developers, we are reducing our capacity to deliver step down beds and to develop our public hospitals.

Tomorrow the Government could decide to give a number of acres of public land to a developer to build a private hospital but, in five years or more, if additional land is needed to extend public hospitals, that will not be possible because the Government will have given away the land. I live in Dublin 15 and it is proposed to build a private hospital on the grounds of the James Connolly Memorial Hospital. I was a member of Fingal County Council when we had to take a tough decision to sell some of the hospital's land for private development. Given that the hospital had a lot of land, we were safe in the knowledge that even if the land in question was sold, there would still be acres available for the future development of the hospital.

I am concerned that additional public lands will be sold to people who are only interested in profit. They will not be involved to provide health services to the people because they will have seen an opportunity to make a profit. While there is nothing wrong with that and I support the free market, anyone who sets up a business must source land and pay the going rate for it before making a profit. The State should not part fund the sale of these lands.

We must look to the future and how additional beds will be provided. First, they should be provided in hospitals on public land. Beds should also be freed up by ensuring elderly people are not kept in hospital for longer than they should be. Our primary care system should be developed. For how long have we heard about the need to develop such care? What progress has been made? If more general practitioners were available at night and on weekends, more beds would be freed up and this would release the pressure on accident and emergency departments. The Minister needs to do much more to free up beds.

The Government is being led by the Progressive Democrats down the privatisation route and we only need to examine the US health service to see how badly people are being served. A two-tier society is being created in the State and those with private health insurance will pay more for services. That is happening in the US where private companies are vying for business but inequities are emerging. That is the route the Government is taking and that represents a bad day's work. On the question of whether the Government is closer to Berlin than Boston, the State is moving closer to Boston every day and this decision is another step in that direction.

Fine Gael is not opposed to private enterprise and to people developing private hospitals if they wish but they should not do so at the expense of the taxpayer. While there is a need for additional hospitals beds, this is not the way to do it. Private developers will get involved to make profits and

[Ms Terry.]

they will cherry pick sites. They will also cherry pick staff from public hospitals. Eleven new hospitals will compete for staff at a time the health service is experiencing a staff crisis. Staff can be attracted from abroad and while we are happy to have recruited excellent foreign doctors and nurses, that is not sustainable in the long term. In addition, other countries are being deprived of their best medical staff. The Minister did not refer to how these hospitals will be staffed.

A private enterprise will set its own pay scales and there could be inequities between the pay of private and public hospital staff. Many issues need to be thought out but the Minister's proposal to sell public land, even at commercial rates, is not the way to address them and that is our major concern.

Mr. J. Walsh: I fully support the amendment to the motion. It is not sensible for us to take a definite position on public versus private hospitals. Many of those who utilise the health services are working class people who pay private health insurance to access the health system. I fully agree that access to health care facilities should be on the basis of medical need rather than on ability to pay and the Minister has stated on a number of occasions that she is extremely anxious that this should be the basis of the health care system.

I agree with Senator Moylan that private hospitals will complement public hospitals where they are built on the same site. The facilities and expensive medical equipment in both hospitals will be available to both public and private patients. The health care system must be considered in a new and innovative way and serious attempts are being made to do that. Recently, I visited New Zealand, where health care is also the subject of media attention. Over the past nine years, we have tripled our investment in health care but we have not seen a commensurate increase in outputs from that sector.

Senators have remarked on the need to investigate the people who control beds. Unfortunately, an elitist system has developed in the public service and the health care sector. The Tánaiste is right to want to review the contract arrangements for consultants because vested interests must be confronted. Rather than take ideological positions, we must be pragmatic in ensuring that our health care system meets the needs and demands of the public and taxpayers.

Mr. Browne: I am more convinced than ever that Fine Gael was correct in tabling this motion. My party is in favour of private sector involvement in the health service and welcomes the provision of 1,000 additional private beds. However, we are asking whether this is the best way forward. The Members opposite are being disingenuous when they accuse us of opposing 1,000 new beds. Of course we welcome these beds, just as we welcome the prospect of competition in the health sector. However, will Members be able look back on this matter in 20 years time and say, "That was a good deal"? We are all aware of the M50 bridge fiasco. It is easy now for us to see that as a bad deal but will we be open to the same charge in respect of health care?

The Tánaiste referred to lease arrangements for the construction of private hospitals on public lands. What will happen once these leases are up? Will the State take the land back from the developer? This issue gives rise to uncertainty but we need to ask the questions now. The Comptroller and Auditor General has expressed his unhappiness with previous examples of misspending, such as the Beaumont Hospital carpark. That is why scrutiny and debates such as this are needed.

We have to ask ourselves whether the arrangement represents a good deal and, if so, for whom? Will it benefit taxpayers and patients? I became nervous when I heard a Member say that the arrangement won a ringing endorsement from a consultant. I would rather ordinary patients and taxpayers to consider it a great idea than to have it supported by consultants.

Senator Terry hit the nail on the head when she said the private sector will take part in the hope of making money. I do not blame the private sector for wanting to make profits but we must ask ourselves whether we are negotiating a bad deal on behalf of the public. The public interest does not refer to consultants and private developers but to taxpayers and patients. It is of great concern that these hospitals will not need licences to open.

If it costs €100 million to provide 100 public beds but €42 million for 100 beds, how will the shortfall be met? Patients will end up paying, even though they are already paying for private health insurance and, through their taxes, funding the public hospitals. The Tánaiste made no reference to these increased patient costs.

Senator Moylan referred to the nursing homes repayment scheme. I made a request under the Freedom of Information Act in that regard because the HSE advertised for people to administer the scheme but then re-advertised when it did not receive the applicants it wanted. If questions arise with regard to the ability of the HSE to administer the procurement process, I am not confident it can manage these major projects.

I look forward to support from all Members for my party's motion and hope Senators from Fianna Fáil will vote with their conscience this time.

Amendment put.

The Seanad divided: Tá, 26; Níl, 20.

Tá

Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Hayes, Maurice.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
MacSharry, Marc.
Minihan, John.
Morrissey, Tom.
Moylan, Pat.
O'Brien, Francis.
Ormonde, Ann.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Níl

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Ulick.
Coghlan, Paul.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.
McDowell, Derek.
McHugh, Joe.
Norris, David.
O'Meara, Kathleen.
Phelan, John.
Quinn, Feargal.
Ross, Shane.
Ryan, Brendan.
Terry, Sheila.
Tuffy, Joanna.

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

Amendment declared carried.

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

Business of Seanad.

Mr. Dardis: I propose an amendment to the Order of Business, that we discuss the statements on the recent Supreme Court judgment on statutory rape from now until 8.15 p.m., that speakers have ten minutes each and that they can share their time, that there be one slot per group and that the Minister, if he so desires, be called no later than five minutes before the end of the statements.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Supreme Court Judgment on Statutory Rape: Statements.

An Leas-Chathaoirleach: I welcome the Minister for Justice, Equality and Law Reform, Deputy McDowell.

Minister for Justice, Equality and Law Reform (Mr. M. McDowell): I acknowledge, in the words of the editorial in this morning's edition of *The Irish Times*, that there is "widespread outrage and dismay" at yesterday's release of a 41 year old man serving a sentence for unlawful carnal knowledge of a 12 year old girl. That release derived from last week's Supreme Court decision that section 1 of the Criminal Law Amendment Act 1935 was unconstitutional. The section was struck down because it excluded the possibility of an accused person's invoking the defence of honest mistake as to the age of a person with whom they had sexual intercourse.

Over the previous 70 years many hundreds of persons were convicted under this legislative provision. At no time between 1935 and 2006 was a successful challenge mounted to the denial of the right to the honest mistake defence. Cases as celebrated as the X case, which were considered at huge length in our courts on a number of occasions, were the subject of prosecutions under this section. As a barrister who has both prosecuted and defended these cases, at no time did I hear it suggested that there was a constitutional infirmity with that legislation. We can analyse the process of legal review and how the case was handled until the crack of doom but the electorate looks to us as legislators to put the situation right without delay. The electorate now looks to the legislators to correct the situation without delay, a view supported by my soundings of all parties in the Dáil. I believe it is also supported in this House.

The Government proposes to pass emergency legislation before the weekend to restore the protection of young persons under 17 years of age through statutory prohibition on the offence of unlawful carnal knowledge. We propose to meet the Supreme Court concerns about admitting arguments as to mistaken belief as to age by accused persons. These can be tested and adjudicated upon by the trial courts.

[Mr. M. McDowell.]

This assembly does not have the right to make retrospective legislation to make right the convictions of persons in custody for this offence. No legislation could have been passed in the past few days, weeks or months to correct the situation of Mr. A or others in that position.

Many people believe that there should be no defence of honest mistake. The Ombudsman for Children wrote to me this week, arguing against such a change in the law, but the Supreme Court has decided it must be part of the law. A small number of people in custody are held in prison solely on foot of convictions for unlawful carnal knowledge. The State has argued against their release on the grounds of *habeas corpus*. One prisoner was released by the High Court but the case is being appealed to the Supreme Court and will be heard on Friday. The appeal is being vigorously pursued, just as the proceedings in this matter were vigorously pursued in the High Court and in the original Supreme Court case.

I wish to reject misinformation being suggested at present, namely, that there is no protection for our children from sex predators. This is completely untrue — strong legislation remains in place to protect our children. It is important to reassure the public. The striking down of section 1(1) of the 1935 Act does not leave a gaping hole in our laws. Our criminal code still provides for sexual offences against young people. Rape remains part of our law and carries a life sentence; sexual assault against a young person carries a penalty of 14 years; aggravated sexual assault carries a life sentence penalty; and rape of a young person contrary to section 4 of the 1990 Act carries a life sentence. To get a child drunk and to have sex with that child is an offence that carries a life sentence.

While the Government intends to publish legislation in this area, many other offences under criminal law protect our children. I spoke to the Garda Commissioner who confirmed that any offences of the type publicised in the newspapers remain serious sexual offences and will be the subject of vigorous investigation by the Garda Síochána.

