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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

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SEANAD ÉIREANN

Déardaoin, 26 *Deireadh Fómhair* 2006.
Thursday, 26 *October* 2006.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Business of Seanad.

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

> The need for the Minister for Transport to commence the procedure for the extension of the metro from Swords to Donabate, so the massive benefit of 390 hours' travel time savings per annum will be extended to all the people of north Dublin and Drogheda.

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

> The need for the Minister for Enterprise, Trade and Employment to clarify the classification of County Carlow and County Kilkenny as announced in the new regional aid map approved by the European Commission for the period 2007 to 2013.

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

> The need for the Minister for Health and Children to clarify the position regarding the donation made by the National Breast Cancer Research Institute and returned to it by the Health Service Executive for BreastCheck in light of concerns that this vital service will not be up and running for the women in the west by the end of 2007.

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

Order of Business.

Ms O'Rourke: The Order of Business is No. 1, Patents (Amendment) Bill 1999 — Second Stage, to be taken on the conclusion of the Order of Business and to conclude no later than 1.30 p.m., with the contributions of spokespersons not to exceed 15 minutes, the contributions of other Senators not to exceed ten minutes, and the Minister to be called to reply no later than ten minutes before the conclusion of Second Stage; and No. 2, Child Care (Amendment) Bill 2006 — Order for Second Stage and Stage, to be taken at 2 p.m. and to conclude no later than 4.30 p.m., with the contributions of spokespersons not to exceed 15 minutes, the contributions of other Senators not to exceed ten minutes, and the Minister to be called to reply no later than ten minutes before the conclusion of Second Stage. There will be a sos from 1.30 p.m. until 2 p.m.

Mr. B. Hayes: I wish to raise a case highlighted over the weekend of a high-risk convicted paedophile who broke the terms of his probation order in Northern Ireland and came to reside in the Republic of Ireland. There is quite a bit of concern about this matter, given the need to put in place an all-Ireland approach to the question of child protection policy in general.

My understanding is that if a person such as a high-risk convicted paedophile from one jurisdiction comes to live in another jurisdiction, the person is under the obligation of reporting to a local Garda station just once. There is no ongoing monitoring or assessment. There is no examination of the way in which these people may interact with children.

If ever there was a need to put in place an all-Ireland policy with all-Ireland structures relating to monitoring, assessment and police communications north and south of the Border, it must surely be in this area. We should either go the route of extraditing people if they break the terms of a probation order, a very severe circumstance, or else we should apply the penalties in force in one jurisdiction in the other jurisdiction. People of these islands enjoy free movement north, south, east and west but there needs to be much greater security in respect of convicted paedophiles and the systems need to work in order that we can ensure public safety. That should be brought about in addition to the all-Ireland vetting process which the Minister rightly said was required. I ask the Minister of State with responsibility for children, Deputy Brian Lenihan, to brief this House on his plans in this area and to set out what additional co-operation between the Garda Síochána and the PSNI is required to ensure child protection is taken seriously and structures are put in place to deal with it effectively.

Mr. O'Toole: I support the points made by Senator Brian Hayes, which are totally in line with two reasons we need legislation in this area. Under the Good Friday Agreement there was a commitment to shadow legislation in both jurisdictions to ensure a similar approach to these issues. As Senators will recall, in the past couple of weeks we dealt with the Europol (Amendment) Bill 2006, which is being debated in the Dáil this week, to allow co-operation among police forces in various states, the principle of which we were all in favour, even if there were difficulties with certain aspects. People want

[Mr. O'Toole.]

this issue to be dealt with in a legal fashion. The weekend newspapers concentrated on paedophilia, which is appalling, but whatever the crime, if someone breaks probation in the North he or she should not be given sanctuary in this State. It defies everything we have supported over the years.

Probation arrangements should be on an all-Ireland basis at the very least. In fact they should be wider in scope, as proposed in the Europol (Amendment) Bill 2006. I ask the Government to deal with that issue, in which it will have my support. It is appalling that sanctuary be given to people charged with any crime, not just paedophilia.

There has been much discussion in the past 24 hours on the report of the three wise men on salmon drift net and draft net fishing, which Senator Norris welcomed yesterday. My views are very clear — it will make no difference. I repeat what I said in the House a year ago about the groceries order. The Government will clearly eliminate drift net fishing and implement the other recommendations in the report because politically, it must do so. However, the only people who believe that buying out 39 salmon licences in a county will stop salmon fishing are those naive enough to believe the only people fishing for salmon are those with the 39 licences, which is not and has never been the case. There is an east coast naivety about salmon fishing, dependent on statistics supplied by officialdom which have never accurately reflected the industry. The only way to deal with the issue of salmon stocks is to get all the people to co-operate, as has happened in Canada and other places. The Government's abolition of salmon fishing will make no difference other than to put people out of work in various places around the country.

Mr. Morrissey: In the past few weeks there has been, after many years of procrastination, a successful flotation of Aer Lingus.

Mr. Norris: What?

Mr. Morrissey: I say "successful" because the flotation was intended to bring about a number of outcomes. One was equity for the company. The second was the plugging of its pensions deficit and the third was the strengthening of its balance sheet, which has certainly happened. However, the Government has retained a major shareholding in the company and we need a debate on the present management of Aer Lingus. Only last week one of the new shareholders alerted the general public and the airline's passengers to the fact that the company's catering department now buys in its sandwiches. This morning we heard of swingeing job cuts at the company, starting with the catering department. Why has this not been done already? The management stated two weeks ago that the flotation of Aer Lingus would not result in lower fares. This morning it stated lower fares would result from the proposed job cuts.

Mr. O'Toole: Do they involve the Senator's constituents?

Mr. B. Hayes: Passengers will have to bring their own sandwiches.

Mr. Morrissey: Aer Lingus was not established as a job creation agency, though it might have been used as such in the past. The company should concentrate on the service it provides to its customers. As the Government still retains a shareholding in Aer Lingus I call on the Minister to come to the House to discuss the future of the company.

Mr. Finucane: If the Senator came down to Shannon he would not be able to get a bite in the restaurant after 3 p.m., which is one of the changes that has taken place. It is a long time since we discussed dismantling the airports and I attended a meeting in Shannon——

An Cathaoirleach: We will not have a debate on catering facilities at airports.

Mr. Finucane: I will talk about a more serious topic. I would like the Minister to come to the House to account for legislation going through at present, namely, the 2006 Bill relating to health reforms, with particular reference to changes to the nursing home subventions involving a target of 5% of the overall value of a house. I am amazed that changes in the subvention rates were not part of the Bill because the nursing home subvention rates have been in place since 2001. A few years ago members of a family did not have to include details of their incomes on the form as they were assessed against the overall value. However, we have reached, by way of stealth, a situation where there is a huge differential between the amount of a person's pension, plus his or her nursing home subvention, and the overall cost. Effectively, family members now pay towards the cost. It is time the subvention values were changed because there has been a dramatic rise in the prices of nursing homes between 2001 and 2006.

I hope the Minister for Finance, Deputy Cowen, will review the position of Irish charities in the forthcoming budget. Last year, €36 million was paid into the Revenue's coffers in VAT. We had the farcical situation where, of the money collected by people at church gates on behalf of the Irish Cancer Society, €300,000 was remitted in VAT and Concern alone paid €1.5 million. That is a contradiction because the money in question could be more usefully spent in providing oncology nurses and other staff. The Minister should introduce changes in the forthcoming

budget because it is wrong to charge charities VAT at 21%.

Mr. Mooney: Earlier this week the British-Irish Interparliamentary Body met in Belfast. The Secretary of State, Peter Hain, was asked a question about the development of the Ulster Canal, which has been debated in this House on a number of occasions. Last week the Minister for Community, Rural and Gaeltacht Affairs, Deputy Ó Cuív, who is responsible for Waterways Ireland, indicated he was awaiting the British response. He was, in principle, in favour and said the Irish Government would financially support the project, which is the last link in the waterways of this country and would allow free passage for the Cathaoirleach from his own constituency in Limerick all the way to Lough Neagh and Belfast.

Mr. O'Toole: Hear, hear.

Mr. Mooney: I was astonished at the response of the Secretary of State to the effect that the British could not make any immediate move because they did not have the money, whereas the Irish do. That is farcical and a complete reversal of the historical position. I ask the Leader for a debate on the North-South Implementation Bodies, particularly Waterways Ireland, which, along with the all-Ireland tourism marketing campaign, is one of the success stories, in order that this House and the public can be informed of their work.

Mr. Norris: I normally agree with Senator Morrissey on transport issues but I was astonished to hear him describe the flotation of Aer Lingus as a success. If the Government wanted to privatise it why did it frustrate Willie Walsh's attempts to take it over? In the process it lost the business leadership whose lack Senator Morrissey bewails this morning. The Government has got itself into this situation.

I am interested in Senator O'Toole's comments on salmon driftnet fishing but it would be better if he read the Order Paper where he would see that No. 17 has a comprehensive motion in my name——

Mr. O'Toole: With my name on the bottom of it.

Mr. Norris: That was the point I was coming to. The motion addresses all the problems. The Government has commissioned reports and so on but has never once taken the scientific advice or implemented the conclusions. Ministers have come into this House and been evasive and economical with the truth and suggested they took on board some of the reports but they have never implemented their recommendations.

This is a potential disaster and it would be outrageous if the Government once again buckled in the face of local considerations and pressure. It would be just like the situation that Senator O'Toole and I highlighted last night in which the Government helped to unload 250,000 defective homes on the Irish people because it did not want to disadvantage a section of the cement manufacturing industry that supports it. It would be wrong to allow narrow local considerations to prevent the Government doing what is clearly the right thing.

Last night there was a serious fire in Portland Row, involving a hostel. A total of 11 fire brigades were called, 50 people were evacuated and five people are still in hospital suffering smoke inhalation. We are lucky that there was not considerable loss of life. Would the Leader consider allowing a brief discussion on No. 16 in my name, which draws attention to this fact and asks that the Government ensure that all such accommodation is professionally vetted in terms of fire regulations, hygiene, and so on?

Could the Leader find out from the Minister, or ask him to come into the House to explain, whether this hostel was ever vetted, whether it was fire regulation compliant, how many people were there and what are the conditions in this type of accommodation? This is funded by taxpayers but some people make a great deal of money out of these hostels around the country most of which do not meet elementary safety regulations.

I put down this matter on the Order of Business on 28 September and raised it previously.

Ms O'Rourke: That is right. The Senator did that.

Mr. Norris: There is a tragedy waiting to happen and it will be too late when people are burnt to death. Then we will all lament and bewail the tragedy. We know about it now. I am using this opportunity to serve notice that a tragedy will happen which we can avoid if we implement the proper fire, hygiene and safety regulations.

Mr. J. Walsh: Will the Leader schedule a debate on planning soon? I refer in particular to the abuses current in the planning process. Reports over the weekend indicate that for some time there has been a practice whereby people object to a planning application then withdraw their objection when offered considerable sums of money. That should not be countenanced or allowed within the planning structure. Urgent measures should be taken to outlaw the practice.

There are also reports of commercial interests, objecting, sometimes nationally, to planning applications for competitive reasons. A preliminary consideration of appeals should be introduced to the planning process to ensure that vexatious or wrongly motivated appeals are quickly discarded.

I have spent some time over the past couple of years on inquiries into atrocities that occurred here during the period of the troubles in

[Mr. J. Walsh.]

Northern Ireland. The fact of collusion with British forces, most notably the UDR, has emerged strongly from these inquiries, most notably with the UDR. The Pat Finucane Centre yesterday issued a report yesterday highlighting the fact that at least 15% of those who were engaged in the UDR were involved in serious Loyalist paramilitary offences, including murder and bombings.

I was astonished, although perhaps I should not have been, to see that the English monarch recently attended the stepping down of the regiment as a mark of honour to it. That was inappropriate and added insult to the injuries of the victims of those atrocities. I condemn it and hope others in this House would do the same. It fuels the sectarianism that blights Northern Ireland.

Ms Terry: I may already have asked the Leader since the start of this session for a debate on domestic violence. A campaign will start on 25 November for six days to highlight this issue. It might be opportune for us to hold a debate during that week. We should also note that 124 women have been murdered in Ireland since 1996, 78 of those in their homes. These are startling figures. Despite debates in both Houses and legislation we are not getting to grips with this serious problem. Organisations such as Women's Aid do not receive the funding they need to tackle the problem. It would be helpful to have that debate before the budget to try to secure sufficient funding for the groups trying to deal with the problem. I would appreciate if that could be organised.

Mr. Glynn: I support Senator Walsh's remarks on the planning process, especially his reference to commercial interests objecting for competitive reasons. There have been several recent examples of this in the midlands. I would welcome a debate soon on the subject during which Members could articulate their views and make suggestions that might find their way into legislation which would prevent this unsavoury practice. It beggars description and in many cases the ordinary Joe and Mary on the street suffer waiting for badly needed services. There was a clear example of this recently in the midlands.

Ms Tuffy: I join Senators Jim Walsh and Glynn in calling for a debate on the planning process. I would like this to include the development of apartments. The Minister for the Environment, Heritage and Local Government issued guidelines a couple of years ago seeking higher densities. The developers pursued that with a vengeance and have been building apartments all over the place, even in villages, where they are not in keeping with the local character. There was a plan to issue guidelines on the quality of design but I am not sure that ever came to fruition.

One would not want to spend one's life in many of these apartments. I live in a house which my parents bought approximately 30 years ago and which has stood the test of time. That may not be so of many of the apartments being build now. We need to review this issue.

Taking into account Senator Jim Walsh's comments on inappropriate submissions, the public should not have to pay a fee to make submissions on planning applications. That has affected public representatives, councillors, Deputies and Senators who must pay if they want to act on behalf of local residents. Public representatives can neither pick and choose planning applications to challenge nor pay hundreds of euro to challenge all applications. The EU has criticised this fee and it should be abolished.

11 o'clock

Mr. U. Burke: Ireland prides itself at being at the forefront of the knowledge economy. This was a result of large investment in the area. The Minister for Education and Science, however, has failed to live up to this commitment. Last year only €2.3 million was spent on the upgrading and provision of IT facilities in schools. Some 10,000 computers in primary schools are in need of upgrading. At second level, 5,500 computers are beyond repair while 20% have been in use for six years or more and are obsolete.

If we want to continue to be at the forefront of the knowledge economy, why is the Minister for Education and Science failing in her duty to provide the wherewithal to do so? When IBEC, the INTO and the secondary teachers' unions highlight this together, then it is a serious issue requiring urgent attention. Will the Leader bring it to the attention of the Minister? It must be addressed in the forthcoming budget. To allow this situation to continue means the Minister has failed and is not interested in continuing the valuable work done in schools to bring Ireland to the forefront of the knowledge economy. Ireland is lower than the OECD average for availability of computers at school.

An Cathaoirleach: The Senator has made his point adequately.

Mr. U. Burke: It is an urgent case. While Minister after Minister promotes Ireland as being at the forefront of the knowledge economy, the Minister for Education and Science is failing in her duties to ensure it is.

Mr. Hanafin: I call for a debate on credit institutions, particularly after the recent statements by the Minister for Social and Family Affairs on those who do not qualify for credit being forced to go to moneylenders who charge exorbitant amounts. This year's Nobel Peace Prize winner, Muhammad Yunus, arranged a microcredit scheme for the poorest of the poor communities, through his Grameen Bank. The scheme has a

96% to 98% repayment rate on its loans. This is largely due to peer pressure in that the loans are organised by the community for the community.

It must be possible for the Government to set aside a certain amount of money for community groups to be able to lend out small amounts of money. The Grameen Bank charges an interest rate of 16%. Unfortunately, in Ireland interest rates with moneylenders can be as high as 30%. Now is the time to outlaw such exorbitant rates being charged against vulnerable people, particularly when the ECB's rate is no more than 3.5%. We must look for justice for those who may have a fine record of repayment but are unfortunately caught by the credit institutions.

Mr. Quinn: Next year the French presidential elections will be held. One candidate, Nicolas Sarkozy, has emerged as a favourite because as Minister for the Interior he took a zero tolerance approach to breaches of road safety. This is a lesson for those who wish to win elections. To be able to reduce deaths on the road is in the hands of the Government. The Minister has commented on the large number of suggestions from the Road Safety Authority. It is up to us to support the Minister in this regard.

A large number of deaths of young people on our roads occur after hours. The insurance companies could issue a policy to a young driver on condition it expires at 10 o'clock in the evening. This will only work if cars caught without insurance are impounded. Families would certainly not allow young family members to use the family car if they knew it was not insured after a certain hour. This is not necessarily in the hands of the Government but the insurance companies.

A large number of young people have a different attitude to drinking and driving than our generation. I am impressed Mr. Sarkozy's reward is due to tackling road safety and reducing road deaths when he had the power to do so.

Mr. Coonan: Recently a neighbouring farmer was attending a long-standing appointment with a consultant when his telephone rang. It was an inspector from the Department of Agriculture and Food, announcing he was to visit my neighbour's farm in ten minutes. At such short notice, there was no way the farmer could facilitate the inspection. As a result, he suffered drastic penalties in his farm payments for this and next year. This is unacceptable.

Farmers whose lands are acquired through compulsory purchase orders for road developments are penalised by 30% in capital gains tax and 9% in stamp duty. The policy should be more focussed on consolidating farm holdings. Will the Leader arrange a debate with the Minister for Agriculture and Food on these issues, as it is long overdue?

