

Vol. 185
No. 13



**Thursday,
7 December 2006**

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

Thursday, 7 December 2006.

[illegible]

SEANAD ÉIREANN

*Déardaoin, 7 Nollaig 2006.
Thursday, 7 December 2006.*

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Paidir.
Prayer.*

Business of Seanad.

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

The need for the Minister for Community, Rural and Gaeltacht Affairs to initiate a review of a scheme with particular reference to the age threshold, type of socially monitored alarm systems and overall inflexibility in the operation of the scheme.

I regard the matter raised by the Senator as suitable for discussion on the Adjournment, and it will be taken at the conclusion of business.

Order of Business.

Ms O'Rourke: The Order of Business is No. 1, a referral motion whereby No. 17, a motion concerning certain sections of the Criminal Justice (Drug Trafficking) Act 1996 relating to powers of detention, amendment of forensic evidence and rearrest, which will cease to be in operation unless a resolution is passed by each House of the Oireachtas, will be referred to the Joint Committee on Justice, Equality, Defence and Women's Rights for consideration, the decision on the referral to be taken without debate; No. 2, the Energy (Miscellaneous Provisions) Bill 2006 — Committee Stage, to be taken on the conclusion of the Order of Business and to conclude not later than 1 p.m.; No. 3, the Health (Nursing Homes)(Amendment) Bill 2006 — Second Stage, to be taken at 1 p.m. and to conclude not later than 4 p.m., with contributions of spokespersons not to exceed 15 minutes, those of other Senators not to exceed ten minutes and the Minister to be called on to reply not later than ten minutes before the conclusion of Second Stage; and No. 4, the European Communities Bill 2006 — Order for Second Stage and Second Stage, to be taken at 4 p.m. and to conclude not later than 6 p.m., with contributions of spokespersons not to exceed 12 minutes, those of other Senators not to

exceed eight minutes and the Minister to be called on to reply not later than ten minutes before the conclusion of Second Stage.

Mr. B. Hayes: Why is No. 25, a motion in the name of the Leader dealing with the Curtin affair, still on the Order Paper? Is it linked to the apparent failure of the Government to accept the former judge's resignation from the Bench? I understand the matter has been resolved, yet the motion remains on the Order Paper. Given that the Joint Committee on Article 35.4.1° of the Constitution and Section 39 of the Courts of Justice Act 1924 has concluded its work and the Government has allegedly accepted the former judge's resignation, why is this the case? Will the Leader give her views on the matter? Perhaps the House could dispose of the motion today if an opportunity arises.

I also understand the joint committee gave a commitment to make a report to the House concerning future legislation that may be required in this area. Will a report issue to the House?

Why have a budget given that most of the detail of yesterday's budget was leaked and appeared in the newspapers last Sunday? I welcome the introduction of a small increase in mortgage interest relief for first-time buyers, even if it amounts to only €30 per week for a couple, most of which will be eaten up by increases in interest rates. The big loser from the budget was the Tánaiste. Despite all his huffing and puffing, stamp duty was not changed. We were led up a certain garden path to find that nothing had changed.

An Cathaoirleach: The House debated the Budget Statement last night.

Mr. B. Hayes: The Tánaiste, the most unpopular party leader, is the big loser from the budget. His comments in September caused the Dublin housing market to stall. The House was informed as late as last week that some relief would be forthcoming in the budget but stamp duty did not change. We will watch developments with great interest.

On 20 December, 6,000 heavy goods vehicles could descend on the M50 motorway with the result that for ten hours, an additional 60 HGVs per hour will travel on the most congested road in Dublin. Does the Leader agree that, given the gridlock on the M50, it is lunacy to increase the M50 toll charge by 10 cent from €1.80 to €1.90? The Government should get real. It is already mayhem on the roads. This morning in Lucan, one car accident caused gridlock in west Dublin and two weeks ago it was caused by a hole in the road as commuters tried to get home. A stop should be put to increasing toll charges on the M50 so that hard-pressed commuters are given a break.