The second falsehood is that the Government could have introduced emergency legislation to stop sex offenders affected by the Supreme Court judgment from being released. There is not a shred of truth in this suggestion. The High Court originally upheld the State's defence of the 1935 Act. The Director of Public Prosecutions, the independent prosecutor in Irish law, continued to lay charges for offences under the 1935 Act as late as 12 May. The Dáil was incorrectly informed that the DPP placed a moratorium on these prosecutions at some point in the past.

No legislation can retrospectively convict someone and nobody can draft a Bill that will bring about that outcome. Another falsehood that has been continually articulated by some quarters of the media is that the Law Reform Commission warned the State in 1990 that sections of the 1935 Act were unconstitutional. One newspaper wrote that the Law Reform Commission suggested there should be a constitutional referendum to deal with this issue. Nothing could be further from the truth. It stated that Irish law, in respect of the absence of a defence of honest mistake as to age, was unduly harsh and wholly out of step with law in other jurisdictions. Over the past 16 years, this was never interpreted as being unconstitutional. Countless cases have gone unchallenged on this aspect since the Law Reform Commission issued that report in 1990. The great majority of lawyers did not believe that there was a constitutional flaw, otherwise they would have raised it.

I have not checked the record of the Seanad but I am unaware of any Member of the Oireachtas tabling an amendment to make Irish law less stern in this regard. Any Member doing so would have faced stern opposition, not least from the viewpoint articulated by the Ombudsman for Children. Nothing could be further from the truth than to state that Governments since 1990 have done nothing with regard to the Law Reform Commission report. A series of Acts dealing with sexual law, homosexuality, child sexual abuse and the constituents of rape were based on the recommendations of the Law Reform Commission. None of the Governments, including that which included Deputies Rabbitte and Kenny, sought to change the law as a result of the report. Stern as the law was, successive Ministers with responsibility for justice judged it more effective than allowing the defence of honest mistake. No one in the Dáil or, I imagine, in the Seanad suggested we should have a less stern law to protect our children from sexual abuse.

Five Acts dealing with sexual offences have been passed since the 1990 report, including landmark legislation proposed by Máire Geoghegan-Quinn decriminalising homosexuality and dealing with prostitution. Many Acts have dealt with international agreements on child sexual offences. On no occasion has a Member of the Oireachtas, as far as I know, tabled an amendment to allow the defence of honest mistake. The Law Reform Commission report did not impugn the constitutionality of the Act. The Department of Justice, Equality and Law Reform published a discussion paper on this issue in 1998 and received a significant number of submissions. Subject to correction, 11 dealt with this subject and seven favoured retaining the 1935 Act. There was no great appetite to water down stern laws on the abuse of the defence of honest belief.

I wish to say a few words about what has happened since. It has been suggested that somehow if the Minister for Justice, Equality and Law Reform, the Attorney General and the Director of Public Prosecutions had conferred and decided that it was likely or possible that the Supreme Court would decide the case as it did, we would have been able to do something to stop Mr. A

from contesting his liberty on foot of it. Nothing could be further from the truth.

While it is true that I personally was unaware of the Supreme Court action and had no inkling of it until I heard about the result last Tuesday, even had I seen it happen in the Supreme Court, I could not have introduced legislation in advance its decision, and I would not have done so. First, to publish and introduce legislation while defending in the Supreme Court a case that one has won in the High Court would have been regarded by one's counsel as pulling the rug out from under him or her entirely. Second, it is not the practice of the Department of Justice, Equality and Law Reform, when it has won in the High Court, to prepare emergency legislation against the contingency that it might lose a case in the Supreme Court, especially when that legislation could not reconvict or keep in custody any person who would be affected by a successful outcome there.

That is another myth. However, the fact that it is a myth and sounds credible does not in any way inhibit some people from saying that somehow someone could have stopped this decision. That is not the case.

As far as the legislation soon to be put before the Houses of the Oireachtas is concerned, the Government is very clear regarding its intentions. It wishes to introduce a measure that will restore protection for children under the age of 15 by reintroducing an offence of statutory rape for them. Any statutory rape amounts to sexual assault, so the effect of reintroducing that protection will be to increase the maximum sentence for that offence from 14 years, as it is currently, to life in respect of that category.

Regarding 15 and 16 year olds, the legislation will reintroduce what in the 1935 Act was described as the protection of an offence by misdemeanour, which made it a lesser punishable offence to have sexual intercourse with a girl in that age category. In that respect, it is the Government's intention to reform the law and modernise it in accordance with the Law Reform Commission's suggestion regarding persons in authority and so on. However, it is absolutely wrong to suggest that these measures will by themselves suddenly make wholly illegal something that is wholly legal now.

I will deal with the question of the conduct of the court cases. The case heard in the High Court and Supreme Court started off on the basis of counsel being jointly instructed by the Director of Public Prosecutions and the Office of the Attorney General, which is quite usual, since it was a mixed case of criminal law and potential constitutional issues, depending on the interpretation of that law. It was thought, as is frequently the case, that one team of counsel would suffice to represent both interests. That team won the case in the High Court. I emphasise that fact, since very few people are doing so at present. Counsel for the Director of Public Prosecutions, who was in the driving seat in that joint team, won the case in the High Court, after which the case went to the Supreme Court.

My second point is that the case was vigorously defended, both in the High Court and in the Supreme Court. The result in the latter case has been a decision by the Supreme Court that section 1(1) of the 1935 Act was not brought forward into law in 1937 owing to the fact that the Legislature in 1935 had shorn it of a defence by expressly removing the defence of honest mistake from the pre-existing law. It did not come forward. Curiously, the same decision of the Supreme Court stated that the offence of sexual assault, then known as indecent assault, was not infirm, since there had not been any specific amendment to remove a defence in that case, and it came forward into the Constitution with the gloss that the defence of reasonable mistake must attach to it.

If one had asked a legal practitioner five years ago whether he or she thought that the defence might avail itself of that argument, that practitioner would have said "No". If one had asked a Member of the Oireachtas in 1937 whether he or she thought that the law was being amended to allow the defence of reasonable mistake in indecent assault cases — now sexual assault cases — that Member would have replied in the negative. However, owing to the peculiar legislative history of section 1(1), the Supreme Court held that it could have only one meaning, namely, that it could not be a defence under that section to show honest belief, whereas there was sufficient ambiguity about indecent assault to allow the court to hold that such a defence attached to that offence.

What is happening now in the Supreme Court is that the Government, through the governor of Arbour Hill Prison, is contesting the decision made by Ms Justice Laffoy in the High Court. Is this some scramble to save face? No, it is not. There are two views of the law in this matter. One is the classical view that, if it was not brought forward, section 1(1) must now be regarded as never having been part of our law, and as a consequence persons have never been properly convicted, imprisoned or registered as sex offenders, since the offence simply does not exist.

There is another view that I wish this House to hear, since it is important that it be articulated. It is as follows. Although that offence has now been struck down as inconsistent with the Constitution, things done under it are not retrospectively made unlawful. It was not unlawful to imprison the man in the X case or those others who pleaded guilty and were sentenced, to place them on the sex offenders' register, or to regard them as having been convicted of a very serious offence carrying the penalty of life imprisonment.

Members may ask, if it did not come forward in 1937, how it could possibly be that someone could be regarded as not being detained unlawfully. The State's argument is that, while some-

[Mr. M. McDowell.]

thing stands part of our law, in the sense that it is accepted as a general part thereof without being challenged, and is generally operated, it should attract the protection of the courts, at least to the extent that acts carried out under that Act should not be regarded retrospectively as unlawful and having no meaning in law.

The nub of the State's case is that Article 40 is not the appropriate way to secure one's liberty if one claims that one has been held in custody unlawfully under section 1(1) of the 1935 Act. What one should do is seek to have the warrant committing one to prison quashed by way of judicial review. In the context of such a review, issues such as whether one pleaded guilty to that offence when charged with another offence, thereby securing one's acquittal from the former and trading a plea, would be examined. Whether the prosecution was prejudiced by one's pleading to an offence subsequently found invalid would be examined. Issues as to whether the offence committed also constituted a different, valid offence at law could be canvassed. Every statutory rape of a child of ten, 12 or however many years, also amounts, as a matter of law, logic and fact to an indecent assault or a sexual assault on that child. Every person who has either pleaded guilty to an offence of statutory rape or been convicted of it has, on the particulars of his or her indictment, sufficient facts also to convict him or her of the offence of sexual assault attracting a maximum sentence of fourteen years in prison.

It is not a threadbare statement to suggest that when somebody goes to court, advised by lawyers, and pleads formally before a judge appointed on the Irish Constitution that they are guilty of the offence on the indictment, and the particulars of the offence also constitute a very grave offence under Irish law, justice demands that the plea be given effect to as a matter of commonsense and to uphold the constitutional rights of the children involved. It is not a threadbare position.

I am not an advocate in the courts now. The appeal the State has taken, which will be pursued vigorously, is not being done to save face. It is the result of a conviction that justice demands that if somebody gets four life sentences for assaults on young children on a plea of guilty to statutory rape when indicted for rape, as in one of the cases at issue, and secures, by that plea of statutory rape, an automatic acquittal of the greater offence of rape, and acknowledges himself guilty on the facts of sexual assault, that person should serve his or her sentence. That is not a threadbare, outlandish or unreasonable argument which flies in the face of commonsense.

It is for the courts to decide, for the first time, what the consequence for a criminal conviction will be if somebody is the subject of a conviction and a sentence on a pre-1937 statute which was struck down post-1937. This matter has never been decided before, but the case is immensely strengthened when the particular ground of objection relied on in the CC case, that there could be doubt about the age of the victim and that the person was entitled to argue that point, was wholly unavailable, inapplicable and inappropriate given the facts of the case that are subject of the other conviction.

It is wrong, bogus and untrue to suggest that somehow the 1990 report of the Law Reform Commission went unacted upon. It is wrong to suggest that, after the CC case commenced, some piece of legislation or some action by the Irish Government or Legislature could have affected the outcome of that case. It is wrong to suggest that as a result of the striking down of section 1(1) of the 1935 Act our children are defenceless and that serious acts of sexual predation against them are now made lawful. It is wrong to suggest that any Government ignored successive warnings, or even any warnings of substance, that this legislation was unconstitutional. It is wrong to suggest that these propositions were obvious to the minds of reflective lawyers who observed the situation, when many hundreds of lawyers have conducted cases under this section without ever impugning the validity of the section, not least the Supreme Court in considering the X case and the cases that resulted from it.