Mr. Coghlan: Ever since the Tánaiste and Minister for Justice, Equality and Law Reform suggested the abolition of stamp duty, and despite the Minister for Finance indicating he is set against such a change, there is continuing uncertainty in the property market regarding property-related taxes. This is not good for stability in this important sector. The Government urgently needs to speak definitively with one voice on this matter. Will the Taoiseach take an early opportunity to say something definitive on the matter?

Mr. Norris: That will be the day.

Mr. Finucane: Which? The Taoiseach taking an early opportunity or saying something definitive?

Dr. Mansergh: Albeit after some delay, I am glad all farming organisations will sign on for social partnership, thanks in part to a package of spending measures over the next several years. I agree with Senator Coonan's point on the consolidation of farm holdings. The capital gains tax situation for farmers whose lands are compulsorily purchased for road developments should be examined.

A recent study showed that Ireland, along with three Scandinavian countries, had the greatest media freedom in the western world. Most Members are conscious of this. It puts the minor complaints about the freedom of information legislation into perspective. It provides a background in which we can debate forthcoming legislation relating to libel and privacy.

Ms O'Rourke: Senator Brian Hayes raised the need for an all-island approach to dealing with the release of convicted paedophiles. He understands that an individual who broke the terms of his probation order in Northern Ireland and is now resident in the South need only report to the Garda once, after which he is free to go about his business without any ongoing monitoring. The Senator believes there should be a common security area in this regard and that the wider implications of the travel plans of persons such as this should be examined. Senator O'Toole also raised this issue in the context of the Europol (Amendment) Bill 2006, which allows for co-operation among police forces in various states. That Bill was only recently passed and we must examine whether such arrangements can be put in place in the context of ensuring safety for children.

Senator O'Toole also referred to the report of the three wise men on salmon fishing. It seems an honest debate is finally taking place on this issue. I commend Senator Kenneally who spoke about it this morning on "Morning Ireland". The only way it will be settled is if there is an attempt to gain common ground. Senator O'Toole expressed the wish to have everybody on side but there will never be total agreement. Perhaps the only topic that would get everybody on side is the wish that we may all go to Heaven. There will certainly be no agreement about salmon fishing. There are,

[Ms O'Rourke.]

however, attempts to have a useful ongoing debate.

Senator Morrissey said he is aghast at developments in Aer Lingus and asked for the Minister to come to the House for a debate on this matter. Senator Finucane spoke about the Health (Nursing Homes) (Amendment) Bill 2006. We will debate this Bill shortly and the Senator will have an opportunity to put forward his good ideas, either on Second Stage or through Committee Stage amendments. The Report and Final Stages of the Bill will finally be taken next week in the Dáil and it will come to us after that. Much correspondence has come in about it. Senator Finucane also pointed out that the 21% VAT imposed on responsible charities is penal and unnecessary.

Senator Mooney said that the response given by the Secretary of State for Northern Ireland, Mr. Hain, to a query about the development of the Ulster Canal was that the British do not have the money and we do. This seems a cavalier attitude. The Senator seeks a debate on the general progress of the North-South Implementation Bodies.

Senator Norris asked why the Government rejected the expertise of Aer Lingus's former chief executive officer, Mr. Willie Walsh. He also pointed to No. 17 on the Order Paper, a motion proposed by him and his Independent colleagues on salmon driftnet fishing. Senator Norris went on to raise the matter, as he has done passionately on several occasions, of the dangers posed by hostels. In some of these facilities many people are crowded together and, in some cases, the electrical wiring has not been updated and is faulty. He forecast there will be deaths as a result of a fire at one of these hostels and asks whether action can be taken to prevent this.

Senator Jim Walsh called for a debate on planning and spoke about the abuses within the system. I agree that some objections are made purely on competition grounds. He also raised the matter of collusion between the British security forces and loyalists in Northern Ireland and he condemned the recent attendance of the English monarch at the stepping down of the UDR.

Senator Terry raised the matter of domestic violence and the campaign that will begin on 25 November for six days to highlight this issue. We will endeavour to ensure a useful debate in the House. It is woeful to consider that 124 women have been murdered in the last decade, 78 of them in their own homes.

Senator Glynn spoke about planning and wished to add his name to the calls for a debate on that. He referred in particular to the incidence of commercial interests objecting on competitive grounds. Senator Tuffy spoke about the lack of design and overall aesthetic of many of the apartment blocks being constructed and called for this aspect to be included in the debate.

Senator Ulick Burke spoke about the importance of the knowledge economy and referred to the lack of modernity at both primary and post-primary level in terms of computer facilities in schools. Senator Hanafin called for a debate on credit institutions and argued the benefits of microcredit schemes for communities. The Minister for Social and Family Affairs, Deputy Brennan, has announced a significant strengthening of the Money Advice and Budgeting Service, MABS. I am sure many Members advise people who are experiencing financial difficulties to use this service. I have found it very helpful and easy to deal with.

Senator Quinn spoke about Mr. Nicolas Sarkozy, the French Interior Minister and possible candidate in that country's upcoming presidential election, who introduced a policy of zero tolerance in regard to road deaths and all associated crimes. I hope Madame Ségolène Royal will be the successful candidate in that election but that is another kettle of fish. Senator Quinn proposes the consideration of new regulations to the effect that young drivers' insurance policies would expire after 10 p.m. There was another tragic road death at 5 a.m. on the road outside Kilbeggan in County Westmeath.

Senator Coonan called for a debate with the Minister for Agriculture and Food on the issue of the penal capital gains tax for which farmers subject to compulsory purchase orders are liable. I hope this issue can be examined.

Senator Coghlan argued that the policy put forward by the Progressive Democrats Party on stamp duty is leading to instability. However, his own party is increasing that instability with its new proposals.

Mr. Coghlan: The Government has a responsibility in this matter.

Mr. B. Hayes: Our policy paper was published last year.

Ms O'Rourke: All will be revealed in the budget.

Mr. Coghlan: The Minister for Finance has said "No".

An Cathaoirleach: The Leader should be allowed to continue without interruption.

Ms O'Rourke: Senator Mansergh was appreciative of the farm organisations which seem prepared to endorse the new social partnership deal. As he said, they will now be inside the tent looking out rather than outside looking in. Senator Mansergh also referred to the recent report which showed that Ireland, along with three other countries, has the greatest media freedom in the western world. This is a positive achievement.

Order of Business agreed to.

Patents (Amendment) Bill 1999: Second Stage.

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

Minister of State at the Department of Enterprise, Trade and Employment (Mr. M. Ahern): I am pleased to bring this Bill before the House. In an increasingly knowledge-driven global economy, sustained economic growth is inextricably linked to the ability to innovate successfully. Protection of intellectual property is of crucial importance because intellectual property rights not only reward investments in new products and services but also ensure transfer of technology, stimulating further innovation.

The granting of patents for new inventions in order to secure to the inventor the exclusive right to exploit the invention for a limited period of time is a long-established and well known instrument of promoting technical innovation and industrial development.

After the Industrial Revolution and from the 19th century onwards, all industrialised countries established their own patent system tailored to meet each country's industrial strategy. In Europe, efforts to create a common patent system resulted in the establishment of the European Patent Convention, EPC, in Munich in 1973. That convention established a European Patent Office in Munich, the function of which is to grant, on the basis of one central application to that office, patents which would be valid in each contracting state designated by the applicant. In effect, a bundle of national patents emerge from a European patent application and in each designated country the European patent has the same legal effect as one granted by the local national patent office. European patents are granted only after an in-depth examination following a comprehensive novelty search in a collection of several million documents and, therefore, offer a high level of legal certainty. The EPC has 31 contracting states — all EU states except Malta, as well as Bulgaria, Romania, Iceland, Liechtenstein, Monaco, Switzerland and Turkey.

Industry today operates internationally to a far greater extent than it did when the European Patent Convention was established in the 1970s. In 1993, a major step was taken towards worldwide harmonisation of legislative and regulatory practices with the Agreement on Trade Related Aspects of Intellectual Property Rights, known as the TRIPs Agreement. That agreement is an annexe to the agreement establishing the World Trade Organisation, WTO, and compliance with the TRIPs Agreement is an essential requirement under the new world trading order.

The primary purpose of the Bill, as published, was to give effect to certain provisions of the TRIPs Agreement. Since then, there have been a number of other international developments in regard to patents. The Government considers it prudent to take all relevant developments on board in a single piece of legislation and the Bill was amended substantially through its passage in the Dáil to include the following: amendments consequent on the revision of the European Patent Convention, EPC; provisions to give effect to the Patent Law Treaty which was concluded under the auspices of the World Intellectual Property Organisation, WIPO, the UN agency which administers international treaties in the field of intellectual property; and miscellaneous necessary amendments to intellectual property legislation, mainly by way of clarification or correction.

I now turn to each of these constituent aspects. The main objective of the TRIPs Agreement, as contained in its preamble, is to reduce distortion and impediments to international trade by promoting effective and adequate protection of intellectual property rights and by ensuring that measures and procedures to enforce intellectual property rights do not themselves create barriers to legitimate trade.

Article 3 of the TRIPs Agreement obliges each member country to accord the same treatment to non-nationals as it does to its own nationals. Article 4 includes a most favoured nation provision according to which any advantage, favour, privilege or immunity granted by a member country to the nationals of any other country in regard to intellectual property rights must be accorded immediately and unconditionally to nationals of all other WTO member countries.

The standard for patentable subject matter is set in Article 27 of the agreement. Patents shall be available for any inventions, whether products or processes, in all fields of technology provided that they are new, inventive and capable of industrial application. Patents shall be available and patent rights enjoyable without discrimination as to the place of the invention, the field of technology and whether products are imported or locally produced.

There are three permissible exemptions to the basic rule on patentability. First, inventions, the commercial exploitation of which would be contrary to public order or morality, may be exempted. Second, inventions concerning diagnostic, therapeutic and surgical methods for the treatment of humans or animals may be exempted. Third, member countries may exclude from patentability "plants and animals other than micro-organisms and essentially biological processes for the production of plants and animals other than non-biological and micro-biological processes".

Our principal law relating to patents for inventions is contained in the Patents Act 1992. In general, the 1992 Act is in compliance with the provisions of the TRIPs Agreement relating to both the standard for patentable subject matter

[Mr. M. Ahern.]

and the subject matter which may be excluded from patentability.

The main area where the 1992 Act needs to be updated to comply with the TRIPs Agreement relates to the provisions concerning compulsory licences. The right given by the grant of a patent is, in essence, a right, enforceable through courts, to prevent others from making, importing, using or selling the patented product. However, the patentee need not exercise this right; he or she may license others to do so.

The 1992 Act also contains provisions in sections 70 to 75, inclusive, concerning the compulsory licensing of patents without the authorisation of the patentee. The existing provisions of section 70(2) such as that the patent is not being adequately worked in the State or that the demand for a patented product in the State is being met by importation are contrary to Article 27.1 of the TRIPs Agreement which provides that "patents shall be available and patent rights enjoyable without discrimination as to place of invention, the field of technology and whether products are imported or locally produced".

Essentially, this means that where a patented product is exploited in any member country of the WTO and is then imported into another country in sufficient quantities to satisfy domestic demand there, a compulsory licence cannot be granted in that other country. Additionally, pursuant to Article 31 of the TRIPs Agreement, numerous conditions must be adhered to by member countries of the WTO should such countries provide for the possibility of granting compulsory licences under a patent.

Prior to the granting of a compulsory licence, the applicant for the licence must show that reasonable efforts to obtain a contractual licence from the patentee have failed. The licence shall be limited as to its scope and duration and it shall be of a non-exclusive nature. The compulsory licence shall be non-assignable and shall be granted predominantly for the supply of the domestic market. The compulsory licence shall be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The patentee shall be compensated adequately depending on the circumstances of each case. The legal validity of the compulsory licences as well as any decision relating to the compensation shall be subject to judicial review.

Where compulsory licences are granted to permit exploitation of a second patent which cannot be exploited without infringing a first patent, three additional conditions apply: the invention claimed in the second patent shall involve an important technical advance of considerable economic significance; the patentee of the first patent shall be entitled to a cross-licence, that is, a licence to use the invention claimed in the second patent; and the licence in respect of the first patent shall be non-assignable except with the assignment of the second patent. Sections 19 to 23 of the Bill amend the existing provisions concerning compulsory licensing of patents as contained in sections 70 to 75, inclusive, of the 1992 Act to bring them into line with the TRIPs Agreement.

The Bill contains proposed changes to the 1992 Act consequent on the revision of the European Patent Convention, EPC, by a diplomatic conference in November 2000. The revised text of the EPC will enter into force, at the latest, two years after the 15th contracting state has deposited its instrument of ratification or accession. The 15th state deposited its instrument of accession on 13 December 2005. This means that all those states which have not yet ratified or acceded to the Act revising the EPC must do so by 13 December 2007 to avoid being excluded from the European Patent Organisation. Before Ireland may accede to the convention, as revised, our national law needs to be amended to bring it into line with the revised provisions.

The main changes now proposed in the Bill relate to patentability criteria and, in particular, explicit recognition that a patent may be obtained for a second medical use of a known substance; limitation of the effect of European patents following the central limitation procedure before the European Patent Office, EPO, introduced in the EPC revision; and provision for the protection of third parties where a patent is restored by the enlarged board of appeal of the EPO following its review of a decision of a board of appeal of the EPO.

The Bill contains provisions to bring our existing law into compliance with the Patent Law Treaty. The purpose of the treaty, which was concluded under the auspices of WIPO, is to harmonise the formal requirements for patent applications set by national and regional patent offices such as elements of an application, filing date, priority, time limits, etc., and to streamline the procedures for obtaining and maintaining a patent. The Patent Law Treaty does not relate in any way to substantive patent law, for example, the criteria to be satisfied for an invention to be eligible for patentability. Its focus is on procedural requirements involved with filing and prosecuting a patent application, such as filing date requirements and procedures to prevent loss of the filing date; formal requirements regarding patent applications; and mechanisms to avoid unintentional loss of rights. While there is no obligation to accede to the treaty, the adoption of its provisions will make it easier for applicants to prosecute and to maintain a patent application.

The opportunity is being taken in the Bill to effect a number of miscellaneous amendments to intellectual property legislation including trademark, copyright and industrial designs. Those amendments are mainly by way of correction or

clarification and have been kept to those of the most pressing necessity. The amendments proposed to trademark legislation concentrate on ensuring Ireland's full compliance with the TRIPs Agreement; changes to reflect jurisprudence established by the European Court of Justice which necessitate amendments to the 1996 Trade Marks Act; and ensuring consistency with more modern intellectual property legislation in the area of search and seizure of infringing goods. The amendments proposed to copyright and industrial designs legislation are of a corrective nature.

As the Bill, as published, was substantially amended by the Dáil to include new provisions to give effect to the international obligations I have mentioned, I would like to turn now to its provisions and explain in greater detail what each is designed to achieve.

Section 1 sets out the definitions of Acts referred to in the Bill. Section 2 sets out the definitions of various terms used in the Bill. Sections 3 and 4 amend sections 9 and 10 of the 1992 Act to bring them into line with Article 27-1 of TRIPs and Articles 52 and 53 of the EPC, as amended. The changes provide that methods of treatment of the human or animal body and diagnostic methods practised on the human body which had previously been excluded from patentability under section 9 by the fiction of their lack of industrial applicability are now included as exceptions to patentability on public policy grounds under section 10. Amended section 9 makes it clear that patents are to be available for inventions in all fields of technology.

Section 5 amends section 11 of the 1992 Act to bring it into line with new Article 54(5) of the EPC and will now explicitly allow patent protection to be obtained for second and further medical uses of known substances or compositions.

Section 6 amends section 23 of the 1992 Act to reflect the requirements of Article 5 of the Patent Law Treaty and sets out the requirements that must be fulfilled to get a filing date for a patent application. The changes include a right to be accorded a date of filing even when the description does not comply with the language requirements of the legislation or other requirements. They also allow a reference, in lieu of filing a description, to a previously filed application to be used to obtain a date of filing. Another change proposed is that if a missing drawing or part of the description is filed subsequent to the date of filing of the application, the application will not be re-dated to that later date, if priority from a previous application is claimed and the requirements to be prescribed are met. One of those will be that the missing part of the description or drawing is present in the earlier application.

Section 7 amends section 25 of the 1992 Act and extends the existing right to claim priority from an earlier application filed in a State party to the Paris Convention for the Protection of industrial Property to a right to claim priority based on an earlier application in any member state of the WTO. Section 8 amends section 33 of the 1992 Act and provides for the possibility of correcting an error in the withdrawal of an application.

Section 9 amends the 1992 Act by the insertion of new sections 35A and 35B to allow for the re-establishment of rights as provided for in Article 12 of the Patent Law Treaty in the case of applications which had been refused or deemed withdrawn for failure to comply with a time limit. Section 35A sets out the conditions and procedures under which the Controller of Patents, Designs and Trade Marks shall reinstate an application, and section 35B sets out the effects of reinstatement of a patent application, including the protection for third parties.

Section 10 amends section 37 of the 1992 Act to clarify the protection afforded to third parties where a patent has been restored and to set out the effects of restoration. The existing protection for the intervening rights of third parties is set out in Rule 38 of the Patent Rules 1992, but the Attorney General's Office has advised us that it should be set out in the Act itself.