Mr. O'Toole: Will the Leader respond to an issue discussed earlier in the week which concerned the Minister of State, Deputy Tim O'Malley? I do not wish to speak about the personal aspect. If he made a mistake, he can deal with that mistake. However, I am interested in raising the issue which was under discussion. Other Members, including the Leader, were of the opinion it would be important to have a debate before Christmas on the issue of psychological and psychiatric support structures and access levels for children as this is an important issue. We thought that after the budget would be a good time to have that debate. Will the Leader invite the Minister of State to the House? I will not call for his resignation. I met him and told him what I thought of what he said and I am ready to move on. The issue has been opened up for discussion. The Leader stated that the controversy has at least brought public attention to an issue that was being ignored and which needs to be discussed.

With reference to the matter raised by Senator Brian Hayes, I raised this matter in the House following the resignation of Judge Curtin and in fairness to the committee, Senator Brian Hayes was incorrect with regard to the committee's commitment. What happened on the day was that Senator Hayes, I and others asked that the committee which had done such work in treading through an almost impossible series of connections between personalities, legislation, common law and the Constitution, had developed significant experience which needs to be capitalised upon. I would like the committee to report to the House, not on that case in particular as it has given us its report on that, but to give its opinion on how similar cases might be dealt with in the future. I would like the House to have a discussion on the draft legislation which was attached to report No. 5 of the All-Party Oireachtas Committee on the Constitution which dealt with the unfortunate business concerning another Supreme Court judge some years ago.

I stated during the Curtin affair that the Oireachtas did not have its house in order to deal with such situations and they will happen again. Legislation should be enacted. The committee spent two years considering this issue. The members know more about it than anybody, it would be interesting to hear of the pitfalls and they could give a general view of the legislation drafted.

Mr. Ryan: Nobody wants to talk about traffic yet again but it is an issue. I use the wonderfully useful Fermoy bypass so often that I purchased the capacity to pass through by electronic means without any delay. I now know that if I was to take my car around the country to the various toll systems, I would need three other devices stuck on my windscreen. I can imagine a truck driver travelling the country who needs one sticker on his windscreen for Fermoy, another for the M50,

another for the M1 and another for the M4. It is the simplest thing in the world and we do not appear to be able even to do that right. We now have four different electronic systems. It is ridiculous. People travelling on the roads have enough problems without this.

I refer to another issue related to our incapacity to do anything properly. Why are our telephone bills among the world's highest? It is because our capacity to regulate is so inept. If the regulators do not have enough power, where is the amending legislation? They have the powers and will not use them. There is the ridiculous situation where the energy regulator apparently forced the ESB to have a bigger price increase than it requested. This should be sorted out once and for all. The job of the regulator is to protect the consumer, not the service provider. I am really tired of energy regulators and telecommunications regulators who seem to regard their first duty as being to look after the technological and other concerns of the service provider. This is worse than a State monopoly because it is a *de facto* private monopoly. I have asked the Leader on previous occasions for a debate on how we do regulation in this country and I now ask her yet again.

I am disappointed, as many other Members may be, with the extraordinarily provincial reporting by *The Irish Times* on a very good debate on defamation in this House yesterday. Apart from the sacred Senator from Trinity College behind me, no Member of the Opposition was reported in *The Irish Times*. There was not a single comment from a single Member of the Opposition. I find this astonishing and disappointing.

Contrary to a report in the *Sunday Independent* of last Sunday, there is an engineer in the Oireachtas and he is standing up here.

An Cathaoirleach: I will have that corrected.

Mr. Ryan: Many, including myself, fulminate about law and order. Yesterday in Cork, the family of a murdered girl showed extraordinary generosity in their response to the family of the man who murdered her. We all could reflect on this and choose our words a little more carefully when discussing some of these horrendous crimes. If the family of a victim can be as forgiving as that, perhaps all of us in the system, besides our otherwise correct concern about crime, could learn a little bit about the fact that forgiveness is also a part of moving on in life.