People can work up incandescent, white heats of fury but let us consider this realistically and truthfully. No legislative intervention could have altered the outcome of this case. The Government is determined to introduce legislative reform proposals which will adequately address it. It is right to take a few days to get this right and not introduce a second Bill with some constitutional flaw. This Government is determined to fight its appeal in the Supreme Court and to legislate in these Houses to bring about justice for children who need protection.

It is wholly and completely wrong to suggest that public servants or public office holders were indifferent to a threat to the safety and welfare of our children that they lazily decided to ignore or fob off. That did not happen. These Houses have legislated extensively in relation to sexual offences. No Member of either House, in the 16 years since the Law Reform Commission canvassed the view that we should allow this particular defence, tabled an amendment to any of the legislation or any Private Members' Bill suggesting the protection of children should be less stern than was provided for in the 1935 Act.

I welcome the opportunity to come before the House to tell the truth about these matters. I did not know about it personally and I would have said so if I did. However, this is not relevant. My knowledge or lack thereof could not have made me do anything that I would otherwise have done. We would not have prepared legislation on a contingency. We would not have introduced legislation and pulled the rug from under our own team in the Supreme Court had we apprehended any threat. The Director of Public Prosecutions

did not believe he was going to lose the case, did not warn me he was going to lose the case and kept on using section 1(1) until 12 May, contrary to what was said in the other House this morning.

Let us deal with the truth of this matter, not myths. Let us deal honestly with what unites us on this matter instead of pointless point scoring. We all stand together by our children and no one Member of either House is more devoted to the protection of children than another. No Member of this House has a better record than another, when in power or out of power, on this issue. The Irish people look to all of us to be respectful of the truth in this matter, to legislate to protect our children in response to the Supreme Court decision and, in so far as we believe the High Court decision is mistaken, to vigorously prosecute an appeal to the Supreme Court. This is being done with a view to upholding what we believe is a commonsense and fair approach, as opposed to the mythical approach that what happened in the X case so many years ago was all a nullity at law.

Mr. Cummins: I would like to share my speaking time with Senator Maurice Hayes. I am glad that the Minister has at last come to the Houses of the Oireachtas to explain the extent of the problems facing us following the Supreme Court decision. It is over a week since the decision was made and we and the public need answers. The explanations given here raise more questions than answers. Can the Minister confirm how many men are in prison based on section 1(1) of the 1935 Act? How many are facing charges under section 1(1)? What is the scale of the exposure if all these offenders are released just as Mr. A. was released yesterday?

Section 1(2) of the same Act deals with the unlawful carnal knowledge of girls aged between 15 and 17 and is almost identical to section 1(1). Is it the view of the Minister and the Government that a challenge to this section is also likely to succeed? If this is the case, we need to know the consequences. How many offenders are in prison based on section 1(2) of the Act? How many more men are currently in the system facing charges arising from section 1(2)? In the other House this morning the Government had no answers to these critical questions. This is basic information about a serious threat to our young people. It should be readily available and should have been answered in this House this evening.

The Minister and his Department said that he was unaware of the constitutional challenge to section 1(1) even though the challenge had been reported in the *Law Society Gazette* last October and in a national newspaper last July. No explanation has been offered as to why the Attorney General who was party to the Supreme Court challenge did not alert the Minister to the consequences of the challenge. Since the Supreme Court decision the Minister has been sixes and sevens, I suggest, speaking half truths and making dishonest claims on the radio in particular. Last week he said it does not require an instant response because there is no gaping black hole and we should not rush into serious law. At last, this week and this evening, the Minister and the Government are promising urgent legislation. The only black hole, I suggest, is the gates of our prisons.

On RTE "Six One News" last night the Minister said that the DPP continued to lay charges under section 1(1) of the 1935 Act until recent weeks.

Mr. M. McDowell: To 12 May exactly.

Mr. Cummins: On Monday the High Court was told that the DPP has not sought to proceed with statutory rape indictments and trials had been staged by consent since last summer pending last week's judgment. Who is right and who is wrong?

Mr. M. McDowell: I am right——

Mr. Cummins: The Minister is always right. We are not all knee-high to him. What does this say about the Minister's integrity on this vital matter?

The Minister also said on the RTE "Six One News" that the DPP had carriage of defence on this case in the Supreme Court. This morning in the other House the Tánaiste revealed that the carriage of this case was jointly by the Attorney General and the Director of Public Prosecutions. The Minister also stated that the first he and his officials knew about the challenge was when they read it in the newspapers. Can we really believe that? The Tánaiste said this morning that in November and December 2002 the Department of Justice, Equality and Law Reform was informed by the State solicitor's office that this action was being taken. What is going on? Who is telling the truth? Was the Tánaiste telling the truth this morning or is the Minister telling the truth now?

The Minister's arrogance and his incompetence on this issue are a new low for this Government. His competence and integrity are now in doubt. He urgently needs to answer the questions I have posed to retain any semblance of integrity on this matter.

It would be remiss of me if I did not refer to the victims and their families. The mother of the young girl whose rapist was released by the High Court yesterday outlined on the "The Gerry Ryan Show" the potential consequences for this family and the shocking effects on her daughter. The potential release of six more offenders is likely to have similarly traumatic consequences for the other families.

Unfortunately, the Government clearly believes that political accountability by Ministers for their actions or their failures is a principle that should apply to other Administrations rather than this one. The Minister said that we would be in a position soon to scrutinise the legislative

[Mr. Cummins.]

response to this grave situation. I hope he will tell us when this will response will come.

Mr. B. Hayes: I welcome the Minister to the House and thank him for making a statement on this matter. It is important that a statement was made in this House because a request for a full statement on this matter came from this House yesterday.

It is important to state that the questions posed by Senator Cummins need to be answered quickly. There were posed in the other House this morning by the leader of my party. The gravity of this situation requires an immediate audit and an immediate response to those questions, specifically the question on section 1(2) of the 1935 Act, over which I understand a cloud of suspicion exists following the Supreme Court judgment of last week. It is important to know how many persons convicted under that subsection are also currently languishing in Irish jails. If that is successful, we would need to know the total number involved.

What is important now is to move ahead and get agreement on plugging the existing gap in Irish law and leaving to one side the issue of the age of consent, which is a wider issue that warrants wider debate and an issue which we need to take time to consider. I give that view sincerely.

It is important to put in place, as Senator Cummins said, some practical help for the victims and their families. Despite the comments of the Minister that no charges have been preferred post 12 May under section 1(1) of the 1935 legislation, we have heard of cases in the country where the Garda have informed the victims of statutory rape that the book of evidence and the court case proceeding will not now proceed. I suggest to the Minister and the Government that specific help needs to be provided to those families and those young girls, and in each case the State must be there for them at this stage, given the gravity of the situation we now face. That needs to happen urgently. We also need to be informed as soon as possible of the total number of cases in respect of which charges will not now come before the courts, given the significance of last week's ruling.

The Minister claimed that the normal channels of communication were not used in this case between the DPP, his office and Attorney General's office. Most people find that unbelievable. As to the notion that such a significant court case could come before the Supreme Court and the Minister would not be aware of that fact, I respectfully suggest that a county solicitor, not least an eminent senior counsel such as the Minister, knowing the ramifications of that case, would be aware of that.

The Minister came to this House tonight in a very defensive mode, and rightly so because currently he has much to defend. Our task is to do whatever we can to resolve this legal lacuna and to ensure that the protection of our young is the absolute priority. To do that, the way forward is to bring forward amending legislation and to leave the issue of the age of consent to another day. I hope the Government does that. I am not clear from what the Minister said as to whether the Dáil will sit tomorrow to deal with this matter or whether it will be dealt with early next week. We need clarity on that issue as well.

An Leas-Chathaoirleach: The Deputy Leader wishes to propose a change to the Order of Business.

Mr. Dardis: This debate was originally scheduled to conclude at 8.15 p.m., but as there are four more groups offering and ten minutes has been allocated to each group, I propose the debate should continue for another 50 minutes which will also allow the Minister ten minutes to conclude the debate.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Mr. J. Walsh: I welcome the Minister to the House for this debate and I very much welcome what he had to say. Members requested a debate on this matter yesterday morning and this morning and the Deputy Leader kindly acceded to that request. I am pleased that the Minister actually attended.

I listened to Senator Cummins say that there were questions to be answered, but the substantive questions have all been well covered by the Minister. Senator Cummins asked a question regarding section 1(1) of the legislation. The answer given in the Dáil this morning was that there were either six or seven people in prison currently under that section. Senator Brian Hayes has broadened this aspect to include section 1(2) in respect of which there may or may not be implications. That has not been struck down as unconstitutional and as of now it is unaffected.

The House has acted responsibly in the way it has conducted the debate, although that does not always happen in the other House. On an issue of major concern to the public, many people will express their concerns through the media. That is to be expected and it is probably right in a democracy that this happens. However, it behoves us to take a more measured view of the situation. Undoubtedly the appalling situation where a person in his 40s, who was convicted of having sex with a girl of 12, was released from prison is one which none of us could accept or condone.

8 o'clock

We need to consider the issues of the age of consent and gender equality, which are complex. Young people are sexually active at an earlier age than perhaps our generation. They face many challenges. One would certainly have to raise questions as to some material in teenage magazines. Young people are also exposed to such material on television and the Internet. There is a huge responsibility on us as legislators, but also

on parents and society generally, to ensure children are safeguarded. Exposure to explicit sexual details at an early age is not healthy or good for young people's formation. It is an issue which should be considered. Reports also seem to indicate that young people in their very early teens are having sex. That should be taken into account in terms of how we manage this issue. We need to legislate but we also need to provide education and support systems which tackle this issue.

If two consenting young people engage in sexual activity and both are below the age of consent, the boy is guilty of an offence but the girl is not. That is a serious anomaly. My position was that it should be an offence for both parties but when I thought about it I considered whether it might lead to a situation which would make girls reluctant to come forward where they had not given consent and statutory rape had occurred. It is a complex area of which we need to be careful.