Section 11 amends section 38 of the 1992 Act to ensure consistency in approach to post-grant amendment in national proceedings and before the EPO. Section 12 amends section 42 of the 1992 Act regarding the use of patents on board vessels, aircraft and land vehicles. That arises from Ireland's ratification of the WTO Agreement. Section 13 amends section 45 of the 1992 Act and is a drafting revision to reflect minor amendments to Article 69 of the EPC. Section 14 amends section 50 of the 1992 Act to provide that relief for the infringement of a partially valid patent may be granted also on condition that the proprietor of a European patent designating the State limits the patent at the EPO.

Section 15 amends section 53 of the 1992 Act to introduce a further restriction on the bringing of proceedings for groundless threats of infringement. Under the new subsection (3)(*b*), proceedings may not now be brought by an aggrieved party where a person, for example, a patent proprietor, has threatened that party with proceedings in respect of acts of secondary infringement — such as selling or stocking the patented product or offering the patented process for use — provided the person being threatened has made or imported that product for disposal or used that process.

Section 16 amends section 58 of the 1992 Act to bring it into conformity with Article 138(1)(*d*) of the European Patent Convention. It clarities that section 58(*d*) relates only to amendment of the patent that occurred after it had been granted. Section 17 amends section 59 of the 1992 Act to provide that, in the case of a European

[Mr. M. Ahern.]

patent designating the State, where the controller or the court has found that the grounds of revocation affect the patent only in part, the specification of the patent can be amended under section 38 of the Act, or the claims of the patent can be limited by the proprietor under the new central limitation procedure provided for in the revision of the European Patent Convention.

Section 18 amends section 68 of the 1992 Act to remove any discriminatory restriction on the importation of a patented product from another member country of the WTO. Sections 19 to 23, inclusive, substantially amend sections 70, 71, and 73 to 75, inclusive, of the 1992 Act to bring the provisions concerning compulsory licences into line with the requirements of Article 27.1 and Article 31 of TRIPs, which I have already outlined.

Section 24 amends section 92 of the 1992 Act to clarify that the provisions applicable to the taking of evidence by the Controller of Patents, Designs and Trade Marks applies equally to later enactments under which the controller has functions. Section 25 amends section 96 of the 1992 Act to ensure the three-month period for filing an appeal against a decision or order of the controller, in the instance where written grounds of the controller's decision have been sought, is computed from the date that the written grounds are furnished rather than from the date of the decision.

Section 26 amends section 110 of the 1992 Act and is consequential on the revision of section 33. It sets out the procedure to be followed where the controller receives a request to restore an application that has been withdrawn in error. Section 27 introduces a new section 110A to set out the effect of restoration of a withdrawn application, particularly the protection of the intervening rights of third parties. Section 28 inserts a new section 118A into the 1992 Act to reflect Article 11 of the Patent Law Treaty to provide that where the applicant or proprietor of a patent has failed to observe a time limit specified by the controller the person may be granted one extension as of right.

Section 29 amends section 119 of the 1992 Act to reflect that European patents may be limited or revoked by the European Patent Office at the request of the proprietor under the new central limitation procedure contained in the revision of the EPC. That section also provides for the consequences of the restoration of a European patent which has been revoked by a board of appeal and is subsequently restored by an enlarged board of appeal. Section 30 inserts a new section 119A to provide for the possibility of relief where a translation of a European patent designating the State published in French or German has not been filed within the prescribed period. Again, that is to provide for re-establishment of rights under Article 12 of the Patent Law Treaty.

Section 31 amends section 120 of the 1992 Act to reflect the omission of the current Article 54(4) from the revised EPC. The effect of this change will be that a European application designating the State will have prior art effect under section 11(3) on publication, even if the designation of the State has been withdrawn prior to publication. Also, consequent on the proposed amendment to section 37, the intervening rights of third parties, following the re-establishment of the applicant's rights under the EPC, are now set out in the section.

Section 32 amends section 121 of the 1992 Act to set out the protection afforded to a third party who may have begun to do an act which would not have constituted infringement based on the original translation of a patent or application, but which would constitute infringement based on a corrected translation. Section 33 makes a minor drafting amendment to section 122 of the 1992 Act to bring it in line with the terminology in Article 77 of the EPC.

Section 34 repeals the transitional provision set out in paragraph 4 of the First Schedule to the 1992 Act as that provision is inconsistent with Article 28 of the TRIPs Agreement. Section 35 amends the Second Schedule to the 1992 Act to introduce a new provision with regard to "equivalents", consequent on the revision of the protocol on the interpretation of Article 69 of the EPC.

Section 36 repeals two orders relating to agreements concerning priority with countries not party to the Paris Convention, made under section 25(5), which will become superfluous when section 7 of the Bill comes into operation. Section 37 amends section 2 of the Trade Marks Act 1996 to include a reference to the "Agreement establishing the World Trade Organisation".

Section 38 amends section 10 of the Trade Marks Act to bring it into line with jurisprudence established by the European Court of Justice which established that a trade mark can be refused on the basis of earlier rights if the earlier mark enjoys a reputation in the State and the later mark would take unfair advantage of that reputation, regardless of the issue as to whether the goods in both cases are similar or not.

Section 39 is linked with section 38 in that it relies also on jurisprudence established by the European Court of Justice. It amends section 14 of the Trade Marks Act to make it an infringing act for the proprietor of a mark to use a similar or identical mark to an earlier mark where the earlier mark enjoys a reputation in the State and the later mark would take unfair advantage of that reputation.

Section 40 amends section 25 of the Trade Marks Act to align the search and seizure pro-

visions with those prevailing under more recent legislation in the intellectual property area such as the Copyright Act 2000. It extends the list of activities which can be carried out during a search and seizure operation, for example, making an inventory of the infringing articles, allowing the seizure of anything found which may be required in evidence and the power to require any person found on the premises to give his or her name or address for use in any subsequent legal proceedings.

Section 41 amends section 29 of the Trade Marks Act to include changes affecting the proprietorship of a mark to be regarded as transactions to be recorded in the Register of Trade Marks. Section 42 amends section 41 of the Trade Marks Act and extends the priority right, based on an earlier application in a country or territory with which Ireland has entered into an agreement for the reciprocal protection of trade marks, to successors in title of a person.

Section 43 amends section 60 of the Trade Marks Act to include a reference to the World Trade Organisation. Section 44 amends section 79 of the Trade Marks Act to ensure that the three-month period for filing an appeal against a decision of the controller of patents, designs and trade marks, in the instance where written grounds of the controller's decision has been sought, is computed from the date that the written grounds are furnished rather than from the date of the decision.

Section 45 is aimed at ensuring full TRIPs compliance in that anywhere in the Trade Marks Act the Paris Convention is referenced such references are expanded to include also the WTO agreement. Section 46 augments the transitional provisions of the Trade Marks Act 1996 arising from ratification of the WTO agreement. It safeguards the continuation of any bona fide use by any person who was, prior to the entry into effect of the WTO agreement, using a mark.

Section 47 amends section 364 of the Copyright and Related Rights Act 2000 by ensuring that in any court proceedings in which the controller is involved under the Copyright Act, the controller can neither be the recipient of an award for costs or be ordered to pay costs. Section 48 repeals section 367(2) of the Copyright and Related Rights Act 2000. The effect of this amendment is that the controller of patents will no longer be required, within a period of three months, to refer to arbitration a dispute referred to him under the terms of the Act as this has, in practice, proved impossible.

Section 49 amends section 57 of the Industrial Designs Act 2001 and clarifies beyond doubt that infringement proceedings cannot be instigated before the date of publication of registration of a design and, equally, that no criminal offence can be committed before that date. Section 50 amends section 84 of the industrial Designs Act 2001 to ensure that the three-month period for filing an appeal against a decision or order of the controller, in the instance where written grounds of the controller's decision has been sought, is computed from the date that the written grounds are furnished rather than from the date of the decision. Section 51 provides for citation and commencement.

This is a non-contentious Bill. While technical it is important in that it seeks to revise our patent law to reflect obligations under the TRIPS Agreement and the revision of the European Patent Convention and the Patent Law Treaty. It also proposes necessary corrections or clarifications to intellectual property legislation. I commend the Bill to the House.

Mr. Coghlan: I welcome the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Michael Ahern, to the House and welcome the Bill, which is supported by Fine Gael.

While the Bill is not contentious, it gives us the opportunity to debate patents generally. The Bill is a technical one as borne out by the Minister of State's references to the various sections. This is the nature of the legislation and more detailed discussion is more appropriate on Committee Stage, though I do not envisage much contention then either. It is not the kind of legislation to keep people awake at night worrying and I do not envisage the debate making the news headlines tonight.

Mr. Leyden: That was said in 1992.

Mr. Coghlan: Somebody else must have said it then. Legislation relating to intellectual property is vital to the economy and to our place in the international community. Many people know little about patents as the area is highly technical. We should try to disseminate knowledge about the process. People should be aware of how important the process is and how to apply for a patent and should be informed of the costs involved and the help available to them — from Enterprise Ireland and others — when making patent applications. While some things can be patented, others cannot. There is currently much controversy about patenting the human gene and mapping the human gene sequence. Perhaps we should return to this controversial area if other Members do not cover it.

I welcome the Bill as it brings us into line with the international community. We should disseminate more information on patenting and copyright and introduce the topic in schools to inform people of what is involved. It is expensive and time consuming to patent an item. Much work is involved in investigating the novelty of an invention and if a person is not careful, an invention can be stolen by another person. If a person makes his or her invention known prior to patent-

[Mr. Coghlan.]

ing, he or she will lose the right to patent it. Patenting is a complex, technical, legal and expensive business. Large companies wishing to patent an item have the substantial resources required to do so.

Deputy Stanton asked in the Dáil about inventors who work from garden sheds where many inventions and businesses began. For example, Bill Gates started his business in a shed. We must encourage such people and inform them that support is available and accessible. Enterprise Ireland is doing a great deal in this area, but complaints have been made by the Inventors' Association of Ireland and others. I hope their issues have been addressed. Perhaps the Minister will monitor the situation. An Irish Bill Gates could be working on an invention in a garden shed. Therefore, education and dissemination of information on the patent process are vital.

The decentralisation of the Patents Office is laudable, but the Government must be careful when moving specialised staff. Were all of them willing to move or was some expertise lost? Such considerations must be taken into account. How has the office operated since decentralisation?

Fine Gael has been vocal on the issue of patents in the European Parliament. In July 2005, the European Parliament rejected proposals to create a Europe-wide patent for computer implemented inventions. Speaking in the debate, Deputy Coveney MEP, stressed that the patents directive does not propose the introduction of a new patents system for the European Union, but harmonises and brings consistency to patent offices throughout the different member states. The current situation of 25 national patent offices with no consistent approach does not contribute to an integrated and functional common market.

The software and information technology industries in the EU have thrived under the current position. Why do we need a common approach? SMEs in particular seem to be split on this issue. Some people have decided to create the impression that this issue pitches the large multinationals against SMEs, but the latter fall on both sides of the argument. Some want to protect their ideas and inventions and others fear a patents minefield due to the proposed common position. Nobody in the European Parliament wants to vote for a situation that will harm the future of SMEs.

The two key issues in the directive were the definition of what it proposed to allow patents on and interoperability. We are not talking about the patenting of software as in the US. On interoperability, we must ensure the equipment or networks required by multiple users to allow innovation are not withheld from the market. In particular, this is the case for the open source movement, which has been successful in recent years. Unfortunately, that rejection of the proposal showed a serious failure of the institutions to find common ground and agreement on what is an important area for the European economy generally. It is disappointing that the Bill has taken so long to pass through the Oireachtas, but I wish it a speedy passage through the remaining Stages in the House.

Mr. Leyden: I welcome the Minister of State, Deputy Michael Ahern, and his officials to the House. Repetition is not allowed——

Mr. M. Ahern: That will not stop the Senator.

Mr. Leyden: Repetition every 13 years is allowed. My colleague on the other side of the House, Senator Coghlan, stated this was not legislation to keep him awake at night, which was also stated in 2000.

Mr. Coghlan: I was talking about other people rather than myself. I could not be included.

Mr. Leyden: In April 2000, Deputy Stanton stated, "This is not the kind of legislation to keep people awake at night". It is strange that it has been repeated. In 1991——

Mr. Coghlan: We probably have the same script writer.

Mr. Leyden: ——I introduced the original Bill in the Dáil. At that time I stated, "Patent law has been revised only once since the foundation of the State. That revision was in 1964 and the Patents Act of the same year is still the current law on the subject." I was aware of the Bill's significance, as having a good patent law led to the success of the economy to some extent. I also stated:

> I should like to mention another patent convention, namely, the Community Patent Convention, which was signed by Ireland and other Community member states in 1975. It will not be possible to ratify that convention on the basis of the present Bill because an amendment of the Constitution is required before ratification of this convention can take place. This matter will be kept under review in the context of other possible amendments of the Constitution which may arise in the period ahead.

Will the Minister of State clarify what has transpired since 1991?

This Bill was introduced in 1999 before the last general election, at which time it fell, and it would be an exaggeration to say there is urgency about it. Matters have proceeded well enough since then. During the debate, I was advised the Government was considering establishing either a semi-State or independent commercial patents office. Has the Minister of State considered this matter? The Patents Office was decentralised to Kilkenny successfully ahead of time, but it was

difficult to decentralise such a technical office of 74 staff.

Intellectual property rights comprise a key element in promoting competitiveness and economic growth. In 2004, the office sought to provide business, industry and individual entrepreneurs with an effective and vital system of protection of their intellectual property rights. The office continues to expand its collection of patent information in electronic format with publicly searchable Irish, European, American and Japanese documents available on CD-ROMs and DVDs at information centres in Dublin and Kilkenny. It is vital for the development of industry that information on what has been invented around the world is available. There are many new ideas, but it is important the wheel is not re-invented and people know what is patented throughout the world. It is a worthwhile service.

In 2004, the Patents Office promoted awareness of industrial property protection of information via attending a number of exhibitions and seminars. The office is an annual exhibitor at the Esat BT Young Scientist and Technology Exhibition in the RDS and sponsored a prize in the competition in January 2004. Its special awards were won by students of the Christian Brothers grammar school in Newry. It is noteworthy that students of the school have won the award several times. It is important that the office should continue this type of promotion and reinforce in schools the notion that patents should be registered through available facilities.

Ideas are formulated all of the time. Agents acting for individuals can provide an excellent service, but one does not need an agent to register a patent. For people with ideas, going through the procedures can be awesome. Therefore, more public awareness would be worthwhile and the Minister of State should examine the matter in his capacity in the Department of Enterprise, Trade and Employment. The Patents Office is doing well, but some people are unaware of its existence. I do not know whether individuals from the office are present, but I wish to commend them on supporting investment in education.

In May 1997, the Minister for Enterprise and Employment decided to establish a Patents Office users council, the terms of reference of which were to consider and report to the Minister on the administration of industrial property protection by the Patents Office and advise on appropriate changes and innovations in its operation. Will the Minister of State indicate how well the council is operating? The proposal was a useful one because it would make the public more aware of patenting opportunities.

People have often told me they have ideas they wish to put forward. It is important those ideas are sent to the Patents Office for registration, because they can be of worth to the country and the individuals in question. Using cats eyes in the middle of the road is a good example. A simple idea based on cats' eyes reflecting light at night made a fortune for the inventor and created a large industry. I have told people to register their ideas rather than allow someone to take their ideas and create industries around them.

The Bill has taken time to appear before the House because it is technical in nature. People must be made aware of patents through the education system. People have ideas all of the time and they should be allowed to register them and create a viable industry. Ireland is innovative and some of its business people have been inventors. For example, the submarine was invented in Ireland and Henry Ford was an Irishman. One could go through an entire litany of people. Sometimes we do not recognise what was achieved here in this country. Such people are still there. There are many young people, and older people, who have ideas to offer.

12 o'clock

In 2004 there were only 496 patents granted. It seems a small number. The numbers are dropping somewhat. The numbers of applications are falling also, which is rather strange. At the end of 2004, the latest year for which I have figures, there was a total of 2,395 pending applications on hand. Of these, it is interesting to note that 980 applications were awaiting the submission of evidence of novelty or originality.

I can assure the Minister of State that at the time of the passage of the Patents Act 1992 there were thousands of applications pending. That is why the emphasis at the time was on relocating the office to Kilkenny, increasing the number of staff and providing the opportunities contained in that Act. It was envisaged that we would create an independent semi-State company, which would look after this entire area and would provide other possibilities of increasing income as well. Perhaps the Minister of State would mention that in his concluding remarks.

The advice of the Attorney General at the time was that a constitutional amendment was required, but I could not figure out what was to be amended. It is interesting that a Bill was presented to the House in 1992 when we are now considering another Bill dealing with this office. In 1992 I was advised by my officials on the appropriate pronunciation of the word "patents".

Mr. M. Ahern: I am a man of the ordinary people.

Mr. Leyden: I am not questioning the Minister of State's interpretation.

The earlier Bill was brought to this House by former Minister for Industry and Commerce, Des O'Malley, in January 1992. I am not sure where I was at that time, but that year there were certain events happening and much trauma within the Fianna Fáil party.

[Mr. Leyden.]

A patents Bill is before the House again. It is interesting that Senator Coghlan has reiterated what was stated then by, I think, the then Senator Myles Staunton, although the Official Report of the debate does not contain his Christian name.

Mr. M. Ahern: He was the only Staunton.