Mr. Leyden: Perhaps the Leader could make time available for Committee, Report and Final Stages of the Registration of Wills Bill 2005. This is a Private Members' Bill proposed by me to regulate and register wills. Despite the best efforts of the Law Society of Ireland to try to thwart the actions of the Oireachtas and prevent the passage of this legislation, I hope the Leader

will make time available to ensure that the society's best efforts come to nought and that the Bill will be brought in. There are vested interests at work and the many rip-offs associated with wills are a scandal. The Law Society of Ireland stands over the scandal and its members involved in the perpetration of those.

An Cathaoirleach: The Senator should be careful in what he says.

Mr. Finucane: As a member of the Joint Committee on Article 35.4.1° of the Constitution and Section 39 of the Courts of Justice Act 1924, I wish to clarify two points. The commitment to produce a report for the Dáil and Seanad was on the basis of the entire proceedings continuing. There was no commitment beyond that. It was not regarded as necessary. The committee issued an internal report on the progress of the committee over the period and the number of meetings. I agree with the point made that the committee was in uncharted waters. We have the benefit of the High Court and the Supreme Court experience, of section 3 provisions and other aspects. As the Chairman of the committee correctly said on many occasions, the exercise will be beneficial in future in that a roadmap has been created as to what might happen. What we learned about the court experiences would stand in good stead if this were ever to happen again, which it may not.

I fully agree with Senator Brian Hayes's comments on the M50. I was amazed this morning to see a schedule of new rates which will operate from 1 January 2007. Recent statements on transport made by Fine Gael indicated that even now at this stage, there is merit in the Government paying €20 million annually and lifting the barriers and removing this toll regime. After all, if there is a commitment to buy out the M50 tolling regime in 2008 for €1 billion, surely the Government can countenance spending €20 million during 2007 to buy it out then.

Mr. Glynn: Will the Leader arrange a debate in the new year on the mental health services? I have called for such a debate on a number of occasions. On a recent visit to the health committee in the House of Commons, my colleagues Senators Henry and Browne and I were told about the Appleby report. It would be interesting to debate it.

On a number of occasions when I have visited Britain, I am disappointed that many retail outlets and hotels refuse to take the euro even though Britain is in the EU. We are, however, in good company because some of those places also refuse to take the Scottish pound.

An Cathaoirleach: What is the Senator's point?

Mr. Glynn: I would welcome a visit to the House by the Minister for Foreign Affairs. This issue should be addressed. It is ludicrous that one

of the major players in the EU will not accept the basic currency.

Mr. Norris: Hear, hear.

Mr. Glynn: It is a nonsense.

Mr. Norris: I regret if some of my colleagues on this side of the House feel slighted but, as Senator Ross told me, I am very pleased I was mentioned. Perhaps it was because I was the only one who opposed the defamation legislation. It is very good this House should reflect a dissenting voice. The situation in regard to the press ombudsman is a laugh. The Insurance Ombudsman was funded by the insurance industry and every time it did not like what she said, it pulled the plug on the cheque. That is what will happen again.

An Cathaoirleach: That is yesterday's business. The debate on the Defamation Bill has been adjourned. The Senator can make that point during the debate.

Mr. Norris: Absolutely. Can I tell the Cathaoirleach today's news?

An Cathaoirleach: Yes.

Mr. Norris: Many Members on both sides of the House told me they were delighted I said what I did and that they would have liked to have done so but they are terrified of the press. That is what we are heading into.

I call for a debate on landmines perhaps in the context of the Middle East because 1 million landmines were dropped in Lebanon in the past 72 hours. No. 25, motion 28, on the Order Paper in the names of all my colleagues on the Independent benches seeks to outlaw landmines and it is based on a very powerful submission by Mr. Tony D'Costa of Pax Christi to the Oireachtas Joint Committee on Foreign Affairs. I am happy to withdraw that motion if the Government and the Opposition parties wish to put together a composite one.

My colleague, Senator Mooney, is very interested in this issue and attended the same meeting. I would like the Leader to consider the motion in the name of the Independent Senators to see if it is possible for the Government to put together, and pass, an all-party one. I believe the Government would be sympathetic to this.