I listened with interest to the Minister speak about the fact that the release of Mr. A from prison is being appealed to the Supreme Court. I understood him to say that a prosecution would not automatically be expunged where the section under which a person was prosecuted was subsequently struck down by the Supreme Court and that other factors would be considered which might keep the person incarcerated. Where there is such a disparity between ages, as in this case, common sense should dictate that a person guilty of such an offence should not be released.

In regard to double jeopardy, if the appeal to the Supreme Court is not successful, we should look at the way in which technicalities are used in cases by intelligent, hardworking lawyers who have researched the legal position. I am not sure we should necessarily allow a situation whereby somebody who is obviously guilty of a heinous crime and who has been prosecuted under a section of an Act which has been struck down cannot be recharged where a technicality is invoked. I distinguish between that and where a jury of the person's peers made a decision as it would be different if the person was convicted by a jury. I am not sure the public welcomes technicalities being invoked. I know we must safeguard people and that we cannot continue to prosecute people until we get a guilty verdict.

I welcome, as I am sure other Members do, the decision of the Supreme Court to hear the case on Friday. That is a responsible decision and the court is dealing with the case as a matter of urgency, which is what we wanted. I noted that the Supreme Court judge, in announcing that decision, said these matters cannot be rushed. There is always a danger when there is much hysteria and public concern, which we all share, and when the media are pushing the issue that we get ahead of ourselves. It is a time for steady heads and a steady hand on the tiller. In that regard, the Minister's outline of the situation was welcome. Obviously, we want the legislation as soon as possible but when it comes before us, it should be evaluated to ensure it does not include other lacunae which will cause problems for us in the future.

The House has done a service by inviting the Minister and having him enunciate an outline of the Government's position on this matter. I and others in the House welcome the fact the Government has decided to restore the protection of children under the age of 15 years and to deal with the issue of 15 to 17 year olds.

Mr. O'Toole: I wish to share time with my colleague, Senator Norris. I welcome the Minister and deeply appreciate that he has come to the House. An earlier speaker made the point that he was very much on the defensive. He spent the first ten minutes scotching stuff in today's newspapers. I strongly believe the Minister should have come into the House yesterday to explain, in a non-confrontational manner, what he said this evening as I heard answers to some important questions — questions to which we wanted answers yesterday to try to deal with queries.

The points the Minister made that the existing charges of rape and various forms sexual assault remain and that children are not unprotected should have been put on the record yesterday. It would have been very helpful, although I accept he would not have had all the information.

Having heard the debate, I do not want to see legislation next week. I am prepared to take the stick I will get for saying so. The Minister referred to the implications of Supreme Court decisions in previous cases. The Supreme Court will hear an appeal on Friday but presumably the judgment will be deferred. Either way this will have a serious impact on the Minister's approach to whatever he does afterwards. These matters are interconnected but they are not the same.

I would like to see the legislation published next week and opened to public discussion for a period before we start to deal with it. It should not be published on Tuesday, discussed on Wednesday and passed on Thursday although I am aware of all the pressures on the Minister to do that.

I said yesterday that there were three parts to this issue. First I wanted the Minister to come into the House and explain the position and we would argue the toss. Then I wanted to distinguish between the age of consent and the current problem with the law. The Minister tonight roughly outlined the impact of the current situation. Senator Cummins has raised serious questions which I presume the Minister will answer at the end of the debate. Assuming that he deals with that and there is an audit, as Senator Brian Hayes suggested, at least we will know the confines of the problem facing us.

There seems no reason to pass legislation next week. The public needs to know that if someone is facing a charge the DPP has a choice of charges to lay before that person. Senator Cummins said that apparently gardaí are telling victims they cannot go ahead with cases in which they were going to prefer charges of statutory rape. That attitude needs to be scotched immediately because it is clearly wrong. Whoever says that does so on the basis of misinformation or lack of

[Mr. O'Toole.]

information. That needs to be stopped, otherwise it will run like a bushfire.

The legislation should be published. There should be some debate on it among all who are interested. It is actually nice to see interest in legislation at such a broad level. Let us get views on it. This House should have time for a proper Committee Stage debate, unlike the other House which seems to pass legislation at a clap. The Minister should do that, keeping an open mind as he always does on legislation in this House, deal with it and bring it back to the House. We can explain to the public that this is the best way to move forward. Early publication is more important than early legislation. Let us see the Minister's thoughts, respond to them, get a general view, and deal with the issues as they come forward.

The Minister spoke about a judicial review, sought by whom I am not quite clear, on the basis that people engaged in plea bargaining. Is there really such a thing as plea bargaining? We know there is but can it be stated as such? I do not know how that works because I was under the impression that ostensibly it never happened, although it did happen, like national partnership agreements. The Minister said there is enough information on the files of these people to allow other charges to be laid against them but that statutory rape was chosen. Does that allow an opportunity for further charges to be laid against these people around the same issues on which they have already pleaded or been found guilty of statutory rape? Would that be double jeopardy? People would wish that to be clarified.

Can the Judiciary take into consideration the issues of common good raised in today's *Irish Independent*? Every time we try to make our legislation black and white we lose out, whether in regard to drink driving or other issues. Mandatory sentences are an example. Will the Minister explain how, although there is a mandatory sentence of ten years for dealing in drugs, judges frequently decide that is not reasonable and apply lesser sentences. I do not argue with that. In the cases I have examined they have been right, as they have been to raise questions about having to sentence people on charges of statutory rape. If they could use discretion on such a clear mandatory provision in legislation could they have chosen not to listen to an argument of honest mistake? Is it not the essnce of judgment that one takes circumstances into consideration because they alter cases, and come to a conclusion on that basis?

I thank the Minister for coming into the House, although it would have been better to have this debate yesterday. We need to scotch certain issues and hard questions need to be answered.

Mr. Norris: I too am glad the Minister has come in here this evening. It is important that he has done so. He came in to confront the issues forthrightly and by and large he did that, although there are some areas with which I am not satisfied. The Minister was very angry. He used the phrase "incandescent with rage" but as he spoke I felt he was incandescent with rage. The country feels the same way about the violation of a 12 year old child who was fed with drink and raped, and the man pleaded guilty. I cannot understand how any human being with a conscience would walk free having pled guilty in that manner. There is a defect in that man's conscience. I could not do it had I been guilty of this terrible crime.

The Minister's anger, however, was sometimes misdirected because it focused on charges that have not been laid against him. Nobody in this House ever suggested that the Minister or any member of Government or any Member of either House was indifferent to the suffering of children, or carelessly or needlessly neglected something. Nobody said that and I most certainly did not, but I did say some things repeatedly in various debates that were never heeded.

I have looked at the issue of consent, for example, which underlies this matter. I am not an expert in law but I suggested that one way of approaching this was to consider a principle of consent, rather than an age of consent, which may always cause some difficulty, and let that be referred to a court. In this type of case it is blindingly obvious that an offence was committed. I know, however, of a case in which two teenagers had consensual sexual relations and the male was convicted and jailed. That is not right. I never thought it was right and said so in this House. I am not trying to say I was right and I told the Minister so because this is not the moment for that kind of talk, nor is it the moment for partisan politics which will only demean the entire process.

Many people are confused because there appear to be conflicting views emerging from the Department of Justice, Equality and Law Reform and the Office of the Attorney General. That is what people perceive. I am confused about this matter but I agree with the Minister that he could not possibly convict someone retrospectively. I am glad he said that because, dreadful as this case is, it would be awful to rush an Elastoplast solution through with the result that, because we did not want one guilty man or even three or six guilty people to get away, innocent people would be jeopardised. We must protect the innocent in this matter.

I did not interject, because this is too solemn and serious a moment, when the Minister's anger overcame him and he cited the reform of the criminal law on homosexuality, as if this was a response to the Law Reform Commission. No, it bloody well was not. It came about because I took the Government to the European Court of Human Rights, having failed to get a judgment that a major violation of fundamental human rights was in conflict with the Irish Constitution. The Constitution does not protect everybody.

The Minister is right to say we should not claim to be wise after the event. The Law Reform Commission did not, apparently, say there was a constitutional flaw, but it did say — in the words of the Minister — the law was unduly harsh and

totally out of step with other European countries. Was that not a signal? Should the Government not have acted on that rather than say it was not under this Minister's watch? For God's sake, if we are concerned about the welfare of people in the country, should we not pay attention when the Law Reform Commission says "the law is unduly harsh and totally out of step". A phenomenon I have noticed time and again with the Government is that when a difficult issue arises it is kicked to the Law Reform Commission and then damn all happens. That is a pity.

It is important to acknowledge that the Minister has come into the House to discuss this issue. I hope he has reassured rape victims, because many people are concerned about rape. I hope there is support for the family involved in this matter and that they are reassured by the Minister. I hope too that some good legislation results from this situation.

I want to refer to something that was stated repeatedly last night on "Tonight with Vincent Browne". The Minister has referred to a sex offenders' register, but those on the programme stated with clarity and certainty that there is no such "animal" in the country.

Mr. Dardis: If Senator Norris believes the Minister was incandescent with rage, I do not know what adjective describes Senator Norris's state of mind.

I wish to share my time with Senator Maurice Hayes.

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

Mr. Dardis: I welcome the Minister to the House and acknowledge the fact that he has always shown himself amenable to coming here and engaging meaningfully in debate. I thank him for making himself available at a time when it may seem like a whirlwind is going on around him with regard to dealing with these difficult issues. I know the Minister and all Members have the same sense of dismay at what has occurred and at the situation in which we find ourselves and he has expressed his outrage at the developments resulting from the Supreme Court judgment.

This debate has its origins in the Supreme Court decision in respect of section 1(1) of the Criminal Law (Amendment) Act 1935. Senator Brian Hayes referred on the Order of Business to the blame game having started. I am certain there is little to be gained from the blame game. As I said this morning, the House has a good tradition of dealing with these matters in a balanced, reasonable, considerate and compassionate way. I hope we will do that again.

The main focus must be on the concerns of the citizens, particularly the protection of young people. The central question concerns what we are going to do now. I agree with what Deputy Kenny said in the Dáil, namely, that we must have some measure of unity in our attempt to protect young boys and girls. We must have a combined will on the part of the Oireachtas to deal with this difficulty. It is not just a matter for the Minister or the Government, but for the Oireachtas.