Mr. Leyden: There was another Staunton, or Stanton, since. The Official Report of the debate does not contain the Christian name of the contributor.

Mr. Coghlan: One is Stanton and the other Staunton.

Mr. Leyden: Peter Barry, the former deputy leader of the Fine Gael, made a great contribution to the debate on the 1991 Bill when he spoke of his experience as a business person.

I commend this Bill to the House and wish the Minister of State well.

Mr. Quinn: I wish to share time with Senator O'Toole.

I welcome the Minister of State and his officials to the House. I was not going to refer to keeping people awake at night because there has been enough talk about insomnia on this. I offer my sympathy to the Minister of State on this detailed Bill. I had to read the following sentence in the Minister of State's speech half a dozen times before I understood it:

> The changes provide that methods of treatment of the human or animal body and diagnostic methods practised on the human body which had previously been excluded from patentability under section 9 by the fiction of their lack of industrial applicability are now included as exceptions to patentability on public policy grounds under section 10.

That we are discussing a Bill which first saw the light of day in the last millennium, as Senator Coghlan stated, sends a clear message to the world which, from the point of view of Ireland, is far from desirable. It reflects a regrettable fact about this country, which is, that we do not take seriously enough the question of intellectual property. We cannot continue like this. If we want to become a leading light in the knowledge society whose very lifeblood is intellectual property, we cannot hope to be taken seriously by therest of the world if we treat intellectual property with scant respect, as we in this country tend to do.

For instance, every year the software industry publishes figures of the proportion of Irish computers that use pirate software, and those figures are shocking. I could perhaps understand it if this was a poor Third World country where people simply cannot afford to pay the retail price of software. Not only is this not a poor Third World country, this is a rich country that also has the potential to present itself as one of the world's leading sources of software for various purposes. What a paradox that is, to be at the same time a leader in the production of software and also a leader in the pirating of software. Nobody seems to care much about this contradiction.

Our indifference extends to intellectual property far beyond software. There is in this country a thriving black market in counterfeit goods of all kinds. The list of cheap knock-offs of leading clothing and footwear brands and counterfeit CDs and DVDs of music and films is a long one and so are the queues of people who line up to buy these illicit products.

There are laws on the Statute Book that make the infringement of intellectual property a crime and today we are in the process of adding to that body of law, but these laws seem to have little support from the public and it also seems that little energy is put into that task of enforcing them. I realise that Ireland is not the only country where this applies. I was in Italy a few months ago and I could not believe the amount of counterfeit goods such as watches and handbags being sold. The police force there seemed to ignore such activity. The same applies in many other countries, but we have made serious investment in this area and therefore it matters to ensure that it is understood.

The Bill is driven, not by any wish to protect intellectual property but instead by the wish to conform to the international treaties and agreements on intellectual property to which this country has signed up in the past. We should ask ourselves if we are conforming to our international obligations merely by putting these laws onto our Statue Book. Is there not also a burden on the State to energetically enforce the laws we pass? That is the real challenge to us. Are we not obliged to educate our people on the rights and wrongs of intellectual property? Senator Leyden referred to this aspect. We have a job to do in enforcing the laws and educating people in terms of understanding them.

Our casual attitude to copyright and patent infringement reminds me a little of the way some people look on the making of false insurance claims. Senator O'Toole has played a large part in changing that attitude in recent times with the work that he has been doing, but it seems that false insurance claims were not regarded as something to be ashamed of in the past. Ripping off an insurance company, some used think, was a victimless crime and some may continue to hold that view. In reality, of course, it is anything but that since, ultimately, it is not the insurance company that pays but the general body of policyholders, in other words the customers.

Despite this, we get the same kind of double think that allows people complain about high insurance rates while at the same time turning a

blind eye to those who try to rip off the purpose of insurance by making false or exaggerated claims. In this regard I have been most impressed in recent times by the advertisements, not from the State but by insurance companies and others who have come together, to remind people they are breaking the law and to encourage others to report them.

Stealing intellectual property is not a victimless crime. Offenders sometimes take refuge in the defence that the people who are hurt are the big guys who can afford to take that punishment. It is difficult to feel sorry for Microsoft but it is easy to feel at least a twinge of sympathy for someone whose victim is the richest man in the world. It is equally difficult to feel sorry for songwriters or film production company executives who tend to be mega millionaires as a result of what they have created. All that tends to ignore the basic reason we have laws to protect intellectual property. They are in place to guarantee their creators a profit from their endeavours, not to enrich people as such but to encourage them to continue creating new concepts and ideas and to encourage other people to imitate them. Ultimately, laws on intellectual property are for the benefit of those who enjoy the creations, not the creators. At the extreme, if a person who creates intellectual property could not profit from it, all his or her creative effort and innovation would die out and every time software is pirated or a counterfeit compact disc is bought, the basic principle of rewarding the creator is diluted.

In our own selfish interest, we, in this country, cannot permit this to happen. In this war against the stealing of intellectual property, there is no doubt about which side we need to be on. The knowledge society is our future in Ireland and one of the clear implications of that is we should be among the leaders in protecting intellectual property. We need to do more than go through the motions of passing laws such as this, as we also need to be energetic in enforcing our intellectual property laws. We must encourage and educate our people to add to them. I welcome the Bill.

Mr. O'Toole: I thank Senator Quinn for sharing his time.

I welcome the Minister of State to the House. This is another complex issue, with which he will deal quietly and move on. Anything do to with patent laws usually gets the industrial sector into a twist. During the 1990s when there were problems and proposals regarding the extension of the period of patient, there was absolute chaos in sectors of industry. I agree with everything Senator Quinn said. Ten years ago, a significant proportion of domestic industry was based on out-of-time patents and, consequently, the entire chemical industry was using generic combinations of drugs, which had been used under patent previously. The patent period was 16 years up to then but it was extended in the mid-1990s to 20 years. During the negotiations on the patent extension, companies stated they would go out of business. To this day, investment in research and development in Ireland is the lowest in Europe. Ten years ago the next lowest to us was Belgium and our investment as a percentage of GNP was 50% of Belgium's. We have improved somewhat but not enough.

The Minister for Finance said in his last Budget Statement he would actively seek co-operation among third level colleges and institutes of technology to promote research and development. To avail of patent legislation, ideas must be produced. People must be encouraged to articulate their ideas, get them to a near market stage, bring them to incubation centres, which are attached to most institutes of technology where they will be helped to develop, refine and sophisticate their ideas, before bringing them to finality at which point they can then be lodged as a patent and brought to market. How important is this? John Logie Baird, the Scotsman who invented the television, died in rented accommodation in Dundee years after he was bought out by EMI. Marconi discovered radio and he was bought out by GEC. The only person who had enough sense, education, experience and readiness to keep his patent while allowing people to invest in it is the man to whom Senator Quinn referred as the richest man in the world. Bill Gates is the only person who did not sell. James Watt had to sell two thirds of his patent to secure further investment as his developed his idea and he was not allowed to patent it in his own name. These are examples on a grand scale of the importance of what the Minister of State is doing in the legislation, which recognises the World Trade Organisation's efforts to deal with issues globally while filling the gaps in legislation dealing with translation, transnational and Third World issues.

When the Patents (Amendment) Act was put on the Statute Book in 1992, Ministers, ICTU and IBEC were saying graduates were needed to engage in research and development. The Minister of State should recognise and highlight this at every opportunity. However, this is no more because we need people to engage in doctoral research. I spoke to a constituent of the Minister of State's earlier this week. He did his degree in Cork and did his doctorate in California. He conducted post-doctoral research before returning to Cork where he is being helped by the incubation centre in the institute of technology. He has developed an important system relating to sonic waves. He has established a world leading company in County Cork as a result of doctoral research. James Watt invented the steam engine, did not patent his idea and lost out. Baird invented the television, which can be found in very house in the world, died in rented accom-

[Mr. O'Toole.]

modation and suffered a loss of reputation and money. Marconi did better because he held on to a number of his patents and he was supported by the Pope and others. However, the principle is the same. Intellectual property rights need to be protected. People who have good ideas to improve our quality of life and services should be able to patent and protect them. We do not want young people engaging in pre-Industrial Revolution type work in companies such as Fruit of the Loom nor do we want Irish industry to be based on out-of-time patents. Ireland should be leading, not following in this area, and that is why I welcome the legislation.

Mr. Hanafin: A balance must be struck with patents. There is the risk and reward necessary for people who will undertake long, difficult and arduous tasks in an effort to create something for the benefit of all. For example, Edison made 4,000 attempts to come up with the rubber formula. When he was asked whether his effort was a waste of time and money, he replied it was not, that he had found 4,000 ways that were not successful and that he would find the one that was. He did subsequently and the same happened with electricity. The risk and reward was balanced.

In Ireland, the pharmaceutical, ICT and intellectual property markets are important, strong and expanding and I hope that continues. When we discuss patents, we should consider the perspective of generic drugs that might be developed to save lives in the Third World. I am glad to note there are three permissible exemptions to the basic rule on patentability, which is an important element of the Bill. First, inventions, the commercial exploitation of which would be contrary to public order or morality, may be exempted. Second, inventions concerning diagnostic, therapeutic and surgical methods for the treatment of humans or animals may be exempted. Third, member countries may exclude from patentability plants and animals other than micro-organisms and essential biological processes for the production of plants and animals other than non-biological and microbiological processes.

An important distinction can be made between what the EU and US are doing in this area. If somebody were to develop a product, which hopefully will happen bearing in mind the green revolution in the 1960s, whereby two ears of corn or wheat would grown where currently only one grows, that would be to the benefit of humanity. Similarly those who are protected by patent should consider those in the Third World whose lives can be saved and put in place provision for those countries who cannot afford to pay the high cost of drugs, notwithstanding the fact that the reward and risk must be balanced.

I am conscious that the human genome should not be patentable in any way in future. Some genetic engineering is frightening to everybody. There is genetic engineering, about which people talk, in so-called Frankenfoods and genetic engineering for cosmetic purposes. However, there is also genetic engineering which could be beneficial to humanity and this must be free of patent. Notwithstanding the fact that patents and the use of them are beneficial for this country, there is great benefit in regularising and ensuring that the European standard is maintained.

This is a relatively short and uncontentious Bill. Ireland's membership of the World Trade Organisation gives rise to the main elements of the Bill. The amendments are included either as a consequence of our status as a contracting party to the European Patent Convention or because of the need to clarify and correct inaccurate wording in two sections of the 1992 Act.

The granting of patents for new inventions to secure to the inventor the exclusive right to exploit the invention for a limited period is a long established and well known instrument of promoting technical innovation and industrial development. After the Industrial Revolution and from the 19th century onwards, all industrialised countries established their own patent system tailored to each country's industrial strategy. The desirability of some international harmonisation of patents was recognised as far back as the 19th century.

The first international convention for the protection of industrial property, the so-called Paris Convention, was signed in 1883. This convention has been revised several times since then and now 157 countries, including this State, are party to it. Under this convention, member countries must provide equal and reciprocal treatment in patent matters for nationals of other member countries and recognise the priority date of an application filed up to 12 months earlier in another member country. The convention also stipulates the condition under which a country can grant a compulsory licence if a foreign owned patent is not being worked in its territory.

A further landmark in international development was the Patent Co-operation Treaty concluded in Washington in 1970 which came into force in 1978. The main objective of the treaty was to streamline patent application filing and novelty search procedures for applicants wishing to obtain patent protection in several countries belonging to the treaty. The treaty was not concerned with the establishment of an international patent but with an international procedure for sharing the work on processing patent applications in patent offices.

In Europe, efforts to create a common patent system resulted in the establishment of the European Patent Convention, EPC, in Munich in 1973. That convention established a European Patent Office in Munich whose function is to grant, on the basis of one central application to that office,

in any of its official languages, namely, English, French or German, patents which would be valid in each contracting state designated by the applicant.

In effect, a bundle of national patents emerge from a European patent application and in each designated country the European patent has the same legal effect as one granted by the local national patents office. European patents are granted only after an in-depth examination following a comprehensive novelty search in a collection of several million documents and, therefore, offer a high level of legal certainty. The EPC is not limited in its membership to EU countries and includes such non-member states of the EU as Monaco, Switzerland and Liechtenstein. Most EPC contracting states have brought their national patent laws into line with the EPC.

Industry today operates internationally to a greater extent than it did when the European Patent Convention was established in 1970s. There can be little doubt about the desirability of and need for much more international agreement on patents. In 1993 a major step was taken towards worldwide harmonisation of legislative and regulatory practices with the Agreement on Trade Related Aspects of Intellectual Property Rights, or the TRIPs Agreement, negotiated under the General Agreement on Tariffs and Trade, GATT. The TRIPs Agreement is an annexe to the agreement establishing the World Trade Organisation, the WTO, and compliance with the TRIPs Agreement is an essential requirement under the new world trading order. The TRIPs Agreement, which came into effect on 1 January 1995, covers all area of intellectual property rights, including patents.

The main objective of the TRIPs Agreement, as contained in its preamble, is to reduce distortion and impediments to international trade by promoting effective and adequate protection of intellectual property rights and by ensuring that measures and procedures to enforce intellectual property rights do not in themselves create barriers to legitimate trade. Article 7 of the agreement, entitled Objectives, provides that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare and to a balance of rights and obligations. To achieve these objectives, the agreement sets out the minimum standards of protection to be provided by each member country.

There are many technical amendments to the Bill which are necessary, notwithstanding that within the House there is agreement on it. The Bill is uncontentious and I commend it to the House.

Mr. McDowell: It is the first refuge of an Opposition spokesperson on a Bill such as this one to complain about the delay in its introduction. However, even by the standards of this and the other House, the delay of seven or eights years in progressing the Bill to this stage requires some explanation. I invite the Minister of State to share his thoughts on that subject when he replies.

I checked the website of the Patents Office yesterday and noted it is quite a good one. Among the information it contains is a list of recent applications for patents, of which I will list a number. During September, applications for patents were made for a security access control assembly unit, an apparatus for facilitating the collection of waste, a hand-washing system and an apparatus for the collection of solar energy. Thus, there is a wide variety of applications. It is good to note there are such applications because research and development innovation is vital in our economy.

However, there is another side to the story. I am glad Senator Hanafin, uniquely among the speakers who contributed thus far, mentioned it in the more nuanced beginning to his contribution. It is in our interests to protect the interests of inventors and those who have ideas. If we do not do that, big companies will not spend time, money and effort in exploiting an idea or carrying out research and development, the findings of which others can simply take and use. Therefore we must protect that aspect.

However, our greater interest as a society must be to ensure that good ideas are exploited for the benefit of society. We cannot stand over a position which has happened and will happen again whereby companies, perhaps large ones, will simply patent every idea that crosses their thresholds not with a view to exploiting those ideas down the road but with a view to preventing others from doing so. It is important we strike a proper balance not only in the Bill, because legislation is only one aspect of it, but in the way we operate the patent system. We must strike a balance between encouraging invention, innovation, ideas and trade and in protecting inventors. We cannot stand over a situation where the patents system is used and abused by multinational corporations to prevent trade, which does happen.

It is important to reiterate the point made by Senator Hanafin when he spoke about inventions that are vital for the proper functioning of society. Drugs are by far and away the most important example in this respect. It is important that pharmaceutical companies have sufficient incentive to conduct millions of euro worth of research. If the incentive does not exist they will not do it and invention and innovation will be delayed as a result. Equally, one has to wonder whether we really want to have the market in incredibly important drugs tied up for 20 years and left to be exploited, perhaps exclusively, by

[Mr. McDowell.]

one American multinational corporation. Is it morally and politically sustainable or right that, having invented a particular drug, a multinational corporation has 20 years in which to exploit it to the maximum of its commercial advantage? I agree with Senator Hanafin that it is clearly in the interests of society that research information and knowledge is exploited as broadly as possible. I accept we cannot tell pharmaceutical companies that once they have invented a drug, anybody who wishes is entitled to copy it. However, there is a requirement for nuance and balance, which I accept can be imposed at a multinational level only under the auspices of the European Patent Office or the World Trade Organisation.

While I agree with much of what Senators Quinn and O'Toole have said, I suggest they should also examine the other side of the argument, which has not been sufficiently ventilated today. That argument is most powerfully put in the major debate of recent years concerning software. I read some contributions to that debate last night and I assure Senator Leyden, it did not keep me awake. Most of the debate has been between the European Commission and the European Parliament. It is a fascinating debate and one on which literally billions of euro and thousands of jobs potentially turn. It would be naive to say we can allow ourselves to indulge in this argument from an intellectual point of view. The interests of Ireland incorporated are inextricably linked with the multinational corporations which employ thousands of people in the IT sector. The view of our MEPs and Government always has been that whatever Microsoft or other large multinational IT corporations want, they get.

However, I am still attracted by the counter argument, almost idealistic in nature, which suggests that software, ideas, the Internet and the exchange of information and everything connected with that, are so vital to the functioning of modern societies that they should not be patentable at all or, at the very least, there should be serious restrictions on the extent to which they are patented. Again, it is a matter of striking a balance. The European Parliament voted earlier this month to attempt to strike a balance. Having read the resolution that was passed, it appears some further negotiation between the office of Mr. McCreevy, the Commissioner for Internal Market and Services, and the Parliament is required. I hope they have got the balance right. I tend, at least on an intellectual basis, to agree with those who refer to shared human facilities and shared knowledge and who argue that it runs contrary to the original concept underlying the Internet to restrict the availability of software.