There is a further worry that, inadvertently, public moneys may be invested in American companies engaged in manufacturing these obscene instruments of death and misery. They are not even military instruments. Mr. D'Costa told us that 98% of the casualties are civilian. That tells us one simple thing, namely, that they have no military application and that they are instruments of terror and mutilation. After a war is over, unfortunate children pick them up and are muti-

[Mr. Norris.]

lated and killed. All parties should stand up against this filthy and barbarous practice.

Mr. J. Walsh: I support Senator O'Toole's call in respect of the work and objectives of the Curtin committee. While legislation is being prepared, it is worth pointing out that in the state of Massachusetts, there is a commission which comprises nine members — three from the judiciary, three from the legal profession and three from the public. It deals with instances where the judiciary brings its profession into disrepute or where issues arise which could affect the confidence of the public in the judicial system. It is a model which could well be reflected in legislation. The sooner that legislation is in place, the better.

Will the Leader arrange a debate next week on the report by the Oireachtas Joint Committee on Justice, Defence and Women's Rights on the bombing of Kay's Tavern and other atrocities in the 1970s which was sought by a number of Members last week? At that time I suggested we might await the publication of the McEntee report into the Dublin and Monaghan bombings but I understand that further time has been requested to finalise that report which means it may not be completed until January or February. That is too long to leave this issue unaddressed. It behoves the Members of these Houses to continue to exert pressure on the British Government to meet its obligations and responsibilities in this regard.

The report of the joint committee clearly indicated the extent of the collusion and we owe it to the families and the State to keep this a live issue with which we must deal. The issue will not go away or be forgotten. I would say to Members who are members of the British-Irish Inter-parliamentary Body that it is a forum in which this issue can be raised and highlighted. Hopefully, we will be able to make advances which have not been made in the past.

Mr. Coghlan: In regard to psychological and psychiatric services, as raised by Senator O'Toole, we all know this is an area in which there is, to say the least, a huge shortfall. We have not made the appointments to the various positions. People in counties with long waiting lists have no one to see as the psychiatrist or whoever is not available. We have exported too many members of these professions and have not brought them back. They had to go abroad and they have stayed there. We would want to face up to this issue or we will have more problems. I would welcome a debate on it.

As next week is the last sitting week before Christmas, will the Leader give us an indication of the programme and the sitting arrangements?

Mr. Mooney: I support my friend and colleague, Senator Norris, who correctly said the Pax Christi submission was made to the Oireachtas

Joint Committee on Foreign Affairs earlier this week. Like him and many Members on both sides of the House, I have taken a long-standing interest in the landmine issue. The Government, through its overseas development aid programme, has contributed significantly to landmine clearance, especially in Mozambique. It is a very expensive operation but we can take pride in the fact that there is an acknowledgement, as Senator Norris so eloquently put it, of the terror and mutilation these awful cluster bombs cause.

I have written to the Leader and suggested that the motion in the names of Senator Norris and the other Independent Senators could be incorporated into a Government one and that it might be debated in Government time. There is nothing contentious in it and I suggest it supports Government policy. There may be some slight variations in Senator Norris's motion from that which I will suggest to the Leader because I believe I am right in saying his motion is based primarily on the Pax Christi recommendations put before the joint committee. I hope the Leader will respond favourably to that suggestion.

This week the Egyptian President, Hosni Mubarak, is making his first official visit to Ireland, which will be welcomed. Since the President has a great deal of influence in the region, the Minister for Foreign Affairs might ask him to encourage the Prime Minister of Sudan to allow a United Nations force into Darfur. Perhaps the Leader will convey the sentiments of this House in that regard to the Minister. Senator Norris spoke about the mutilation of children but, as week speak children, women and many other innocent people are dying in the deserts of Darfur. It is an outrageous international scandal and the more pressure put on the Prime Minister of Sudan to allow a United Nations force into Darfur, the better. As the Egyptian President is in Ireland, it is an opportune time for the Leader to convey our sentiments to the Minister for Foreign Affairs.

Ms Terry: For some years, I and other Members on both sides have asked for recognition of women who were forced to give up work due to the marriage ban. When they come to pensionable age they should be given the qualified adult payment as of right in their own name.