On behalf of the Progressive Democrats I want to state our utter outrage at the repercussions of the recent judgment. Nobody has a monopoly on outrage or compassion and the Minister emphasised that in what he said. No right-thinking person could fail to be appalled that a man who plied a young girl with alcohol and pleaded guilty to carnal knowledge should walk free. Nobody anywhere could condone that.

It is important that we make it crystal clear to everybody in this jurisdiction that there is no legal limbo. There is no green light for perverts nor a gaping black hole, but there is a particular problem with which we must deal. The Minister was right to speak about the myths being peddled in a scare-mongering way on this issue. The facts are as follows: first, our criminal code still prohibits sexual offences against young persons; second, the crime of rape remains part of our law and the Garda and the Director of Public Prosecutions are duty bound to uphold and enforce these laws; third, a person who has sex with a girl less than 15 years of age can be charged with sexual assault; and, fourth, consent cannot be given by a person under 15 years of age regarding the offence of sexual assault.

Everyone should know that the crime of sexual assault carries a penalty of 14 years in prison. They should know that a sexual incident with a minor where force is used carries a penalty of life imprisonment. A case of aggravated sexual assault carries a penalty of life imprisonment. These penalties are in addition to the penalties for rape offences. The so-called Mr. A case does not change these facts. The laws and severe penalties are in place. Parents need not have fears about this. Those evil persons who might entertain thoughts of breaching these laws should be aware that they are subject to these penalties and the full rigour of the law.

The so-called Mr. A case does not change these facts. Following the Supreme Court decision, prisoners convicted of breaching section 1(1) of the 1935 Act can apply to be freed on the basis that the law under which they were convicted no longer has any legal standing. This was the route pursued by Mr. A. His application was successful because he had been convicted of a breach of that section and had already served two years of his three-year sentence. That does not negate our strict laws on penalties relating to sexual assault and rape pertaining to young people or anyone else. We should also remember that it is possible for the Director of Public Prosecutions to proffer fresh charges, for example of sexual assault, against those freed under the Supreme Court decision.

We must look forward now. The blame game is a pointless exercise. Whether we go back nine, 16 or 70 years, we should not suggest that the people who drafted the laws did so in the knowledge they contained this defect. Every legislator over the years tried to do the best for the people.

[Mr. Dardis.]

No Government or justice spokesperson suggested changing the law or including a mistake in respect of age as a reasonable defence. Such debates serve neither parent nor young person and are about party politics.

I am glad the Minister consulted widely on this issue this afternoon with the Opposition parties. Hopefully, we will agree a way forward. We are all outraged by this matter, but we must deal with it. Members have shown themselves in the past to be amenable and capable of dealing with such difficult issues.

Dr. M. Hayes: I thank the Minister for coming to the House for this important debate. I have found it helpful to hear the legal issues set out clearly. There are three problems, a medium-term, a short-term and a damage limitation problem. The medium-term problem has to do with the age of consent and a general adjustment in that regard. We live in a society in which media, marketing and other forces all push children towards an earlier expression of sexuality. We can be surprised at the precocity of young people. If we do a quick job now, I hope we do not lose the appetite for dealing with that issue. It should be dealt with in the medium term as some Members have suggested.

The short-term measure required is really a plumbing job to repair the Act, given the deficiencies attributed to it by the Supreme Court. I disagree with Senator O'Toole that this can wait. There is a public demand for something to be done now. I take the point that there is plenty of protection and that children are not unprotected. That is a valid legal point, but there is less political validity. Within the next day or two we need some emergency or temporary legislation to deal with this and try and reinstate the law to where we thought it was.

On damage limitation, we must deal with the effect of the Supreme Court and subsequent judgments. I am encouraged to hear the State will pursue the individual cases with the vigour indicated by the Minister with the possibility of ensuring, within the Constitution and the law, that the people who should be in jail for offences to which they have admitted stay there. I think that represents what most people think the law should be. I hope the Minister is right. As the beadle said in Oliver Twist, sometimes "the law is an ass". Therefore, I think the Minister might have to think of what to do in those circumstances. That brings me to the point that we need to ensure that families or victims receive support and protection. This could be provided by social workers or gardaí.

I commend the Minister on the response he has given the House this evening. I found it helpful and reassuring. I wish him well with the steps he proposes to take. It will be easier to discuss them when we have the text of the legislation in front of us. Like everyone else in the House, I am sure, I want to give the Minister all the support I can in his efforts to protect children.

Ms Tuffy: I would like to begin by quoting the last sentence of last week's Supreme Court judgment:

> I would allow the appeal and grant a declaration that s.1(1) of the Criminal Law (Amendment) Act 1935, is inconsistent with the provisions of the Constitution.

That sentence is unambiguous in ruling unconstitutional an entire section of an Act dealing with the particular offence of statutory rape. It can no longer be said that there is absolute protection of children from sexual predators. If a person who is accused of such a crime starts to raise the issue of consent, there is no guarantee that he or she will be convicted.

The urgency of this situation and the issue which is at stake are clear to anyone who reads the judgment from which I have quoted. I said last week that the Minister, Deputy McDowell, should have anticipated the judgment. I find the Minister's comment that he was not aware this case was coming down the line hard to believe. The State was a party to this action. The Government cannot be a party to that many court cases in which laws of the State may be found unconstitutional. I find it hard to understand why the State and the Government were not monitoring cases of this nature to ensure they were ready for such outcomes. It is obvious that if such a case reaches the Supreme Court, a serious issue is at stake and is being debated.

When last week's judgment was issued, the urgency of the situation was quite clear. I realised the urgency of the situation. An RTE report on the matter was announced with the headline that the offence of statutory rape had been abolished. When I spoke in the Seanad the following morning, I said that this issue should be given priority over all other matters and that legislation should be introduced as a matter of urgency. Other Senators agreed with me.

Bodies like the Irish Society for the Prevention of Cruelty to Children also realised the significance of the Supreme Court decision. The Minister for Justice, Equality and Law Reform did not realise it, however. I read the reports in the newspapers that day and listened to the Minister on "Today with Pat Kenny" that morning. It was clear the Minister did not recognise the urgency of the situation. I reiterate what I have said to the Minister previously, namely, his comments about 15 year old girls and 23 year old men were flippant and missed the point. He spoke about issues like reform, the age of consent and teenagers. Such side issues are irrelevant to the issue at stake, which is the absolute protection of children from sexual predators.

The Minister spoke this evening about the difficulty in finding consensus about the reform of the law, which is irrelevant. The issue we need to address is the lack of protection for children under the age of 15, who are the most vulnerable people in our society. There is a definite consensus that children should be absolutely protected from sexual predators.

I would like to consider the Minister's suggestion that the sexual offences legislation covers cases like those I am worried about because people can be prosecuted under it. I am a solicitor, but I am not an expert on this area of law or on criminal law in general. I have spoken to people who work in this area and I have examined the legislation in question. I refer to section 14 of the 1935 Act, section 2 of the 1990 Act and section 37 of the 2001 Act, which provides for a penalty of 14 years. I have not seen any guarantee that those Acts can be used to prosecute people who have sex with children. There is no direct statement to that effect. I know there is legal opinion that carnal knowledge of a child is automatically a sexual offence, but that is like adding two and two and getting five. It is an issue that needs to be tested by the courts. There is no definition in the legislation that equates "sexual intercourse" with "sexual assault". There is no such wording — I could not find it anywhere. Nobody could tell me there was such a wording. I am aware of the provisions the Minister is using to come to this conclusion, but I do not think they guarantee that a person will be convicted of sexual assault if he or she has sex with a child.

In testing these issues in the courts, children will be put through the mill. It will have to be determined whether they had the capacity to consent and, if so, whether there was consent. Of course those who are accused will allege there was consent. It is in the nature of sexual predators and paedophiles to groom children and manipulate situations to get consent. It is not proper or real consent of the type that we acknowledge as consent. There is no guarantee.

If they can be convicted of sexual assault under the provisions mentioned by the Minister, they will face a maximum penalty of 14 years. It is quite clear that a sexual assault is not considered to be as serious an offence as unlawful carnal knowledge and statutory rape were considered to be. It is not treated as seriously as sexual intercourse with children is treated in other jurisdictions. Consent is not a defence under section 14 of the 1935 Act, which relates to the indecent assault, which is sexual assault, of a person under the age of 15. I wonder whether that provision could be found to be unconstitutional. It is quite possible that the provisions relating to the sexual assault of a child under a certain age could be found to be unconstitutional. It is something we need to address.

The issue at stake is the absolute protection of children from sexual predators. That is the issue. That absolute protection is no longer in place. Many countries throughout the world offer an absolute protection to children under a certain age from sexual predators. Such protection is afforded in the United Kingdom, including Northern Ireland, for example, where statutory rape is an offence. I absolutely accept the point made by those who have said this outcome was not the intention of the legislators or the Minister. We have legislation dealing with statutory rape because we treat that offence with the utmost seriousness. That is why we provide for the maximum penalty, which is life imprisonment. That is the situation in the UK, in Northern Ireland and in many countries throughout the world.

The Minister said last week there was no need to rush any new legislation. He is saying tonight that protections are offered by the sexual assault legislation. By leaving this situation open, he is accepting that this jurisdiction treats the crime of having sex with a child with less seriousness than other countries in all parts of the world. What kind of signal does that send to paedophiles? It was said in one of today's newspapers that, given the way paedophiles tend to communicate with each other and create a buzz on the Internet, we can be sure they are looking at Ireland with interest to see how we respond. That is why it is so important for us to respond speedily on this issue and take it with the utmost seriousness.

The Minister for Justice, Equality and Law Reform should have locked himself away with his experts last Tuesday to draft emergency legislation. He should be doing that now. The Government is giving lots of time to the wages talks, which are important, but this matter is more important, in my view. The type of effort I have mentioned should have been made and should be made now to ensure that legislation is in place to close this loophole as quickly as possible. The longer we take to deal with this urgent issue, the more we are failing in our duty to protect the children of this country.