Senator O'Toole pointed out that Mr. Bill Gates has made billions of euro and dollars and is now the richest man in the world. Fair play to him but that is not our interest. Our interest is in having software as freely available as possible, throughout the entire world and not just in the developed world. It is not in making Mr. Gates incredibly rich, although in fairness to Mr. Gates, he is more philanthropic than most.

Ms White: He gives away a lot of his money.

Mr. McDowell: Exactly. He is generous with his money and more philanthropic than most. I am not criticising him personally but the interest of Governments and those who have a say in designing the way in which we do these things is not to make Mr. Gates incredibly rich. Our interest is in ensuring his company's products are produced and disseminated as widely and inexpensively as possible because they are essential for the functioning of any modern society.

I noted when researching this issue last night that the number of Irish applications for patents appears to have reduced in recent years. I am not sure why that is so although I appreciate the EPO deals with a number of pan-European patents, which may be an explanation. The latest figures available are for 2004 and perhaps the trend has reversed since then. However, it appears to run contrary to what the Government has been asserting recently about stimulating research and development.

I wish to make a number of points about the taxation framework which have not been mentioned thus far but which are important. In the Finance Act of 2004, stamp duty which was previously payable at 9% on the transfer of intellectual property, broadly defined, was abolished. The intention was to stimulate research and development in Ireland but I am not persuaded it has had that effect. Evidence suggests that the abolition of the stamp duty has been used and exploited by non-Irish based firms to transfer royalties and intellectual property in Ireland, with a view to reducing their tax liabilities in other jurisdictions. While I accept it is in our interest to encourage research and development in this country, we should not, even as a side effect of our actions, create a tax loophole or haven for companies which are not bringing an enormous amount of added value to this country. I would welcome the Minister's reflections on this matter. The exemption was introduced only a few years ago but I hope the Minister can assure us it is having the effect he intended, rather than the unintended effect of creating a tax haven for companies that do not add value here.

In 2004 the Minister also introduced a series of measures intended to stimulate research and development. A 20% tax cut is now available for additional work done in this country. It was asserted at that time that the Department would introduce regulations specifying what constituted additional research and development. I am not

sure whether those regulations have been introduced or are sufficiently robust to ensure it is actually added value. It is important that it should be and that we are not simply allowing large companies to discount a certain amount of their tax liability if they are not doing anything which they would not be doing already. The intention of the tax reduction was to stimulate additional work. It is important we are vigilant in ensuring the purpose of that tax change is followed through on and we do obtain added value for the money.

The core of the Bill concerns compulsory licences. On balance, we have probably got it right and I appreciate that much of it repeats what is contained in the TRIPS Agreement. It is an enormously important element of the Bill. It is vital that we are in a position to provide compulsory licences and that people can obtain them in circumstances where patents are not being exploited. We cannot stand over a situation where companies sit on patents to ensure somebody else does not exploit them. The provision dates back to 1992, to the principal Act to which Senator Leyden referred earlier. I am interested in how it functions. I have read the Act but am not clear on, for example, the number of compulsory licences that are typically issued by the controller in any given year. Is the provision a threat or is it something that actively happens in practice?

With regard to the WTO, Senator Quinn's points about respecting intellectual property are correct. However, it would be naive not to be aware of the fact and accept that in many countries, such respect does not exist. While we may be conscious of our obligations, many countries — some of which produce products which are dumped here — simply do not respect patents, regardless of whether they have signed up to the WTO agreements. We must be robust in insisting that we respect intellectual property rights in order that others will do likewise.

Much of the Bill is technical in nature. I am somewhat bemused by the provisions on translation and do not see why such issues should take up our time these days. Surely, at a time when most commerce is done through English, German or French, patents in those languages should be acceptable throughout the European Union. I look forward to debating that issue further. In summary, this is a more nuanced issue than it first appears.

Ms White: I welcome the Minister of State and his staff and congratulate him on bringing this Bill towards its conclusion. I know from my own experience as a businessperson how important innovation and creativity are. No business can grow, and never could grow, unless the drivers of the business were innovative and came up with new ideas. I know from my 16 years with our business, where we work 24 hours a day, seven days a week, that we were very protective and quite neurotic about protecting the recipes we had for our particular product. We spent years adding creativity and innovation to our product, and we now employ 130 people. We would not have done so without innovation and creativity. At times, we ran into people copying what we did. I know how important the need for patent legislation, and updating the legislation, is.

I had personal pleasure in being part of the intellectual property issue. Before his last budget as Minister for Finance, I meet with the former Deputy, Charlie McCreevy, to ask him to remove the stamp duty on intellectual property. I was delighted he did so. I have a sense of personal achievement in that I have added to this.

Other contributors spoke about products and the contribution to the economy of the international companies here. For example, Apple and its chief executive officer, Steve Jobs, have brought the Macintosh computer into our homes, in contrast to the mainframes that existed. They made computers accessible to human beings, and the company has repeated the feat with its iPod.

People can have a gift for creativity. I am revising my child care document at the moment and I am struggling to add creativity to it. It must be creative, and there is no point in just having a mundane report or proposal. As a businessperson there is a struggle within me to be creative all the time.

I congratulate the Minister of State, and I thank him again.

Minister of State at the Department of Enterprise, Trade and Employment (Mr. M. Ahern): I thank all the Senators who have taken part in the debate. It is a very important issue and people have realised that. A number of aspects referred to by Senators stand out. To encapsulate these issues in a sentence, we are talking about the need for education, enforcement, protection of intellectual property rights, further investment in research and development and commercialisation.

These are areas which have been recognised, and all parties have recognised that the future for our country is in the knowledge-based area. To get value and ensure we will be successful in future, the sentiments expressed must be acted upon. The Government realises this and is in the process of acting.

Certain concerns have been raised. Senator Coghlan and Senator Hanafin spoke about the patenting of the human genome. The human body cannot be protected in this way, nor can the simple discovery of one of its elements, such as a sequence or partial sequence of a gene. Discoveries such as DNA or other human genome information cannot be patented because they are discoveries, not inventions.

[Mr. M. Ahern.]

Senator Leyden raised the need for a referendum to accede to the European Patent Convention. This is not the case. The Senator likes a certain pronunciation of the word "patent." A referendum was held in 1992 to allow Ireland to accede to the European Patent Convention, but a convention never entered into force. A European Community patent regulation was proposed by the European Commission in 2000, but unfortunately that has become deadlocked in negotiations owing to issues of translations of patent claims. Following a consultation process earlier this year, the Commission is to bring forward a communication later in the year to advance the matter.

I take note of the points raised by Senator McDowell regarding taxation. He will be aware that the tax arrangements will encourage research and development. It is a matter for the Minister for Finance. I also note Senator White's positive comments.

I do not have figures on the effect of the changes brought about in the taxation area. The matter should be raised with the Minister for Finance to get information on how effective it has been. People have made the point that there should perhaps be further moves in that area.

Senator Leyden also raised the issue of the Patents Office becoming a semi-State company. There are no proposals in this regard. As the Senator will know, the Patents Office has been relocated to Kilkenny. Enterprise Ireland provides assistance to inventors under the intellectual property assistance scheme. The Patents Office provides a number of information resources through its website. The Patents Office users' council is working well and provides a useful forum for the office stakeholders.

Senator Quinn raised a question about the imperative of bringing intellectual property into line with our international obligations. The Senator is correct in stating that securing the highest standards of protection internationally is important, if protection is secured in individual countries. The high international standards depend substantially on states like Ireland supporting international law in the area. Ireland now enjoys very high standards of legislative protection with regard to copyright, patents, trademarks and industrial designs. It is well up to and ahead of many international standards. We are determined to keep it that way.

Senator Quinn and others also raised the enforcement of intellectual property law. This will always present problems, if only because unlike land, for example, this type of property is capable of virtually limitless copying with ease. However, we are in no way complacent about this. We have recently taken measures to complete transposition of the EC directive on civil enforcement of IP rights. Consideration of new measures to promote such enforcement on a criminal level is ongoing in the context of a new proposed EU directive on the subject. The importance of intellectual property law to Ireland is fully appreciated by the Government and it will be supported accordingly.

Senator McDowell raised the issue of pharmaceutical patents and a number of compulsory licences. Patents serve to secure the massive investment needed for research and development. Most importantly, they ensure new technologies can be developed for the benefit of individuals. Development of modern medicines is very expensive and it takes many years to bring a new medicine to market and prove it safe and effective. Without patent protection, there would be very little private investment in research. Furthermore, the public availability of information contained in a patent application promotes scientific progress and innovation. No compulsory licences have been issued in recent years.

Senators Coghlan and McDowell raised the issue of patenting software. The European Patent Convention makes it clear that computer programmes, as such, cannot be patented, and this is reflected in section 9 of the Patents Act 1992. It is important to note that this prohibition does not extend to computer-implemented inventions. These are patentable in certain circumstances where they meet patentability criteria, namely, that they are new, involve an inventive step and are capable of industrial applications.

Senator Hanafin raised the issue of poor countries with public health problems. The Doha declaration recognises that each WTO member has the right to grant compulsory licences and the freedom to determine the grounds on which such licences are granted. It also recognises that WTO members with insufficient or no manufacturing capacity in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing. On 13 August 2003 the WTO General Council adopted a decision on the implementation of paragraph 6 of the Doha declaration on the TRIPs agreement and public health. Subject to certain conditions the decision waives certain obligations concerning the issue of compulsory licences set out in the TRIPs agreement in order to address the needs of WTO members with insufficient manufacturing capacity. The community incorporated the decision into its legal order by Regulation (EC) No. 816/2006. The regulation ensures a legally secure, predictable, effective and sustainable solution for those members of the WTO and other less developed and developing countries which want to use a system to access the affordable medicines they need.

I thank Senators for their contribution to the debate and for raising very interesting questions. I thank them for their support in the passing of this very important legislation, which is vitally

important for the continued growth and development of our economy.

Question put and agreed to.

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

Mr. Leyden: On Wednesday, 1 November 2006.

Sitting suspended at 12.55 p.m. and resumed at 2 p.m.

Child Care (Amendment) Bill 2006: Order for Second Stage.

Bill entitled an Act to amend the Child Care Act 1991 to enable foster parents and relatives who have been taking care of a child for a period of not less than 5 years to apply for a court order in relation to the care of the child; and to provide for related matters.

Mr. Glynn: I move: "That Second Stage be taken now."

Question put and agreed to.

Child Care (Amendment) Bill 2006: Second Stage.

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

Minister of State at the Department of Health and Children (Mr. B. Lenihan): I am pleased to have the opportunity to address the House today on the Second Stage of the Child Care (Amendment) Bill 2006 which provides that a foster parent or a relative who has had a child in his or her care for a continuous period of five years, the child having been placed with him or her by the Health Service Executive, may apply for a court order for increased autonomy in the care of the child.

Child welfare and protection policy is grounded on the principle that children who cannot, for whatever reason, live with their own families are provided with an appropriate alternative. Studies have shown that the development of a child is best achieved in a loving family environment, which foster care can provide. Foster care is the main form of alternative care provided by the Health Service Executive for children in need of care and protection. Our latest statistics from December 2004 show that more than 5,000 children and young people are in the care of the Health Service Executive. Almost 4,250 or 84% of these children are in foster care. This represents an increase of 4% on the previous year's figures. I welcome this increase in foster care which is in line with my stated policy and that of the Government. The number of children in residential care declined by almost 2%, from 527 to 442, between 2003 and 2004.

These figures show the critical importance of the foster care services in our child protection and welfare service. Families and family life are important to all children and the opportunity to experience the quality of family life is one of the main objectives of the national children's strategy. For those children who cannot be looked after in their own families, and need to be provided with alternative care, foster care is the best way for them to experience family life. The challenge for us is to provide an appropriate response to the children of this vulnerable group. This response must respect their rights to a childhood in a secure family environment so that they may fulfil their potential in adulthood.

Foster carers play a crucial role in the lives of children by providing a welcoming place in their homes at a vulnerable time in their lives. It is important that foster carers are recruited on an ongoing basis. As Minister for Children, together with the HSE, I actively encourage people to consider becoming foster carers. Last December I launched a research document entitled Lives in Foster Care, undertaken by the Children's Research Centre in Trinity College. I was heartened to see that the study produced positive findings on the daily lives of this young group of foster children in the areas of schooling, friendships and hobbies.

The study found that on the whole, the young people were leading regular lives, 98% of them attended school regularly and the majority were expected to stay on in school; and 92% had regular friends and these friendships were deemed to be beneficial. The study also found that, like most young teenagers, 90% of these young people had a hobby they did at home, including listening to music, playing the PlayStation and reading. As a society, we take these activities for granted but for many young people in care, taking part in such so-called normal activities and leading what they perceive as a normal life is an achievement, given the difficulties with which they have already had to cope.

This research also highlighted the benefits of relative foster care and the importance of being placed with a birth sibling. The latest available statistics from the Child Care Interim Dataset 2004 show that 32% of children in foster care were in relative foster care. This number has increased over recent years. At the end of 1998, 635 children were in relative care and by the end of 2004, the figure had grown to 1,349, an increase of 112%. This is a very positive development. Looking to the extended family members in the first instance for placement is a recommendation of the working group report and part of the national standards for foster care. It is important, however, that where the State places a child or

[Mr. B. Lenihan.]

young person with relatives, it also has an onus to provide the necessary supports to those carers.

As a result of this Bill, foster parents or relatives who have had a child in their care for a continuous period of five years will no longer have to seek the permission of the Health Service Executive when certain decisions have to be made in relation to the child. With the development and extension of fostering there has been an increase in the number of children in stable long-term foster care and it is important that the parents have the power to make decisions in the best interests of those children and do not single them out as against other children with whom they associate. For example, the foster carer will not have to obtain permission to seek medical or dental treatment for a child or for a child to receive an immunisation or to go on a school tour. The proposals outlined in the Bill will help to prevent the possible stigmatisation of these children in school when they have to wait longer than their peers or classmates for such permission.

Two new sections, 43A and 43B, will be inserted into Part VI of the Child Care Act 1991. Section 43A(1) provides that a foster parent or relative may apply for a court order whether the child is in care on a voluntary basis under section 4 of the principal Act or is the subject of a care order under section 18 of the Act.

Persons can be admitted to foster care under the principal legislation either voluntarily surrendered into care or the courts can make a care order in respect of the child. Section 43A(2) sets out the conditions on which the court must be satisfied before granting such an order. These include that the child must have been in the care of the foster parent or relative for a continuous period of five years; the granting of the order must be in the best interests of the child; the Health Service Executive must consent; and the parents having custody or the person acting *in loco parentis* must have consented if the child is in voluntary care, because the child has been surrendered voluntarily into custody and therefore the parent has an ongoing veto, or must have been informed if the child is the subject of a care order. The child's wishes must also have been taken into account in so far as is practicable.

Section 43A(3) provides that the conditions in respect of the notification or consent of the parent having custody or the person acting *in loco parentis* do not apply if the parent or person acting *in loco parentis* is missing or cannot be found by the Health Service Executive or the court so directs having regard to the child's best interests.

Section 43A(4) provides that, subject to any conditions or restrictions imposed by the court, an order granted authorises the foster parent or relative to whom it is granted, on behalf of the HSE, to have like control over the child as if it were the child's parents and to do what is reasonable to safeguard and promote the child's health, welfare and development. In addition, the foster parent or relative is authorised under the order to give consent to any medical or psychiatric examination, treatment or assessment and to the issue of a passport or passport facilities for the child.

Section 43A(5) provides that the court may impose conditions or restrictions to the extent of the authority granted. Section 43A(6) provides that consent given by a foster parent or relative to whom such an order has been granted will be sufficient authority for the carrying out of the medical or psychiatric examination, assessment or treatment or for the provision of a passport or passport facilities.

Section 43A(7) provides that where a foster parent or relative refuses to give consent in accordance with an order made under this Part, the HSE will have authority to give consent in accordance with section 18(3) of the Principal Act. Section 43A(8) provides that any consent permissible under section 23 of the Non-Fatal Offences Against the Person Act 1997 will continue to be effective consent. This provides that a minor who has reached the age of 16 years may consent to any surgical, medical or dental treatment. Section 43A(9) provides that any access arrangements in place before the granting of an order under this section will continue unless the court orders otherwise, in accordance with section 37 of the Principal Act.

Section 43(A) provides that any other functions of the HSE in the child's interest, such as care planning in accordance with any other provisions of the Child Care Act 1991, will continue in force. Section 43B(1) provides that the court may vary or discharge an order made under this section on the application of the HSE, the person to whom the order was granted, a parent having custody at the time the child came into care or a person acting *in loco parentis*.

Section 43B(2) sets out the circumstances where an order granted under this section may cease to have effect. These include where a child in voluntary care returns to his or her parents or other person, where a care order is discharged, a child is adopted, a child is removed from the custody of the foster parent or relative by the HSE, the foster parent or relative requests that the child be removed by the executive or the child concerned reaches 18 years of age or is married. Part V of the Child Care Act 1991 which deals with jurisdiction and proceedings applies to proceedings taken under Part VI and the new provisions will be in Part VI, the District Court.

The importance the Government attaches to foster care was underlined by the publication in 2001 of the report of the working group on foster care, Foster Care: A Child-Centred Partnership. The report recommended strengthening and

developing the service and provided the guidelines to improve standards in foster care. Following on from this, national standards for foster care were published in 2003. The standards focus on the quality and consistency of services for children and young people in foster care, standards and practices related to foster care and guidance to the HSE on how it can effectively meet its statutory obligations.