Mr. B. Hayes: Hear, hear,

Ms Terry: In an effort to be positive for a change, I acknowledge that the Minister has at last recognised this. However, I am concerned that women must wait until next September for this recognition. I cannot understand why, now that the Ministers for Finance and Social and Family Affairs have acknowledged at long last that women should be recognised in this way, they must wait until next September to be given

the payment in their own right. Will the Leader inquire whether it can be done more speedily?

I am disappointed with the budget provisions on child care services. Parents of young and schoolgoing children are disappointed that no meaningful help is being provided. The small increase in child benefit will not do anything to help with child care services which cost between €1,000 and €1,800 a month.

An Cathaoirleach: The Senator has made her point. We had a debate on that last night.

Ms Terry: We spend a lot of time here discussing parents' experience in this regard. It must be recognised nothing meaningful has been done to address the problem.

Mr. Hanafin: I support my colleagues' call for a debate on landmines. We have seen the terrible effects of landmines in particular areas many decades after wars have ceased there. It is time for landmines, like chemical and biological weapons, to become unacceptable and be banned.

The budget was an excellent, fair and balanced budget which looked after all sectors. However, it demonstrates clearly a split in the Mullingar accord. While Fine Gael has welcomed the tax reduction of the higher rate to 41%, the Labour Party has come out against it. There is a clear dichotomy in the Opposition.

(Interruptions).

Mr. Hanafin: Senator Ryan rightly mentioned media coverage of debate in this House and that every Member is entitled to coverage. *The Irish Times* journalist in the House gives adequate and full coverage to all, but the newspaper management is slow to print some of what is covered and only prints what it wants.

Mr. Bradford: Will the Leader arrange a debate for next week with the Minister of State at the Department of Finance on the decentralisation programme? This is the third anniversary of one of the most significant political announcements of the past decade, made in the Budget Statement of December 2003 by the then Minister of Finance, Mr. McCreevy, that 10,000 civil servants would be transferred throughout the country. This was deemed the ultimate bonanza for rural and provincial Ireland, but unfortunately it has not happened. We need to debate the decentralisation strategy, the spatial strategy and that whole area of public policy. We need to hear from the Minister of State at the Department of Finance with responsibility for this area whether the project has gone entirely off the rails or whether it will be fully implemented. We need a full debate on the matter before the Christmas recess and I ask the Leader to arrange that.

Dr. M. Hayes: I too support a composite motion and the agreement of the House on issues

such as cluster bombs and landmines. With regard to reporting of business in the House, I have no doubt the resident reporter has provided a balanced account. I would not go further than that. As any of us who write for the newspapers know, the coverage provided simply exemplifies the eternal battle that goes on between columnists, writers and sub-editors who have a job to decide how to fill the page and who are not willing to depart from that. I doubt there is anything sinister in it.

I have enormous respect for Senator Walsh and his concern arising from the bombing of Kay's Tavern. However, I wonder whether this is the right time to deal with that issue. There is an enormous problem with regard to how we deal with memory and the past in a deeply fractured society after a period in which awful things were done on both sides. It might cause further difficulty if we got ourselves into a position of demanding that every stone be turned over on one side and not on the other. If the Senator was a Protestant farmer in south Armagh, he would also think terrorism was a matter of international terrorism coming across the Border aimed at him. One of the concerns I have about the report is that it does not put the bombing into context, as if the events came of the blue. We need to include that context.

There is also a weakness in the report. It appears to me that the views of lobby groups were established and accepted as if evidence or gospel fact. We are at a difficult and sensitive period in the North as parties are edging closer. If one party thought we in this House were gang-ing up to throw stones at one side and closing our eyes to what was going on on the other side, it could only do damage. I appeal to the House to postpone that debate and perhaps to include it in a wider debate about how we deal with memory and the sins of the past.

Mr. Norris: An excellent idea.

Mr. J. Phelan: I agree with the sentiments expressed by Senator Maurice Hayes. Will the Leader seek the explanation sought by Senator Terry for the delay in the implementation of the changes with regard to the qualified adult payment for people affected mainly by the marriage bar? Senators on all sides of the House have received numerous representations from people affected by the issue and would like an explanation.