Minister for Justice, Equality and Law Reform (Mr. M. McDowell): I will have to start by dealing with a number of Senator Tuffy's points. It is undoubtedly the case that section 14 of the 1935 Act was examined in the PG section of the Supreme Court's two-phased dealings, which ended with the CC case. In PG's case, it was found that sexual assault does allow the defence of mistaken belief and its constitutionality was upheld. Likewise, it is undoubtedly the case that anyone under the age of 15 cannot consent to sexual assault. It is also the case that the Legislature increased the penalty in relatively recent years to a 14 year sentence. Moreover, although Senator Tuffy doubts this, every person who has sexual intercourse with a child, who cannot consent, must as a matter of fact, law and logic have committed a sexual assault on that child. He or she does much more than that. At present, he or she commits rape if there is no consent. However, at the very least, he or she commits the offence of sexual assault, which carries a 14 year sentence.

I remind Senator Tuffy that Mr. A, who sought his release and has succeeded at the first instance, received a three year sentence for an offence which carried life imprisonment. Hence, the maximum of 14 years available for sexual assault was more than adequate to deal with his case and would be more than adequate to deal with it if it came to be served again.

Two views have been expressed in the House. One, to the effect that this is not the time to rush ahead, was expressed by Senator O'Toole. The other view, expressed by Senators Tuffy, Brian

[Mr. M. McDowell.]

Hayes and others, is that this is definitely the time to move ahead. I heard of this matter last Tuesday and the drafting of legislation commenced in my office on Wednesday. Senator Tuffy has suggested that I should have closeted myself away with the draftsmen. I have done precisely that and I understand that we have already reached our fifth draft. We have spent hours working on this matter, even up to 11 p.m. Hence, the notion that I do not take this seriously or am swanning around pontificating on other subjects is simply untrue. From Wednesday, the day after the Supreme Court decision, my draftsmen have been working continually on this matter. They worked through the weekend and while I would not care to hazard the number of hours I have spent with them, I have done practically nothing else in the intervening period.

I have taken on board the views expressed in this House regarding the victims, who must be terribly upset by the fact that the perpetrators are queueing up to get out. It is the business of the State to ensure that they are given every possible special protection and support at this stage. I haven taken this on board and on my return to my Department I will ensure that, to the extent that it is not happening, it will happen.

Mr. O'Toole: Hear, hear.

Mr. M. McDowell: The third point I wish to make pertains to issues raised by Senator Cummins. He is perfectly entitled to be adversarial and to question the truthfulness of what I have said. However, I can tell him that I did not know about this matter. Had I known about it, it would have been much more convenient for me to say so, because stating that I did not know about the matter carried with it an attendant train of problems. Neither I nor the senior officials in my Department knew about it. That is a fact.

Second, the Senator noted that the Tánaiste told the Dáil today that in November 2002, the Department of Justice, Equality and Law Reform was informed of the commencement of proceedings. Yes, it was so informed and an official of the Department immediately contacted the Chief State Solicitor's office, which told him about the commencement of proceedings. Members should be clear that the official was told on the telephone that nothing was required of the Department at that time and that it would be kept up to date about the matter as things developed.

Mr. Cummins: However, that rang no alarm bells.

Mr. M. McDowell: Unfortunately, nothing seemed to happen and the Department was unaware of subsequent developments, including the victory in the High Court, let alone what happened in the Supreme Court. While the Senator can be critical of these things, that is the truth.

It would be much more convenient for me to say that I was monitoring this affair very closely, was reading every submission and all the rest of it. It would be much easier to tell that lie. However, I must tell this House and the people the truth, that is, that there was no communication whatever with the Department from December 2002 until last Tuesday morning with regard to this matter. I will look into this, because it is important that the Department should have its radar screen and that it should be aware of such matters.

However, if the Senator has asked whether it is a matter of integrity or truthfulness, this is the situation. Of course I would have been very interested in the subject. As a lawyer, I would have been fascinated by the manner in which apparently we won in the High Court, unbeknown to me, and that the case went to two hearings in the Supreme Court. It would have been of major interest to me, had I known about it. However, I did not know about it.

I want to make some points regarding the Director of Public Prosecutions. It is true that he had carriage of the appeal in the sense that he shared responsibility with officials from the Office of the Attorney General. The Attorney General himself was not involved. Second, it is also true to say that he sucessfully prosecuted the defence of this case in the High Court and prosecuted it very vigorously in the Supreme Court. It is also true that throughout this time, he kept an official in the Attorney General's office fully aware of the situation. However, the Attorney General himself——

Mr. Cummins: However, he did not inform the Minister.

Mr. M. McDowell: I am simply apprising the Senator of the situation. He did his job professionally and to the best of his ability. While I regret I was unaware of these things, that is the truth of the matter.

The statements made yesterday were also substantially true. If one used a motoring analogy, the Office of the Director of Public Prosecutions was in the driving seat while the Office of the Attorney General was sitting in the back seat, as far as that particular case was concerned. However, these things happen and nothing is to be read into that. No one's integrity is impugned by saying that. However, that is the sequence of events.

Although Senator Norris is not in the Chamber at present, I had better calm him down. It is of course true that no report of the Law Reform Commission spurred reform in his case. It arose from a defeat of Ireland in the European Court of Human Rights.

Mr. O'Toole: I will duly report that to the Senator.

Mr. B. Hayes: It should be left at that.

Mr. M. McDowell: I hope Senator O'Toole will report that to him. I make the point that when introducing that legislation in 1993, the former

Minister for Justice, Máire Geoghegan-Quinn, made significant changes across the sexual offences area, including prostitution and other matters. Hence, given that a major piece of sex offence legislation was enacted after the Law Reform Commission's proposals were made, it is strange for people to argue that laziness or indifference left the 1935 Act untouched. This is not the case. At the time, no one wanted to touch it. As for all the successive pieces of legislation relating to sex offenders which have gone through both Houses, I reiterate my point, subject to being corrected in respect of this House, that no one has ever proposed an amendment to section 1 of the 1935 Act. Moreover, no one has ever suggested, in an amendment tabled in either House, that there should be provision for an honest mistake.

I wish to make another point regarding an issue raised by several Members, including Senator Jim Walsh. I refer to the concept of double jeopardy. If someone has been brought to jail, having been convicted under section 1(1) of the 1935 Act, people might query whether it would be fair to bring that person back again, prosecute him or her a second time and have him or her serve another sentence. That is a good point. However, the flip-side — and the reason it is a good point — is that the person would have served the time for the offence and would have believed at the time that it was a valid offence. That cuts both ways. If it is wrong and outrageous to regard as a nullity the sentence imposed on a person who is now free having served his or her sentence and to start again, by the same logic it is equally wrong and outrageous that someone who has not yet served his or her time can state this is a fiction and has no reality, and that one's plea meant nothing.

I make the point that what is sauce for the goose is sauce for the gander in this regard. If it is wrong to put someone in double jeopardy, then it is equally wrong to have someone with zero jeopardy for an offence which he or she has admitted.

Mr. O'Toole: Is there no legal impediment to proffering another charge?

Mr. M. McDowell: We will find that out in the Supreme Court. It is a matter for the Director of Public Prosecutions. The Latin maxim is "*nemo debet bis vexari pro una et eadem causa*", which means that a person should not be troubled twice for the same matter. This may or may not come to their aid. However, somebody who has not been troubled at all for what he or she has done is hardly in a position to talk about his or her natural rights when somebody in the other situation is in a similar position.

Senator O'Toole asked about the common good and whether common sense does not enter into the matter. I do not want now to be seen to be anticipating what happens in the Supreme Court. However, since it is undoubtedly the case that every act of sexual intercourse with a child constituted an act of sexual assault, it is certainly arguable at the very least that the common good requires that the use of a non-existent section to prosecute that person should not act as a complete absolution for that offender. I will not go further as people might say that I am trying to argue the case to be heard in the Supreme Court in this House, which I do not intend to do.

Somebody who has served a few years of a life sentence still owes society a grave debt if the life sentence was a just sentence for what that person did. I do not believe the result of all this is that society must write off all its debts while offenders can be absolved of all their debts to society at the same time.

It has been suggested that I was defensive, pugnacious or whatever here today. I find one aspect of my membership of the other House slightly frustrating. Perhaps I will join the Senators one day in this House.

Mr. B. Hayes: That can be organised.

Mr. M. McDowell: On the Order of Business and Leaders' Questions with Deputies addressing issues to my face, giving out and wagging fingers at me, I must sit and remain silent with the Taoiseach or the Tánaiste answering on my behalf. This was my first opportunity to come and give my side of the story. Deputy Kenny sought figures on section 1(2), which relates to intent. Section 2 of the Act is the misdemeanour section. I believe there may have been some crossed wires in that regard. I will attempt to gather those figures, but it will not be easy.

I want Senator Cummins to know that the records are difficult to unravel. A prisoner may arrive in prison with 12 or 15 committal warrants. To calculate which of them are still running, and verify which of them are extant and which of them were not the subject of an appeal, is slightly more complex than the Senator might imagine. The Fine Gael Party has a Bill before the Dáil seeking a register of these matters. Ms Justice Denham is putting such a register in place within the Courts Service without legislation. That project is happening and it would be a great help to have all criminal convictions in all their complexity recorded on a computer so we can know what criminality is being dealt with in the courts.

A Senator asked whether there is such a thing as a sex offenders' register. Yes there is.

Mr. O'Toole: Where is it kept and how is it accessed?

Mr. M. McDowell: That is the point. It is not open to Senator O'Toole to peruse.

Mr. O'Toole: The question is how it is accessed and not how do I access it.

Mr. B. Hayes: PULSE.

Mr. M. McDowell: It is accessed by the police. People convicted of certain offences are required to be registered for certain periods, which obliges them to notify the State of their whereabouts,

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whether they are going abroad, changes of address, etc. It enables an eye to be kept on them.

Mr. O'Toole: Is there a constitutional problem with it?

Mr. M. McDowell: The question does arise as to whether people who have been prosecuted in the time since the register was introduced can now seek to have their entries expunged on the basis that they are a nullity. This is an issue that would need to be addressed if this was dealt with by judicial review rather than dealt with as a simple *habeas corpus*, black or white, all or nothing approach.

Mr. B. Hayes: I ask the Minister to give way. I understand the Government intends to take the Bill through the other House on Friday morning and on Friday afternoon to bring it to this House. From what he said to the House earlier, I understand the appeal will be before the Supreme Court on Friday. Is it the intention to put the Bill through the House on Friday afternoon, without a conclusion to the appeal?