Since the standard's publication, the social services inspectorate has carried out a national audit and a pilot inspection of foster care services. The pilot inspection considered three of the standards of practice. Three community care areas, located in the HSE eastern, southern and western regions, were nominated by the former health boards to be inspected against these standards. The sample group covered both urban and rural areas. The case files of a total of 56 children and young people were considered during the inspection, representing approximately one third of the total number of children in foster care in the three areas.

On the basis of the information yielded by the pilot, inspectors found each of the community care areas provided a good foster care service. The inspectors found the foster care service provided stability and continuity of care for the children and young people, with the majority of children having spent on average three quarters of their time in care in their current placement. The inspection found the services provided children and young people in foster care with an opportunity to maintain links with their families of origin. It was noted over one third of the children and young people were placed with relative carers and two thirds of the children were living with at least one sibling at the time of the inspection. These figures were viewed as a demonstration of the former health boards' clear commitment to maintaining the connection between children and young people in the foster care system and their families of origin.

Each of the 56 children and young people had an allocated social worker and the inspectors found the social workers provided a good service to the children. They visited them regularly and often helped them come to terms with the reasons they came into care. They also maintained a high level of contact with the foster carers to provide them with support.

This was a pilot inspection. When the social services inspectorate is established on a statutory basis in the near future it will be in a position to broaden the range of inspections undertaken against the national standards for foster care to ensure services of the highest standard are provided.

While the proposals sensibly give the foster parents greater autonomy in the practical day-to-day care of the children, the children remain in the care of the HSE which will be responsible for their overall well-being and protection. To be effective service providers, we need a long-term vision for the children in our care. These young people must be empowered while they are in foster care so they can be happy, secure and successful adults in society. The Bill's proposals will help give them a greater sense of belonging in a family where their foster parents are responsible for many of the practical decisions affecting their lives. I salute the work done by foster carers. It is important we have more foster parents. I also salute the work of the Irish Foster Care Association which advocated the initiation of legislation along these lines.

The adoption (Hague Convention, adoption authority) Bill, which is being drafted, will ratify the Hague Convention, bringing it into force under Irish law. The legislation will also establish the Adoption Board as an independent statutory body known as the adoption authority. The issue of the adoption of a person who is 18 years or more by the person's long-term foster carers is one of the miscellaneous issues under consideration in the context of the Bill.

The Government attaches a high priority to the report of the Ferns Inquiry and to following up on the report's recommendations in the context of ensuring effective child protection and welfare systems are in place to protect children. Before the publication of the Ferns Report, I sought the advice of the Attorney General on the report, including the issue of the HSE's powers with regard to third party abuse raised in the report. The advice was that the Executive had general powers under the Child Care Act 1991 regarding third party abuse.

In line with the recommendations, however, it was considered that the Department of Health and Children, in conjunction with the Attorney General's Office, should undertake an in-depth study of the HSE's powers in third party abuse and this would be followed by legislative proposals as necessary. Following further detailed discussions between my office and the Attorney General's Office on the question of conducting the in-depth examination of these issues, my office and the HSE are examining in detail the various issues involved. I expect this process will be concluded in the near future and that the advice of the Attorney General's Office will be sought on the outcome of these deliberations as necessary.

When this is concluded, I will bring forward legislative proposals as required on Committee Stage. My officials are preparing proposals to reform and regulate the provision of public law guardian *ad litem* services, identified as a priority area for reform. The issue of the courts' role in special care is also being examined. An amendment will be required regarding school age child care to come within the requirements of the Child Care Act 1991 in the same way as pre-school

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services. I will return to these matters on Committee Stage.

I commend the Bill to the House.

Mr. Browne: I wish to share my time with Senator Tuffy.

An Cathaoirleach: Is that agreed? Agreed.

Mr. Browne: I welcome the Minister of State to the House and wish him continued success in his area of responsibility. It is right and fitting that our children have the Minister of State as their ambassador at Cabinet.

The Fine Gael Party welcomes the Child Care (Amendment) Bill. It is fitting that people are given extra rights after five years of having children in their care. Some 5,000 children are in foster care and I compliment those involved in fostering. Although I have no children, I see the amount of work my sister puts into rearing hers. I compliment those who care for children other than their own and I also compliment the social workers involved.

Despite our affluence and improved educational opportunities, there remains a need for foster care. Many people are rearing their grandchildren as a consequence of, for example, marital breakdown or parents moving abroad. I recently visited the home of a woman who told me she was rearing her grandchild. I had no idea this was the case. Similar arrangements are in place in every town and village.

The Minister of State said there are officially 5,000 children and young people in foster care. Am I correct in assuming there are many others who are not officially in foster care but are being reared by a relative? Is there an obligation on the grandparent, uncle, aunt or sister to inform the authorities of such arrangements? Could the official figure be far higher and what are the implications of that?

Are persons who foster children and subsequently decide to adopt them placed at a financial disadvantage? I understand foster carers receive a fostering allowance in the region of €300 or €400 per week. If foster parents adopt the child in their care, will they lose this allowance? Are adopted children automatically entitled to inheritance rights? Could these factors act as deterrents to the adoption of children by their foster parents?

In the United Kingdom, foster carers receive a tax credit whereby they do not pay tax on their income from fostering up to a maximum of £10,000 plus allowances. Is there any similar arrangement here? Foster carers in Britain are also entitled to home responsibility protection, which means they are not subject to a reduced basic retirement pension after fostering a child later in life and staying home to look after him or her. It is important we do not put anything in place that would be a disincentive for those considering fostering a child.

There has been some discussion of the question of whether adopted children should have access to their birth certificates. The Minister spoke about this issue on "Prime Time" in 2003 and I understand a commitment was given at that time that children would be given such access. Will he update the House on what progress has been made in this area?

I wish the Minister of State well with the passage of this Bill. It represents a positive and forward step.

Ms Tuffy: I welcome the inclusion of relatives in the provisions of the Bill. I have encountered relatives who are taking on the role of foster parent because the parents are, for whatever reason, not in a position to look after their child. Their position is not good relative to that of other foster parents. As Senator Browne observed, such persons cannot access similar allowances. This must be reviewed because there are many relatives in this position. Some of them receive the orphan's allowance or other forms of payments but others do not. The manner in which they are dealt with by the Health Service Executive is not always helpful and some do not feel secure in their status. This Bill will help to some degree but it is an area the Minister of State should consider reviewing.

Section 43A(4)(*a*), as inserted by section 2 of the Bill, provides that the foster parent or relative shall have "on behalf of the Health Service Executive, the like control over the child as if the foster parent or relative were the child's parent". This definition seems faulty because it does not allow for the possibility that the child's parent may be an unmarried father who, unless he seeks guardianship rights through the courts or with the agreement of the mother, has no rights in this regard.

The Minister of State mentioned the possibility of setting up a register of unmarried fathers. We should follow the example of England, Wales and Scotland where the man designated as the father on the birth certificate has automatic guardianship rights to the child. There are many thousands of unmarried fathers who have no rights, including those in unproblematic relationships who are not even aware they do not have those rights. A register is inadequate to deal with this. The authorities in Scotland found that men simply did not register their guardianship agreements. My suggestion represents only a halfway house and one could go much further. It would, however, do much for unmarried fathers in terms of extending their guardianship rights. I hope the Minister of State will take it on board.

Section 43 A(4)(*b*), as inserted by section 2 of the Bill, defines what a foster parent or relative may do for the purposes of safeguarding the

child's health and welfare, including the ability to consent to any medical or psychiatric examination, treatment or assessment and the provision of passport facilities for the child. Are other guardianship rights not included, such as decisions in regard to education and so on?

Section 43B(1), as inserted by section 2 of the Bill, sets out the persons or bodies on whose application the court may vary or discharge an order under section 43A, as inserted by section 2 of the Bill. These include, as well as the Health Service Executive and the foster parent or relative to whom the order was granted, the parent having custody of the child at the relevant time. What about the parent who does not have custody at the relevant time? A mother who does not have custody, for example, but is by law the child's guardian should be able to go to court and make the application as the guardian. The definition needs to be clarified to cover such situations.

In general, however, I welcome this Bill. I hope the Minister of State will build on it and introduce other positive measures.

Mr. Glynn: I welcome the Minister of State to the House. I warmly welcome the Bill, which shows that he has blazed a trail in this portfolio. The Bill deals with a section of society which needs the care and attention of the Government and Oireachtas. It is an important measure in ensuring that children in foster care are assured of better care where that is necessary and that foster parents will gain additional rights in respect of the children placed in their care.

I agree with Senator Tuffy's comments on the rights of unmarried fathers. However, I would like to see some unmarried fathers taking their obligations more seriously. In some cases, they are not taken seriously at all. It has been said on many occasions, including by a former Member of this House, that there are some who seem to make a practice of being unmarried fathers. It is important that the children born in these situations are cared for by society. Many people show great generosity in this regard. A man and woman I met recently, having reared their own family, have no fewer than three foster children. I admire those people.

As chairman of the Midland Health Board in 2003, I had the honour of officially opening the Irish Foster Care Association conference in Tullamore. At that time I had a number of conversations not only with foster parents but with social workers. Has there been any improvement in the number of social workers being recruited? One former health board had to go to South Africa to recruit social workers.

The Irish Foster Care Association has welcomed this Bill. I expect that when the legislation is enacted, foster parents, the children in their care and relatives will benefit, which is the object of the Bill. The Health Service Executive will also benefit in the longer term as the number of court directions which have been sought will be reduced significantly thereby freeing up social worker resources to work with, and support, other families, which is important. We are freeing up an important resource.

The Irish Foster Care Association has more than 1,000 members but has said there are not enough foster care families available and that there has been a steady decline in applications. Why is that the case? Is this becoming a less generous society in that regard? I sincerely hope it is not.

Under this Bill foster carers have increased autonomy in consenting to medical examinations and treatment and to the issue of passports as well as in the day to day care issues such as giving permission for children or young people to go on a school tour or attend a conference. Although they are basic issues, they have been causing difficulties for foster parents, relatives and especially for children in foster care who are made to feel different in a school situation as the process of consent often involves going to court and, therefore, takes much longer. We want to ensure children in foster care have every opportunity to fit into a stable family and school life and this legislation is especially tailored to do that.

The Minister of State instanced the number of children in foster care and the number of children who have been in foster care for five years or more, although not all may have been in the same placement for that period. An important stage in one's life is childhood when one's personality is formed and the home and the parents play a pivotal role in that regard. It is imperative the mental and physical health of the child is ensured and nothing can complement that more than a good and caring natural family or, in the absence of that, a good, caring foster family.

Foster carers and their families make a huge contribution to the improvement of the lives of children and young people in their care by providing a welcoming place for them in their homes at what can be a vulnerable time in a child's or a young person's life. We want to ensure children in foster care have every opportunity to fit into a stable family and school life. As I said, this legislation is geared to do that. The Health Service Executive will continue to have a role in the lives of children in respect of whom the new court orders will be granted — for example, through the care planning process. In addition, the child's parents or a person acting *in loco parentis* will be notified or will have to give consent, as appropriate, before the court grants an order.

The Minister of State will be the keynote speaker at the Combat Poverty Agency conference — Children Living with Poverty and Disadvantage: New Knowledge, New Perspectives —

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on Wednesday, 22 November 2006. I look forward to attending that conference, if I can.

Since its inception in 1981, the Irish Foster Care Association has endeavoured to improve the services provided for children in foster care. Over the years, this has been achieved in partnership with the Department of Justice, Equality and Law Reform, the health boards and other relevant agencies. The association played a key role in the development of the Placement of Children in Foster Care Regulations 1995 and the report of the working group on foster care. The association was also ably represented on the group which developed the national standards for foster care, which the Minister was happy to launch in April of this year. The association has moved from being an organisation of mutual support for those involved in foster care to one which provides training programmes on many aspects of foster care aimed at foster carers' children and young people in foster care and the people who wish to explore the possibility of fostering.

Foster carers play a vitally important role in the lives of children when they provide a place in their homes for them at a vulnerable time in their lives. As parents and carers, their role in the care of children is to ensure they facilitate them in every way possible to allow them to achieve their true potential. The Minister of State has spoken extensively on this issue and I welcome the contributions of my colleagues opposite. There is unanimous approval for this important Bill.

Is it true that when a bequest is made to a child in foster care, the status of that bequest is different to that to a child who is part of a natural family? This is an area at which the Minister of State might look with a view to changing it. I look forward to hearing his views on it. Many foster parents feel very strongly about this issue and I have been contacted by a number of them. The Minister of State nodded in recognition of what I said. I congratulate him on introducing this Bill and look forward to contributing on Committee Stage. As the Minister of State said, he will have something additional to say at that stage.

Dr. Henry: I welcome the Minister of State and the Bill. As Senator Glynn said, some of the issues in the Bill have been of concern to foster parents for quite some time and it is only right we should try to address them. The Minister of State's figures were very interesting. Some 4,250 of children in care — 84% — are in foster care. Are these children all in long-term foster care or are there additional children in short term foster care?

This Bill deals with children in long-term foster care. It is important we deal with this issue because, unfortunately, there is much breakdown in society which needs to be addressed. We no longer have the extended families we had in the past who would have been in a position to cope with a child bereft of parental attention for one reason or another. I was interested in the discussion about the pop singer, Madonna, and her adoption of a child from Malawi. It was said there is never really a child who is in an orphan in Africa because of the extended family. I will not get into the rights and wrongs of whether children should be adopted from abroad but it is interesting to think that we have perhaps lost a great deal of the support of the extended family while people in other places would keep a child if they had the means to do so.

I hope the Minister of State will do as much as he can to ensure there is plenty of social support and not only financial support for families who run into trouble, particularly in the case of single parent families where someone has a medical or a psychiatric problem and children must be placed in care. However, it is important that we assure such people that the social support they need will be there when they manage to overcome whatever difficulties they may have in order that their children are returned to them. Sometimes people feel that, although they voluntarily gave their children into care, they did not find it as easy to get them back as they had imagined. I cannot divulge the details of specific cases, but we have all occasionally had people address us on the issue. Social support for families is very important; the Government is making a good effort to bring forward financial support.

In going through this Bill, we must be careful we do not make unfortunate mistakes of the kind we did with the Social Welfare and Pensions Act 2005, in which we changed the definition of an orphan. In the new Bill the parents are required to have "abandoned and failed" to provide for their child, whereas under the old Bill it was "abandoned or failed". Of course we did not mean that both criteria had to be fulfilled, but it has given appeals officers an increased workload. I am glad to say that, as far as I can see, they have been very generous in their assessments. Usually it is a grandparent who has to deal with children in a situation where it is absolutely impossible to get them cared for by their offspring. We must go through this very carefully.

Perhaps we might be a little more daring in the Bill, changing the time period to three years for older children. I am anxious about the fact that there must be five years' continuous fostering. Let us suppose the child is voluntarily taken back by the parents after three and a half years and, despite our all hoping for the best, the situation breaks down again after three months, with the child returned to the foster parents. I know the courts appear to have plenty of discretion in such matters, but I would like us to consider individual situations with as much generosity as possible, particularly with older children.

The child's wishes, in so far as is practicable, have been given due consideration, having regard to its age and understanding. As the Minister of State, Deputy Brian Lenihan, said, children are now allowed a louder voice in issues regarding their welfare. We may need to be as far-sighted as we can. The Minister of State quite rightly said that one did not want children to be embarrassed at school because they could not go on the school trip. However, good and generous foster parents, when trying to go to Torremolinos or wherever for two weeks, find that the foster child cannot come. Will the five-year criterion still apply? It appears it will, and that is why I wonder if we might not be a little more generous and make it three, particularly with older children. It is difficult at that stage, when everyone is getting ready to go off with one's bucket and spade. Perhaps we might do a little more for them.

I was interested to hear the Minister of State proposes to address issues that arose in the Ferns report. It is a good idea to include them here, and I am glad he brought them to the House, since I am sure we will try to go through them as slowly and as carefully as possible. It was very unfortunate to discover from the Ferns report that the community medical officer in one case acted *ultra vires* by questioning children about abuse, since one is entitled to do so only if the abuse took place within the family. That also might be addressed in this Bill; I am sure the Minister of State has other areas to include.

I am delighted with the thinking behind the Bill, and I am sure the Minister of State's concern is that the very best be done for children in such situations, respecting the fact that they may have parents hoping to give them a proper family life some time in the future. We must be as broad-minded as possible, particularly with older children, since they have a very good idea themselves of what they would like to see done. I am very glad to see the courts taking so much more notice of what such children say. Years ago the situation was pathetic, since children seemed to have no voice whatsoever. However, now one finds they are asked for their views.

I hope we can increase the number of psychologists available to the courts and the health service to deal with children who may have behavioural problems. Foster parents often have to deal with them before they become far more serious as the children become teenagers.

Mr. Minihan: I, too, welcome the Minister of State and the legislation before us.

The child must be central to any such Bill, and I am delighted we are introducing legislation the emphasis of which is on the welfare of the child. The legal definition of "foster" is to help grow or nurture talents. Foster children are in the legal guardianship of the State or a private adoption or foster agency, yet they are cared for by foster parents in their homes under some short or long-term foster care arrangement with the custodial agency. We are dealing here with people who take children into their homes on a short or long-term basis to care for, nurture and develop them, helping them bring forward all their talents, allowing them to take their rightful place in society.