Mr. M. McDowell: The short answer is "Yes". As I said earlier, legislation cannot deal with the issues that are being addressed in the Four Courts. Nothing I can do, no magic wand we can collectively wave and nothing we can put into or take out of a Bill can affect the outcome of that case. If the hearing were concluded on Friday and even if judgment is not given immediately, we will get on with the legislative process. I hope the text of the Government's proposals will be available by lunchtime tomorrow so people will have adequate opportunity to study them and that they will be law as quickly as possible. I am not holding them up.

I wish to thank the officials in the Department, who have put in a huge effort. They have spent many hours, working at weekends and up to 11 p.m. on the subject since this crisis first broke like a thunderbolt out of the blue on Tuesday of last week. They have worked might and main to try to address all the issues, for which I thank them. I thank this House for the opportunity to address the matter here this evening.

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

Mr. J. Walsh: On Friday at 2.30 p.m.

Adjournment Matters.

Hospital Services.

Mr. McHugh: I welcome the Minister of State, Deputy Tim O'Malley, to the House again tonight. He is a busy man as he was also here last night on the Adjournment. The Minister of State is probably aware of the high profile campaign on cancer services which has been ongoing for some time in the north west. The campaign covers retention of current cancer services and also considers the expansion of a range of ancillary cancer services for the people of the north west. I will not cover old ground I have previously covered with the Minister of State. As he is aware, proposals have been made for radiotherapy centres in Waterford and Limerick. We have existing services in Dublin, Cork and Galway. The north west is completely disenfranchised in terms of an equitable radiotherapy service. We are aware of arrangements with Belfast for patients from County Donegal, with the proviso that bed space must be available. However, Northern Ireland has a jurisdiction that caters for 1.5 million people. Belfast is not and will not be a centre to cater for the needs of the people of the north west. It is incumbent, therefore, on the Government to provide a satellite radiation centre in the north west because it is pivotal to the needs of the people there. It would cost €15 million to set up the centre. A key meeting will take place on 6 June between administrators of Altnagelvin, Galway and Letterkenny hospitals to discuss the potential of sharing services and the permanent appointment of a breast consultant surgeon in the north west.

At primary level, breast screening is not provided in the region. Donegal women do not have that luxury or option similar to women in the east. At secondary level, the appointment of a permanent breast consultant surgeon at Letterkenny General Hospital is urgently needed and this call is being echoed loudly and clearly by the people of Donegal. Recently, a demonstration took place in the town on a wet Sunday afternoon. More than 15,000 people turned up to highlight their frustration and anger and to demand equitable health services for their peers and families in the region. A radiation service must be provided at tertiary level. A satellite radiation unit is needed, which could operate on an east-west basis between Altnagelvin and Letterkenny hospitals and which could also incorporate Galway and Sligo hospitals.

9 o'clock

Cancer patients are acutely aware that all specialist services cannot be sporadically provided throughout the State on a piecemeal basis. People appreciate such services must be located centrally where the expertise is available. All we are looking for in the north west is a level playing field and appropriate cancer services. Will the Minister of State intervene prior to the meeting on 6 June? The Minister for Health and Children visited Letterkenny last Monday and stated there would be an outcome after 23 June. However, between now and then, we need to know where we stand regarding the facilities that will be provided in the region.

A range of people are involved in this process. Ultimately the patient is the key part of the equation but the Government and the administrative and nursing staff and consultants are also involved. What is the consultants' favoured

option regarding the relationship between Letterkenny, Altnagelvin, Galway and Sligo hospitals? We need to know where the consultants and the Government stand because nobody is standing at the moment. Everybody is sitting down and they are not delivering. A pathway needs to be found so we know where we are going in this regard.

Minister of State at the Department of Health and Children (Mr. T. O'Malley): I welcome the opportunity to address the issues raised by the Senator and to set out the current position on the development of services in the north west and at Letterkenny General Hospital, LGH, in particular. Since 1997 cumulative funding of more than €47 million has been allocated to the north western area for the development of appropriate treatment and care services for people with cancer.

Cancer services at LGH are provided by a team of consultants and other professionals as follows: four consultant surgeons; one consultant medical oncologist; one consultant haematologist; one palliative care consultant; three consultant pathologists; six consultant radiologists; two senior pharmacists — specialists in oncology drugs preparation; a range of specialist nurse staff; and one consultant radiotherapist, three days per month. An 11-bed oncology ward was recently completed and officially opened by the Minister on Monday last. This development is supported by an oncology day case area, breast care suite and a clean air pharmaceutical preparation room.

The Senator raised the question of additional beds for LGH. The provision of a 30-bed modular short-stay ward at the hospital has been announced and this project will be funded from the accident and emergency department initiative moneys. Planning permission is being sought with contractor procurement being carried out over the next few months. These additional beds will alleviate the overcrowding experienced in the emergency department and day services unit. This will result in enhanced patient experience, and facilitate a return to full capacity of the day services unit. It is intended that these beds will be available to the hospital for the coming winter period.

A new purpose-built emergency department and 12-bay medical assessment unit is at design stage. This unit incorporates a dedicated X-ray room to improve diagnostic services within the department. It is intended that the planning application for this development will be submitted before year end. The capital plan of the HSE, recently agreed by the Minister, includes provision for additional ward space over the proposed new emergency department, which will be incorporated into the overall project.

When the Minister visited the Donegal area earlier this week she said:

> Everyone in this country, regardless of where they live, should have access to the best possible health services. This is especially so for cancer services. The most important thing for patients is getting the best treatment. Outcomes for patients drives our policy and investment in cancer care. I am determined that everyone diagnosed with cancer will get top quality treatment, as near to their home as possible.

The Minister and I remain confident that the HSE can achieve these objectives.

The Senator raised the appointment of a permanent breast surgeon at LGH. A standalone breast service at the hospital is not an option as it does not, according to recognised cancer experts, have a large enough volume of new patients with breast cancer to achieve the high quality of services to which the women of the area are entitled. The HSE's preferred option is a partnership to be developed between Altnagelvin Hospital in Derry and LGH. There are strong links between these two hospitals and Altnagelvin Hospital is wholly committed to developing a workable solution with LGH. A process of discussion is in place.

The director of the National Hospitals Office and the network manager for the HSE western area are to meet with the respective management and clinical teams next week to seek to progress a partnership arrangement that can develop the best breast care in the region. It is understood that the model of care being sought will include combined multidisciplinary team meetings to discuss patients in both jurisdictions. Decisions on each patient will be examined collectively, involving the appropriate treatment and follow up. The HSE advises that it will also explore the option of a similar model with University College Hospital, Galway.

Consultant staff at Letterkenny General Hospital will refuse, as of tomorrow, to accept new referrals of breast cancer cases. Discussions at hospital level have taken place to seek a deferral of this action. Last Friday, the director of the National Hospitals Office wrote to the chairman of the medical board at the hospital advising that the HSE is pursuing a resolution of the issue of how best to provide breast cancer care to the population of Donegal. The director gave a commitment that the matter will be drawn to a definitive conclusion before the end of June, a little more than four weeks away. The Minister has urged HSE management to complete discussions on the future organisation of breast services by this date. The director also asked that any proposition to cease existing services from tomorrow should be withdrawn in the interests of assuring best patient care. However, medical consultants refused to rescind their decision.

The HSE, in the interests of women who will be diagnosed with breast cancer from tomorrow in Donegal, is making alternative arrangements. This is essential to ensure a service is maintained for women in Donegal with breast cancer.

I consider the action of a small number of medical consultants to be most regrettable, especially given that the HSE is making significant efforts to resolve the issue in the interest of women with breast cancer. I urge the consultants involved to reconsider their decision and to par-

[Mr. T. O'Malley.]

ticipate fully in the discussions next week. These discussions should take place in a positive environment and not against the backdrop of a refusal to provide services to vulnerable patients.

The Tánaiste met with representatives of BreastCheck and they are fully aware of her wish to roll out a quality assured programme to the country's remaining regions as quickly as possible. Additional Exchequer funding of €2.3 million has been made available to BreastCheck to meet the additional costs involved. The Tánaiste also approved an additional 69 posts and BreastCheck is in the process of recruiting essential staff. BreastCheck recently appointed clinical directors for the south and west, who will take up their positions later this year. Additional capital funding of €21 million has been made available to construct two new clinical units in the southern and western regions and to provide five additional mobile units and state-of-the-art digital equipment. BreastCheck is in the process of short-listing applicants to construct these units and is confident it will meet next year's target date for roll-out to the southern and western regions.

In coming years, nearly €50 million will be invested in health facilities in County Donegal, including nearly €28 million for additional beds and a new accident and emergency department at the hospital. Since 1997, this Government has quadrupled the budget of Letterkenny General Hospital and enabled the appointment of more than 550 additional staff. That is a clear expression of our confidence in the health services for County Donegal and we will spend more on further improving the services for Donegal people in coming years.

Flood Relief.

Mr. Moylan: I welcome the Minister of State, Deputy Tim O'Malley, to the House. I am calling on the Minister for Finance to take urgent action to alleviate the serious financial losses incurred by farmers in the Shannon callows area of County Offaly following the flooding of their farmland. In the past, when problems arose in other parts of the country, aid schemes were administered by the OPW.

Some of the television coverage of the flooding was not appropriate. Cattle were depicted as standing in water but farmers in my area would turn their livestock to the roads in preference to leaving them in water. I do not doubt that farmers would refute allegations that they left cattle to stand in water. The only option open to many of them when their lands flooded was to put their stock on uplands intended for hay or silage. These farmers will face real hardships later this year because of the loss of these crops. The Department of Finance should instruct Teagasc to determine who exactly has been affected because farmers who cut hay and silage later in the year will not suffer as much as farmers whose grazing lands were completely flooded and who had no option but to move sheep and cattle elsewhere.

I am aware that the Shannon will never be drained because, if a Minister made any suggestion to that effect, environmentalists would dig in along the side of the river to stop the project. Substantial amounts of money have been spent in the callows to preserve corncrakes but these birds were also affected by the flooding. Farmers and their livelihoods must come first.

While I refer this evening to County Offaly, counties Roscommon, Galway, Westmeath and other low-lying areas of the Shannon basin have also been affected. Nonetheless, the farmers I represent in west County Offaly face particular difficulties.

Mr. T. O'Malley: I am replying to this Adjournment debate on behalf of the Minister of State at the Department of Finance, Deputy Parlon, who is unable to attend the House due to another commitment. The Minister of State has asked me to apologise for his unavoidable absence.

The Shannon is the longest river in Ireland and one of the largest in western Europe. The river drains a catchment of 14,700 sq km to the Shannon Estuary, approximately one fifth the area of Ireland. It is characterised by relatively steep upper and lower sections and a flatter gradient through its middle reach from Lough Ree to Lough Derg. The low-lying lands surrounding the Shannon, the callows, have experienced regular flooding for centuries, particularly along the river's middle sections.

The Minister of State and his officials in the OPW are aware of the current level of flooding in the Shannon callows. While winter and occasional summer flooding are features of the callows, severe flooding of the kind currently experienced is not. The recent exceptional flooding is due to May's unusually heavy rainfall. This month may prove to have the highest recorded rainfall for the month of May.

The question of possible compensation for financial losses incurred by farmers as a result of flooding is primarily a matter for the Department of Agriculture and Food. While it is true that the OPW was involved in recent years in overseeing a number of humanitarian aid schemes administered by the Irish Red Cross in the aftermath of severe flooding, these schemes were only introduced on foot of Government decisions in instances where the damage was particularly severe and widespread. The schemes were humanitarian in nature and designed to relieve hardship. They were not compensation for losses. While some of the earlier schemes provided assistance where hardship resulted from damage to businesses and farm buildings, provision of aid in more recent schemes was restricted to hardship resulting from damage to homes only.

The OPW no longer has any responsibility for such Government approved humanitarian aid schemes. This function has been transferred to the Department of Social and Family Affairs, following the recommendations of the inter-departmental flood policy review group. The

Government approved the implementation of the group's recommendations in September 2004. The group recommended that the provision of emergency assistance in the aftermath of serious flooding should be limited to situations in which damage has occurred to homes and should be administered by the community welfare services of the regional health boards in conjunction with local community and voluntary groups and non-governmental organisations.

The Office of Public Works has no responsibility for the maintenance of the River Shannon. It would be open to the commissioners, under the provisions of the Arterial Drainage Act 1945 and the Arterial Drainage (Amendment) Act 1995, to prepare a scheme to prevent or substantially reduce flooding in an area. The possibility of undertaking an arterial drainage scheme for the Shannon has been considered on a number of occasions but has been ruled out on economic and environmental grounds.

In 2003, the Commissioners of Public Works undertook a further preliminary assessment of the Shannon flood problem by reviewing the conclusions of previous reports in light of the changes that had occurred to the catchment in the intervening 40 years. The review considered a variety of issues, including: conditions and competing uses of the river; perceived changes in climate patterns; changes to agricultural regulations and practices; different economic circumstances for agriculture and other industries; the higher values being placed on environmental and heritage assets; and tourism opportunities, to establish whether a more detailed study might identify viable options to alleviate the flooding problem. It recommended that a pre-feasibility study of possible flood risk management opportunities should be undertaken. That study was completed in late 2004. Copies were given to the stakeholders.

Garda Deployment.

Mr. Browne: I welcome the Minister of State to the House. Local papers in Carlow last week carried front page headlines reading "Lack of gardaí led to closure of station". This was in Carlow town, which has a population of over 20,000 people. In yesterday's *Carlow People* the chief superintendent admitted there is a major drug problem in Carlow. There is grave concern in Carlow town and county about the manpower levels in the Garda division. There is a view that gardaí have been taken out of the station and diverted into the traffic corps and initiatives such as Operation Anvil. That comes at a cost because Garda numbers have decreased elsewhere.

The Minister's speech writers cite statistics on Garda levels in 1997. The population of Carlow has increased substantially in the past ten years but Garda numbers have not kept up. Unfortunately the increase in population has brought an increase in social problems. Carlow town is one of the fastest growing towns in the country and is almost as big as Kilkenny city. The Minister for Justice, Equality and Law Reform, Deputy McDowell, was in Carlow recently at a launch organised by the Irish Wheelchair Association and saw how big the town is.

It is vital that we have a proper dedicated Garda force with the facilities, resources and manpower to do its job. A serious incident recently occurred at 6.30 a.m. on a Monday which was attended by the only two gardaí on duty, leaving no garda in Carlow Garda station. While this was an isolated and exceptional case, it is worrying. I want the Minister to update us on the Garda manpower levels in the Carlow town area and commit to increasing them substantially in the coming months, especially to make up for any manpower losses as a result of diversions to the traffic corps, the drug squad or Operation Anvil.

Mr. T. O'Malley: The Garda Commissioner is responsible for the detailed allocation of Garda resources, including personnel. The Minister for Justice, Equality and Law Reform has been informed by the Garda authorities that the personnel strength, all ranks, of the Garda Síochána on 31 March 2006 was 12,439. This compares with a total strength of 10,702, all ranks, on 30 June 1997 and represents an increase of 1,737, or 16.2%, in the personnel strength of the force during that period.

The personnel strength, all ranks, of Carlow Garda station on 31 December 1997 and 30 April 2006 was 40 and 57, respectively. This represents an increase of 17, or 43%, in the number of Garda personnel assigned to Carlow Garda station during that period. Carlow Garda station, which is open on a 24-hour basis, is located in the Carlow-Kildare division in the eastern region. The numbers of gardaí, all ranks, stationed in the Carlow-Kildare division on 31 December 1997, 2000, and from 2002 to 2005, inclusive, and on 30 April 2006 were as follows: 1997, 281; 2000, 303; 2002, 323; 2003, 323; 2004, 323; 2005, 331; and 2006, 350. This represents an increase of 69, or 25%, in the number of Garda personnel allocated to the Carlow-Kildare division during that period. The divisional resources are further augmented by a number of Garda national units such as the Garda National Immigration Bureau, GNIB, the Criminal Assets Bureau, CAB, and other specialised units.

It is the responsibility of Garda management to allocate personnel to and within divisions on a priority basis in accordance with the requirements of different areas. These personnel allocations are determined by a number of factors including demographics, crime trends, administrative functions and other operational policing needs. Such allocations are continually monitored and reviewed along with overall policing arrangements and operational strategy. This ensures that optimum use is made of Garda resources and that the best possible service is provided to the public.

The current recruitment drive to increase the strength of the Garda Síochána to 14,000 members, in line with the commitment in An Agreed Programme for Government, is fully on target. This will lead to a combined strength of attested gardaí and recruits in training of 14,000

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by the end of this year. As part of the accelerated recruitment campaign to facilitate this record expansion, 1,125 Garda recruits were inducted to the Garda College during 2005. The college will induct a further 1,100 recruits this year and again in 2007 by way of intakes of approximately 275 recruits every quarter. The first incremental increase of newly-attested gardaí under the current programme of accelerated recruitment took place on 16 March this year and a further 275 newly-attested gardaí will come on stream every 90 days thereafter.

The Garda Commissioner will draw up plans on how best to distribute and manage these additional resources, and in this context the needs of Carlow will be given the fullest consideration. An additional nine gardaí are due to be allocated to the Carlow-Kildare division in conjunction with the next incremental increase on 8 June. The Senator will already be aware from earlier this week that the Commissioner has decided to augment Operation Safeguard with the temporary allocation of 275 gardaí who have recently completed training, phase 3, at the Garda College. In addition to providing resources to the operation, it is expected that involvement at an early stage in their career will help focus these young gardaí towards road safety. In conjunction with this allocation, an extra 60 gardaí will be assigned to Garda divisional traffic corps throughout the country, bringing the total full-time dedicated traffic personnel to 685.

The primary focus of Operation Safeguard will be to improve a compliance culture among all road users. Where road users fail to comply with the law, the Garda Síochána is determined to take the appropriate action. Road safety is not solely the responsibility of the Garda Síochána, but each and every road user throughout the country. Many agencies also have statutory responsibility for road safety and the Garda Síochána meets regularly with ail such agencies.

There are plans to build an extension to Carlow Garda station and the Office of Public works is in the process of assembling a design team for the project. While it is not possible to say when the works will commence, there will be no avoidable delay in attending to the accommodation needs of gardaí in Carlow.

The PULSE system is currently available at 231 Garda locations nationwide, including Carlow town. This represents a significant increase over 2005 figures. An additional 50 stations were networked during 2005 and further extension is planned this year, including locations in County Carlow. As well as investing in the expansion of the system, over the past year significant resources have also been invested in upgrading the system to ensure it operates to maximum efficiency. In addition, a major new initiative involving the manner in which data is input to PULSE is currently under way with the establishment of the new Garda information services centre, GISC, at Castlebar, County Mayo. The centre, which is staffed by civilian personnel, allows gardaí at the scene of incidents to report such incidents by mobile phone to call takers at the call centre. This obviates the need for gardaí to return to their stations to report incidents. The system is currently in operation in the southern and south eastern regions and work is under way to extend the system nationwide. These new arrangements will benefit all gardaí, particularly those in non-networked stations. The Minister is confident that these measures, particularly the establishment of the call centre at Castlebar, will ensure gardaí will have access to the requisite information in the most efficient and effective manner possible.

Carlow is one of the 17 locations nationwide forming part of the Garda CCTV programme that remains to be completed. As the Minister for Justice, Equality and Law Reform has indicated previously, he is anxious to accelerate the implementation of this CCTV programme and reduce as far as possible the workload of the Garda Síochána in this regard. He believes that the answer is to outsource the installation of Garda CCTV systems to the greatest extent possible, making use not only of the technical but also of the project management expertise in the private sector.

The Department is currently in consultation with the Department of Finance with a view to proceeding as quickly as possible with the procurement process to contract the project managers and outsourced service providers for the development, installation and management of these CCTV systems. The Minister's ambition is to have a Garda CCTV system operating in Carlow and in the other locations at the earliest opportunity, subject to compliance with relevant procurement legislation and procedures.

The Seanad adjourned at 9.30 p.m. until 2.30 p.m. on Friday, 2 June 2006.