As previous speakers said, it would be remiss not to acknowledge, congratulate and salute those families that take that responsibility upon themselves. Those of us who are parents know the responsibilities associated with parenting. Unfortunately, when we debate other issues in this House such as anti-social behaviour, we consistently return to parental responsibility. I do not know how many times during debates in this House that issue has been mentioned. However, there is a group of people who, rather than walk away from such responsibility, are willing to accept it for a child biologically not connected to them. For that reason, as modern society has developed, we have owed a great debt of gratitude to foster parents and the Irish Foster Care Association.

Senator Henry mentioned the five-year period, something on which I have reflected and which I could argue both ways. I was concerned at the unfortunate child who, after four years and 11 months, was moved to another family. However, one cannot give foster parents the responsibility that we give them willy-nilly without their having some form of medium to long-term relationship with that child. However, if a child enters foster care at the age of 12 or 13, when it enters secondary school, it practically goes through a full secondary school cycle before that responsibility is given to the parents.

I am unsure of my own opinion, since I can argue both sides, but this issue will benefit from a Committee Stage debate and from listening to the Minister's views. I am sure in drafting that point, a decision had to be reached and those arguments have been already considered. I look forward to Committee Stage and hearing the Minister's views in that regard.

We should also consider the different types of foster care. Here we are dealing mainly with long-term foster care, but we have day and short-term foster care, including that provided by relatives. However, in the long-term area, it is only right and proper that such decisions as are outlined in this legislation be within the remit of the foster parents. That is right, just and in the child's interests, for which reason I strongly welcome the legislation.

We cannot lose sight of the fact that in schools and among groups of children, stigmas attach very easily. Children can be very cruel to each other. It is not intentional, since young children simply behave that way. The stigma of a schoolchild who is in foster care but cannot have the

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same simple rights as other children, such as holidays, passports and medical attention — which is particularly important — must be addressed. For that reason I welcome this legislation.

I look forward to Committee Stage and to hearing the Minister's reasoning and the process taken to arrive at the five-year rule. I understand the necessity to come up with such a period. However, Senator Henry has raised an interesting point with regard to older children, especially children who are moved after being in care for a long period of something like four and a half years. Perhaps we should re-examine this issue. I support the Bill and look forward to Committee Stage.

Ms Feeney: I welcome the Minister of State with responsibility for children, Deputy Brian Lenihan, to the House. I agree with all those who have said this is wonderful legislation. I also agree with Senator Minihan who said we owe foster parents our gratitude. Without them where would the 5,000 foster children the Minister of State mentioned be?

I am privileged to know some foster children as well as foster parents. One I know is now a young lady of 21. She has been in foster care with different families from the age of 18 months. While she considers exceptionally lucky on one hand, she feels unlucky on the other because her sister was adopted, but her mother, who is long-term psychiatric care, never gave her up for adoption. This young lady is now attending third level and studying to be a social worker. What better career for a person who has been raised with the help of social workers.

I welcome the Bill and wish it a safe passage through the House.

Minister of State at the Department of Health and Children (Mr. B. Lenihan): I thank Senators for the generous welcome they have given this legislation. Senator Henry took us to Torremolinos in her contribution which is not a bad point of departure for my reply.

When a child is taken into care, social workers are involved on behalf of the Health Service Executive. In that position, that child is in the care of the executive and it acts as the parent. Therefore, it is the Health Service Executive, through the social workers, that must decide whether the child can go to Torremolinos, have a passport or have an essential medical operation. In some cases, the social workers or their superiors in the Health Service Executive do not have the confidence to make these decisions without further recourse to the courts. This is a difficult position in which to put a foster parent when a child is in foster care for a substantial period. I will study carefully what Senators have said about the relevant period, but I had to make a judgment on the appropriate period because there are also short-term arrangements in operation. It would be inappropriate to attach to the parent in such a position the full powers of the Health Service Executive.

This legislation allows the Health Service Executive and the foster parent to go to court and obtain sanction to give the foster parent all the powers of a parent. It is quite a radical step in terms of current legal and constitutional arrangements and a balance must be struck as to how many years must be experienced by the parents before they are empowered to that extent.

Mr. Browne: On a point of information, do the five years apply from the day of placement to the day of application——

An Cathaoirleach: The Senator is not permitted to come in on the Minister's reply. He can raise these matters on Committee Stage.

Mr. B. Lenihan: We will explore that issue further on Committee Stage, but it is five continuous years. Senator Minihan wanted to divine my thinking on the issue. I am trying to outline my thinking and to show how we arrived at the five-year period. I am open to suggestion on it, but do not see a need to increase it to six years. Senator Henry seemed to suggest that some circumstances arise where a small break in continuity should be disregarded for continuity purposes and we could examine that on Committee Stage so that a person who was substantially in continuous care would not be discriminated against. I am not open to pushing the period back below four years. There must be a definite bond between the parent and the child before legislation of this nature can come into operation.

Senator Browne raised the issue of the number of grandparents, relatives and extended family members now caring for children, not all of whom are in the foster care system. He is quite right on that and the figures I gave relate to the numbers in the foster care system. The reason for my lower figures is that children are only brought into care by the Health Service Executive if they are in need of care and protection. It is not necessarily the case that a child being cared for by a relative is in need of care and protection.

The typical circumstances with which we are all familiar occur where both parents die and the child is reared by another member of the family. That child does not, as such, require care and protection and, therefore, has not come to the attention of the HSE for the purposes of the foster care system. However, Senator Browne made a legitimate point in that regard. Those people also need special supports. The report of the working group on foster care looked at this issue, but was emphatic that only children brought into care should come under the Child Care Act and the

fostering system. Outside that, it should be for the Department of Social and Family Affairs to devise appropriate income support arrangements for those circumstances where a child is outside the immediate family setting and being cared for by members of the extended family.

Senator Browne also raised the topical issue of the costs of adoption. When the original Adoption Act was enacted in 1952, the view was taken that the Constitution precluded the adoption of a child of a marriage. In 1998 the Oireachtas enacted legislation which permitted the adoption of a child of a marriage in very limited circumstances. We may well have to revisit this issue on constitutional terms because I am not satisfied we have adequate powers to deal with it.

The 1998 legislation has been in operation a number of years and requires an application to be made to the High Court for the adoption of a child in the position of long-term foster care. The Health Service Executive pays the costs of the application to the High Court, but those costs can be as high as €150,000. The process is a full High Court application, in which the proofs which must be satisfied in order to come within the scope of the 1998 Act, are the proofs of parental failure, abandonment and all the related constitutional terms. These carry a heavy burden of proof.

While it is true that the Health Service Executive discharges the costs of foster parents who wish to adopt their child in long-term foster care, and a number of applications have been successfully made, it remains an expensive procedure. That is the reason, as I mentioned in my opening remarks, that in the context of the adoption legislation which I hope to publish in a matter of months, I address the question of the adoption of foster children again and propose that when the child reaches the age of 18, he or she can be adopted by the foster parents. This is important and necessary reform because the number of children in long-term foster care is constantly growing.

3 o'clock

Senator Glynn touched on this matter also when he referred to the issue of a legacy to a foster child. The Senator is correct in that the foster child is a stranger for the purposes of adoption or inheritance legislation. I understand the legacy would be taxed as if the person were a stranger, but I would be happy to be contradicted by the Minister for Finance.

Mr. Glynn: The Minister of State is correct.

Mr. B. Lenihan: Senator Browne referred to the disincentive of a lack of inheritances in foster cases, but fostering was never envisaged as a complete transfer of rights. Adoption is the total transfer of rights and is required when a child in a long-term fostering arrangement has bonded with the foster parents and has no real connection with his or her natural parent or parents.

We must examine this issue. Constitutionally, we can approach the matter by allowing a child over 18 years of age and who has been in foster care for a specified period to be adopted by simple declaration of the child and the foster parents. The imprescriptible rights of a parent over a child disappear when the child reaches majority, is of full understanding and can give consent. I propose to address the issue in this way in the adoption legislation. I welcome the opportunity to outline my proposal because the Bill cannot be considered in isolation from that reform.

I am trying to provide a spectrum of legal certainty about the future to children brought into our care system, which they do not really have. They are consigned to permanent foster care and without the possibility of enhancement. When this legislation is enacted, the parental position will be strengthened in the spectrum. When the adoption legislation is enacted, the full issue of adoption can be addressed freely in the manner outlined.

Traditionally, common law systems do not permit the adoption of adults. They introduced adoption as a statutory arrangement that tended to be a care option for children under the age of 18 years. In civil law jurisdictions, the adoption of adults has been a recognised feature of the legal landscape and it was this that inspired me to the idea that we should examine that option because it would be a useful and convenient way to address the needs of those children.

Due to the significant increase in the number of long-term fostering arrangements, particularly since the 1991 Act, there will be an increasing cohort of such children. While many are still growing up, inheritance questions will arise. The only way to address the matter is by making adoption easier and less expensive. Adopting a child on an application to the High Court, which is the constitutional procedure accepted by the Supreme Court, is cumbersome and it is not surprising that many foster parents are deterred from making such applications.

Senator Browne raised the question of adoption information. I will examine this matter through the adoption Bill, as a number of its proposals relate to the issue. It is a difficult and sensitive area, but the Adoption Board can and does release original birth certificates to adoptees based on their applications and with the co-operation of the relevant agencies. Only in a small number of such applications are refused. The board contacts the agency and an attempt is made to determine the current circumstances of the mother and to ascertain her opinions on the matter. In 2003, 39 applications were approved, 55 were awaiting further information and three were refused. In 2004, 53 applications were approved, 30 were awaiting reports and four were refused.

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The case law laid down by the Supreme Court is that the child has a right to know the identity of his or her natural mother, but the State must respect and vindicate the potentially conflictual right of the natural mother to privacy and confidential. Neither of these rights is considered as absolute by the courts. As a Minister of State, I have tried to create and foster a climate where people realise that disclosure is the better course of action, but some cases can be difficult.

In 2003, I undertook a consultation process and the administrative provisions relating to making contact were drawn up with regard to the views of adopted persons, natural parents, those who adopt, professionals, agencies and international best practice. We set up a national contact preference register on an administrative basis to enable the mother and adopted child to register their names voluntarily to clarify that they are available for contact. The register is maintained by the Adoption Board and does not preclude an adopted person from applying for the release of the birth certificate in any event. In practice, many adoptees can ascertain the identities of their parents through a search in the register of births, deaths and marriages because it is common for the person's Christian and original names to correspond. Searches can narrow the range of possible candidates and are commonly carried out by those seeking to trace their parents.

I am anxious to increase the discussion and publicity of this matter. The contact preference register was advertised by door-to-door household leaflet drops one or two years ago and there has been some response. It is our intention to place the register on a statutory basis and, in the context of the legislation, I would be open to Senators' suggestions regarding contact. It is a difficult issue. The courts have laid down clearly that there are two conflicting interests and the question is one of how much balance should be provided.

In light of the importance of modern medical and genetic science, there must be a presumption in favour of knowing about one's origins. When the 1952 legislation was enacted, the knowledge of ancestors' medical conditions was not considered relevant to one's physical or mental health, but we live in a different world. We can revisit this issue in the context of the adoption Bill.

Senator Tuffy raised the question of persons outside the foster care system. The working group examined the possibility of placing some children in the care of the Health Service Executive to provide the income support for the family in respect of the child. The group was strongly of the view that such a practice would be highly inappropriate because income support should be a matter for the Department of Social and Family Affairs. If children who are taken into care meet the criteria for protection, they are put in the fostering system.

I appreciate that Senator Tuffy and others, including myself, can be put under pressure by people's relatives who see an injustice in the greater support given to foster parents through the payment of the foster care allowance compared to the payment obtained by people outside the foster care system. The foster care payment was introduced because the children in question are difficult and have experienced problems. To take on the task of fostering is to take on the task of looking after not just a child, but a child in need of care and protection. We should not lose sight of this during the debate.

Senator Tuffy outlined a number of ideas relating to guardianship and how the position of the father can be strengthened, but they are matters for the Minister for Justice, Equality and Law Reform. I will not speak for the Minister, but Senator Tuffy made an eloquent case in respect of the birth certificate in that if a father is disclosed on the certificate, he should have some rights without the need to go to court. The Senator was concerned about definitions, but I assure the House that the powers given to parents under this legislation would be the same as those currently enjoyed by the HSE. Instead of the State being the parent, it is delegating parental responsibility to foster parents.

Senator Glynn referred to the rights of unmarried fathers in a similar sense, but he was anxious that unmarried fathers should meet their obligations, which is a major issue. He raised the same issue as the Irish Foster Care Association, namely, how to recruit more foster carers. We are researching the matter. We find it is easier, particularly with the very challenging children, to find a placement outside Dublin and that is a cause of concern to us, but then one also wants to keep closer the link between the child and his or her place of origin and where the child's mother or father lives, and there is a difficult balance to be struck. Senator Glynn also referred to the bequest and inheritance issue which I addressed already.

Senator Henry was anxious to know the figures for long-term and short-term fostering arrangements. Of the 2,869 general foster care placements in 2004, for example, 605 were for less than a year, 1,146 were for between one and five years, and 1,118 were for more than five years. There are placements in foster care where children have special requirements or extra supports, the number of which is small. There were only 25 of those in all in 2004. Of relative foster care in 2004, 294 were for less than a year, 676 were for between one and five years, and 379 were for more than five years. There was a very small number — 38 in all — of pre-adoptive foster placements. That gives Senator Henry a general

sense of the figures. Of course with relative foster care, the child is in need of care and protection. It is the case that the HSE social workers have located a relative who will look after the child rather than another person who will take on that responsibility.

Senator Henry made a good point, that the foster carers need social as well as financial supports. It is not enough to simply pay the foster care allowance and say "Well done"; they need support from the social workers. One of the merits of this legislation is that in time it will free up social work time. At present, much social work time is being taken up dealing with children in long-term foster care, as in the Torremolinos example she gave earlier, and that is undesirable. I hope this legislation will enable them to focus on that supportive role which foster parents also need.

Senator Henry raised the question of the appropriate duration of time, as did Senator Minihan. Senator Feeney also welcomed the measure. I outlined to the House my thinking on the measure at any rate. This is about giving a spectrum of rights to the foster care parents. The particular spectrum here is giving the parents more responsibility in bringing up the children after a designated period of time, but we need to complete that spectrum by making the adoption option far more available than it is today and I will be addressing that in the adoption legislation. I thank the Senators for their welcome for the measure.

Question put and agreed to.

Acting Chairman (Mr. Finucane): When is it proposed to take Committee Stage?

Mr. Glynn: On Thursday, 2 November 2006.

Committee Stage ordered for Thursday, 2 November 2006.

Acting Chairman: When is proposed to sit again?

Mr. Glynn: At 2.30 p.m. on Wednesday, 1 November 2006.

Adjournment Matters.

Mr. Browne: May I raise my matter first to give Senator Morrisey time to catch his breath?

Acting Chairman: Yes.

Mr. Browne: I had a similar experience one day, of racing up from downstairs to attend the House for an Adjournment matter and being out of breath. It is not pleasant.

Regional Aid Maps.

Mr. Browne: Yesterday, *The Irish Times* mentioned the reclassification of the country in terms of EU funding from 2007 until 2013. It appears to be good news that counties Carlow and Kilkenny have been included in the area which is being classified as an economic development region and will continue to qualify for regional aid. This is based on factors other than the unemployment criteria as specified by the EU Commission.

I have been blue in the face lately with the impression being given, especially in Dublin, that everything is perfect in Carlow and Kilkenny. My colleagues from the west, including the Acting Chairman, often give the impression that in the west everything is terrible and the rest of the country is flying high.

I have repeatedly raised this point and I thank the CSO for giving us extremely detailed information on its website. The CSO information gives a fair and accurate picture. Even last August, I issued a statement pointing out that in terms of disposable income Carlow-Kilkenny was the poorest constituency, not only in Leinster but across the entire south east, and fell well beneath the national average of disposable income. Kilkenny's income was a mere 88.1% of the national average, while Carlow's was only marginally better, at 88.5%. In terms of total income in 2003, the most recent year for which figures are available, both counties faired appallingly badly, with residents in Carlow earning on average of €19,575 and residents in Kilkenny earning on average €19,396. In the entire country, counties Kerry and Roscommon were the only two counties with lower incomes. It put the lie to the myth that counties Carlow and Kilkenny were flourishing.

This was also reinforced, even earlier in 2004, by a statement I issued based also on disposable incomes, where Carlow was the poorest county in the State outside of the so-called BMW region. At the time, I mentioned that the unemployment figures were rising in the county, which was an unusual trend in comparison to the rest of the country.

It appears, as far as I can make out, that the Government has finally taken stock of the situation concerning counties Carlow and Kilkenny and has included them in the category for economic development. I want the Minister to clarify that for me and also to explain what we can expect as a result of the new classification.

Minister of State at the Department of Health and Children (Mr. B. Lenihan): I thank the Senator for raising this matter, to which I am replying on behalf of the Minister for Enterprise, Trade and Employment. In December, 2005 the European Commission adopted new regional aid guidelines for the period 2007 to 2013. The guidelines govern the areas in which member states

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may grant regional aid, more commonly known as investment aid. Investment aid is intended to promote the economic development of certain disadvantaged areas within the European Union in order to redress regional disparities. In Ireland regional aid is typically granted in the form of capital and employment grants for new companies and expansion projects. The guidelines specify rules for the selection of regions which are eligible for regional aid and define the maximum permitted levels of this aid. In line with EU cohesion policy, and European Council requests for less and better targeted state aid, the new guidelines refocus regional aid on the most deprived regions of the enlarged Union.

Under Ireland's current regional aid map, which defines the areas where regional aid may be granted until the end of 2006, all parts of the country currently qualify for some level of aid. Given Ireland's economic performance since the current map was approved by the European Commission in 1999, it was to be expected that our scope to designate areas for regional aid between 2007 and 2013 would be significantly reduced. Nevertheless, Ireland has secured entitlement under the new guidelines to maintain regional aid qualification for areas accounting for 50% of the country's population for the period 2007-13. In designating areas within the permitted threshold of 50% of the population, Ireland had to observe a strict EU requirement that the areas selected be relatively more in need of economic development. The Border, midlands and west region automatically qualified for designation on the basis that, in relative terms, it is the least developed region of Ireland. The BMW region is currently entitled to the highest investment aid rates in Ireland at 40% for large companies, that is, those with 250 employees or more, and 55% for small and medium-sized enterprises. Between 2007 and 2010, the maximum aid rate permitted for large companies in the BMW region will be 30%. This will reduce to 15% between 2011 and 2013. For medium-sized firms, that is, between 50 and 249 employees, the aid rate will be 40% between 2007 and 2010 and 25% between 2011 and 2013. For small firms, that is, fewer than 50 employees, the rates will be 50% between 2007 to 2010 and 35% between 2011 and 2013. The aid rates available in the BMW region will, therefore, remain quite generous.

The south east sub-region, which comprises Counties Carlow, Kilkenny, Wexford, Waterford and south Tipperary, also automatically qualified for designation, on the basis of unemployment criteria specified in the regional aid guidelines. The unemployment rate in the sub-region between 2001 and 2003, at 117.9% of the national average, was greater than the 115% level required for designation. Accordingly, the south east will be entitled to investment aid rates of 10% for large firms, 20% for medium-sized firms and 30% for small firms between 2007 and 2013. The aid rate currently permitted in the south east sub-region is 20% for large firms and 30% for small and medium-sized enterprises. The main difference for the sub-region, therefore, is the reduction in the aid rate for large firms from 20% to 10%. However, the aid rates in the south east have been phasing out or reducing since 2000. Based on the European Commission's initial proposals for regional aid between 2007 and 2013, only the BMW region would have continued to a designated area. In the negotiations with the European Commission, Ireland argued the case for retention of more designated areas and succeeded in having the south east designated throughout that period. Apart from the BMW region, the south east sub-region has achieved the best outcome, as it will be entitled to aid large companies throughout the period.

The remaining areas that will be designated will be the mid-west and south west sub-regions. While the aid rates in these regions will be similar to those in the south east, they will be permitted to aid large companies only during 2007 and 2008. Dublin and the mid-east sub-region will no longer be entitled to regional aid after 2006. In the selection of the areas to be designated between 2007 and 2013, I consulted the Southern and Eastern Regional Assembly, as within that region some areas would no longer qualify. The Assembly accepted the findings of an independent report, which it commissioned, from the National Institute for Spatial and Regional Analysis, at NUI Maynooth. The assembly's proposals were included in the proposed regional aid map which Ireland submitted to the European Commission for approval.

While the Minister is satisfied that Ireland has achieved a very good outcome in its regional aid map, the role of such aid in attracting foreign investment should not be exaggerated. A variety of elements influence such significant decisions. Factors such as the availability of skilled labour, modern infrastructure and a flexible regulatory environment are of fundamental importance to potential investors. IDA Ireland is constantly innovating by adapting and changing the value proposition it offers its clients. This means exploring new areas and strategies, improving Ireland's physical and digital infrastructure and investing in people through education and, in particular, research funding. IDA Ireland remains committed to regional development as a core part of its strategy and it is constantly working with relevant national and local partners to develop and build the infrastructure necessary to make regional locations attractive for international business.

Regardless of the regional aid map, all parts of Ireland will continue to enjoy potentially significant financial supports for research and develop-

ment and training initiatives. They will also remain eligible for a range of non-financial supports. All such supports are designed to drive ongoing company growth by ensuring success in overseas markets, increased competitiveness and productivity and enhanced research and development and innovative capabilities. These factors will drive company success and, ultimately, will ensure overall job creation. All SMEs will also retain entitlement to investment aid at rates of 7.5% for medium-sized companies and 15% for small companies. These rates are expected to increase to 10% and 20%, respectively, in 2007 following review by the European Commission. In addition, De Minimis aid can be given for a wide range of eligible expenses and that will continue to be available. Although the availability of regional aid will reduce as Ireland continues to prosper, as we move into more and more sophisticated and knowledge and skill intensive areas of activity, in keeping with both the characteristics and aspirations of Ireland today, our industrial development agencies will retain the scope to use horizontal forms of support which are increasingly more important.

Public Transport.

Mr. Morrissey: I thank the Minister of State for taking this matter, which relates to public transport integration. I wholeheartedly welcome last week's announcement of metro north, which will enhance the lives of the people of Swords and adjoining areas. If commuters who currently use the bus service transfer to the metro when it is completed in a few years, they will save 390 hours commuting per annum, which is the equivalent of ten weeks travel. Questions were raised about the cost of the new line last week but I prefer to focus on the benefits it will bring for hard pressed commuters. They will have ten weeks per annum to put to better use with their families or in leisure pursuits.

However, Irish Rail plans to build an interconnector between Heuston and Connolly Stations while one short year after the opening of the two Luas lines, it is planned to connect them. The proposed metro will terminate on a greenfield site outside Swords with a massive park and ride facility but a extension could be built to Donabate, which is only three kilometres away, that would meet the northern line and provide access to the towns such as Lusk, Rush, Skerries and Balbriggan. This would increase the patronage on the line, which is what the metro will need to pay for itself. Patronage can be increased by integrating public transport. Access would be opened to all of north Dublin, including Swords, Dublin Airport, Dublin City University, the Mater Hospital and the new children's hospital. For example, currently people from north Dublin who wish to travel to the airport via public transport must take the DART to Howth Junction before travelling back to the airport. The public utilities I have listed would be accessible to everybody in north Dublin if a line three kilometres long was built between Swords and Donabate. It must be ensured the time savings achieved by everybody using the metro from Swords will be provided to people throughout north Dublin.

A park and ride facility will be provided so that people in the hinterland of Swords can drive to the metro station but we should think outside the box. While the new metro line will be fantastic, the service could be improved by linking it with existing modes of transport. I contacted the RPA about this issue and the officials correctly said their remit was defined by the proposals in Transport 21. That is why we must make representations to the Minister for Transport to establish how an extension could be provided. The Luas lines will be extended to Cherrywood, Citywest and the city centre. There will also be a Luas connection through the city centre. Iarnród Éireann has put forward a cogent case for building an interconnector, which is also included in Transport 21. While all those developments are about integration, the metro is not to be integrated with the suburban railway line for a stretch of 3 km. Accordingly, I ask the Minister of State to bring this matter to the attention of the Minister for Transport.

Mr. B. Lenihan: I reply to this matter on behalf of the Minister for Transport. I will certainly bring Senator Morrissey's eloquent plea for Donabate to the Minister's attention, but I must outline his views on the matter.

The Senator is well aware that Transport 21 includes the provision of a metro line from the city centre to Swords via Dublin Airport and the timeline for the completion of this metro line is 2012. This does not include an extension to Donabate, nor was such a link envisaged in the strategy, A Platform for Change, published by the Dublin Transportation Office.

It is envisaged that the metro north will terminate at Lissenhall, north of Swords. As Senator Morrissey outlined, a major park and ride side is planned at this terminus. This will benefit people from Donabate, Portrane and other areas of north Dublin and people from counties Meath and Louth travelling to the airport or onwards to the city centre. It will be possible to park at the terminus and take the metro to the airport or onwards to the city centre. The park and ride facility will also include a bus interchange. The metro journey time from the terminus to the airport will be under ten minutes and will be under half an hour to the terminus at St. Stephen's Green.

A metro line north of the proposed terminus at Lissenhall is unlikely to be sustainable without the land being developed in a manner conducive to a metro, that is, high-density residential and

[Mr. B. Lenihan.]

commercial development. The land between Swords and Donabate is designated as a green belt area in the Fingal county development plan and, thus, is unlikely to be developed. However, the metro north project will be designed to facilitate its further extension should the circumstances, especially land use policy, change in the future. Therefore, while this indicates there is a stop in regard to the Senator's request, it is not entirely a full stop. The configuration of the terminus at Lissenhall will facilitate a further extension if a demonstrated need for that develops in time.

The population of Donabate is served by suburban rail. This service will be improved under Transport 21 with the construction of the interconnector tunnel through the Dublin city centre and with the associated electrification of the northern line, which will become a Dart line running from Balbriggan to Kildare. This will enhance the service from Donabate and surrounding areas as the interconnector will provide extra capacity, that is, it will be possible for more trains to pass through the city centre than at present. As electrical rolling stock can accelerate faster, there will also be the possibility of reduced journey times and increased frequency of service for commuters.

The Balbriggan to Kildare DART line will have interchanges with the second DART line, which will run from Maynooth and Dunboyne to Greystones, at Pearse Street Station, the Luas red line at the docklands and Luas and metro services at St. Stephen's Green. It will also have an interchange with mainline rail services at Heuston Station. The completion date for these projects is 2015. In the meantime, work will commence in 2007 on the resignalling of the rail network in the city centre, which will mean a 33% increase in rail capacity within the city centre, which should facilitate some suburban rail service improvements.

Cancer Screening Programme.

Ms Cox: I thank the Minister of State for taking this matter. It is timely that I raise this matter given that October is breast cancer awareness month. Breast cancer is the most commonly diagnosed cancer and the leading cause of cancer related deaths in Ireland, with an average of 1,726 women diagnosed with breast cancer every year. Of that number, 700 women — mothers, sisters or daughters — die from breast cancer every year. Some 106 women died of breast cancer in the west in 2002.

Breast cancer screening is not available in the west. Such screening could reduce the mortality rate of breast cancer by 20% to 30%. In Northern Ireland, by 1998 the mortality rate for the disease was reduced by 20% and in Scotland it was reduced by 30%. Of the 106 women who died in 2002, 30 of those lives could have been saved if such screening had been available. Some 9.7% of women in Ireland have a mammogram compared with an average of 21% of women in the original 15 member states of the EU. Those percentages represent a significant difference and that is not acceptable.

The timeline for the roll-out of BreastCheck was 2000 when it was provided to women in the east and the midlands. In 2003, the Government promised that BreastCheck would be available in the west by 2005. However, in 2005, we were promised that it would be available in 2007. In 2006, the Government said that BreastCheck would not be available in the west until late 2007. In 2006, we were told that the construction of a screening facility would commence on 6 November and no doubt the Minister of State will tell me about that. It is a welcome initiative.

However, construction is scheduled to last for a period of 48 weeks. Why has the construction company not been told to complete the construction work in a shorter time? Buildings can be built in a shorter time and the work day does not have to be from 8 a.m. to 4 p.m. In the case of a project as important as this one, it is possible to provide incentives to building organisations and construction companies to ensure the completion date of the structure is delivered at an earlier date. Until the structure is in place, we will not be able to make progress. Instead of accepting that the construction work could finish on 9 October 2007 without any delays, the Minister should ask the builders who have been awarded the contract when can they deliver it and how much will it cost. If ensuring the construction is completed at an earlier date would involve an expenditure of a few million euro, is that price too great to pay for a facility that would save lives?

The age group invited for screening is women aged 50 to 64. An American report shows that between 1980 and 1987, the incident rates of invasive breast cancer increased among women aged 40 to 49 by 3.5% and by 4.2% in women over the age of 50. Significantly, we need to examine the impact of widening the age group invited for screening. When we deal with rolling out the programme throughout the country, we need to widen the age group not only at the upper limit of women aged 64 but also to reduce it below the age of 50. Increasingly more women in their 40s are developing breast cancer and it is not detected until it is too late. The survival rate is 82% for women younger than 40 years of age. It is found that women younger than 40 and in the 40 to 50 age group who have breast cancer tend to have a more serious form of breast cancer and early detection is vital. It is important we focus on extending the age group invited for screening as soon as possible.

I raised this matter to clarify the position regarding a donation made by the National Breast Cancer Research Institute, NBCRI, to the Health Service Executive, HSE, for the provision of breast cancer services and there is a concern that this donation was returned by the HSE to the NBCRI one year later with interest. That does not make sense and I would like the Minister of State to clarify the position.

Another matter on which I seek clarification, and I accept the Minister of State may not be in position to do so, in which case I can raise it with my colleague, the Minister of State, Deputy Fahey, is regarding a newspaper reference to the Minister having been quoted as saying that the mobile testing units will get on the road as quickly as October 2008. I hope that was a typographical error in the newspaper concerned. I sincerely hope that in November 2007 when the doors to the BreastCheck unit in University College Hospital Galway are opened, the mobile units will be ready and equipped to travel to provide a screening service to women in Connemara, Mayo, Tipperary, Clare and the other regions that are not being served.

Mr. B. Lenihan: I reply to this matter on behalf of the Minister for Health and Children, Deputy Harney. I welcome the opportunity to set out the position on the issue raised by Senator Cox and also to advise the House on the progress on the roll-out of the national breast screening programme.

In June 2003, BreastCheck accepted a donation of €340,000 from the National Breast Cancer Research Institute for the purpose of purchasing a mobile screening unit to be deployed in the western area. In June 2004, the institute decided to redirect the funds towards the upgrading of mammography services at University College Hospital Galway and elsewhere in the region. The institute requested the refund of the moneys donated. BreastCheck refunded the donation made by the institute with interest, as Senator Cox pointed out. I acknowledge the important contribution the institute is making to the development of cancer services in the west. My colleague, the Minister for Education and Science, Deputy Hanafin, spoke at the institute's annual fund raising gala ball last week.

With regard to the national roll-out of the breast screening programme, the Minister for Health and Children, Deputy Harney, has met representatives of BreastCheck who are fully aware of her wish to have a quality assured programme rolled out to the remaining regions in the country as soon as possible. For this to happen, essential elements of the roll-out must be in place, including adequate staffing, effective training and quality assurance programmes.

At a meeting with Department officials recently, BreastCheck reported on significant progress that has been made in preparation for the roll-out. Additional funding of €2.3 million has been made available to BreastCheck to meet the extra costs of roll-out and a further 69 posts have been approved. BreastCheck has appointed clinical directors for the southern and western regions, both of whom will take up their positions next month. The recruitment of consultants and other staff, including radiographers, is under way.

BreastCheck also requires considerable capital investment in the construction of two new clinical units and in the provision of five additional mobile units and state-of-the-art digital equipment. The Minister is committed to meeting the capital requirements of BreastCheck and an additional €21 million in capital funding has been made available for this purpose. Construction teams have been appointed for the static units in University College Hospital Galway and South Infirmary, Victoria Hospital, Cork. Pre-award meetings took place with the construction companies last week and mobilisation for both sites is scheduled for 6 November next. The BreastCheck clinical unit in the western area at University College Hospital Galway will have two associated mobile units. Almost 58,000 women are in the target population for invitation to screening.

A breast screening programme is a complex, multidisciplinary undertaking that requires considerable expertise and management involving population registers, call and recall systems, mammography, pathology and appropriate treatment and follow-up. A programme must be quality assured and acceptable to women who attend for screening. The first phase of the programme is of a high quality and a similar quality in the west and south is essential. BreastCheck is confident that the target date of next year for the commencement of roll-out to the southern and western regions will be met.

Ms Cox: I thank the Minister of State for clarifying the position regarding the donation. On behalf of the women of the west, I wish to send a message to the Minister and the Department that a timescale of 48 weeks is unacceptable. We can afford to shorten that schedule. Even if we only shorten it by eight weeks, that might save a life. There are many life-saving initiatives that can be put in place now because of our prosperity. Given that women in the west have waited for BreastCheck for seven years, I ask the Minister for Health and Children, as a female Minister, not to simply say she is satisfied with the roll-out in November 2007 but to ensure that it is done to the best possible standards. We must pay back the women in the west and ensure they receive the kind of treatment that is available in the rest of the country.

I have no doubt the Minister of State will relay my message to the Minister for Health and Chil-

[Ms Cox.]

dren. It would be marvellous if we could achieve the aim. It would be a significant statement on the treatment of breast cancer. I am concerned about imbalances in the delivery of health services. I heard a representative of the HSE on "Morning Ireland" this morning talking about improvements in the accident and emergency services in Dublin. She said the HSE targeted the hospitals in Dublin.

In that context, I am concerned that people from the most peripheral part of the country are being forgotten. The focus is on the centre and by that, I do not mean Athlone and Tullamore, but Dublin. There is more to this country than the area surrounding Dublin. I am aware that the Minister of State represents the Dublin area but I wish to make a case on behalf of those on the periphery. We must move services out to the regions.

Mr. B. Lenihan: I thank Senator Cox for her comments. BreastCheck is confident that the service will roll out next year, which is a tremendous development.

I agree that we must value and develop all our regions equally. In fact, the disproportionate growth in the population of Dublin is not necessarily welcomed by persons who have the honour of representing that part of the country.

The Seanad adjourned at 3.45 p.m. until 2.30 p.m on Wednesday, 1 November 2006.