Another issue I wish to raise is the level of personal indebtedness. Many commentators and consumer watchdogs have raised this relevant issue in advance of Christmas. Will the Leader raise the matter of the continuous issuing by financial institutions of unsolicited loan offerings of up to €10,000 if a person signs on the dotted line? At this time of year, this is a temptation many people cannot avoid. We need some regulation in this area.

[Mr. J. Phelan.]

In his contribution in the House yesterday, the Minister of State with responsibility for the decentralisation programme, Deputy Parlon, devoted one paragraph to the issue. Three years ago this week, he was very clear on what he said on the issue. He said that if the Government did not deliver on decentralisation within three years, it did not deserve to be re-elected. Clearly, the decentralisation programme is a shambles and has not been delivered within the three-year timeframe promised. It would be appropriate for the Minister of State to come and explain in detail where matters stand.

Labhrás Ó Murchú: I seldom disagree with Senator Maurice Hayes. Apart from the great work he has done with regard to North-South relationships, we all have great respect for the energy and wisdom he has brought to bear on these issues. On the other hand, any comments Senator Walsh has made on the Northern issue and his involvement in various committees have always been balanced.

I do not suggest where or when the debate should take place, but there is one issue on which we need to bring to bear our concerns. There is a major difference between collusion by a sovereign government against a friendly government and some act undertaken by a paramilitary group. While we have agreed that a part of the process, as we have discussed it in the past, would have to take account of the need to forgive, one must put oneself in the position of the families who suffered as a result of those terrible bombings, which the report stated involved collusion by Britain. The fact the British Government is a sovereign government changes the scenario completely. For that reason, we should not lump this with other acts of terrorism on this island.

Ms O'Rourke: With regard to Senator Brian Hayes's first point on No. 25, the Curtin motion, I understand it will be removed from the Order Paper in time. Senator Finucane also referred to the issue. There is a roadmap with regard to what the committee examined and discovered, and that roadmap will be extremely useful for the future should judicial misdemeanours arise which would require action.

Mr. B. Hayes: Why cannot the motion be removed immediately?

Ms O'Rourke: I expect it will be removed from the Order Paper after Christmas.

Mr. B. Hayes: Why not now?

Ms O'Rourke: We will not be debating the matter. It is a Government matter. There will not be a report on the motion in the House. The committee would have reported had the matter drawn to a conclusion but it did not do so, and, there-

fore, the committee could not issue a report. I expect that is the situation.

Mr. Dardis: It is.

Ms O'Rourke: The Senator also referred to the Tánaiste being derailed with regard to the measures for first-time buyers announced in the budget. That is not so. I recommend that Members read page 16 of *The Irish Times*—

Mr. B. Hayes: The bible.

Ms O'Rourke: —in which the Tánaiste has been badly misquoted. He stated stamp duty reform would stand to be addressed in the next Government and would be on the—

Mr. B. Hayes: Exhibit A. Tell them that in Rathgar and Ranelagh.

Mr. O'Toole: He said with a straight face it would be delivered.

Mr. Finucane: It is like the three card trick in Listowel: now you see it, now you don't.

An Cathaoirleach: Order, please. The Leader, without interruption.

Ms O'Rourke: When it suits certain people, *The Irish Times* is quoted lovingly, and when it does not suit, it is not quoted. There we are.

Senator Hayes also asked about toll charges, which are to increase from €1.80 to €1.90. He suggested it would have been better if the price had been left unchanged.

Senator O'Toole referred to the debate on the Minister of State at the Department of Health and Children, Deputy Tim O'Malley. The debate is really about youth mental services, including psychological and psychiatric services, and what was discussed in the House on Tuesday. We are endeavouring to arrange a debate on the issue. I do not know if we will be able to have that debate next week but we should have it in the first week after the recess. The Minister of State has expressed himself very interested in attending and having a worthwhile debate.

Mr. O'Toole: I am happy with that.

Ms O'Rourke: The Minister of State has apologised for what he accepts were ill-judged remarks. As I said yesterday, if the furore which was occasioned, rightly so, means there is a focus on these matters, that in itself is positive.

Senator Ryan asked whether it would be preferable to have a uniform system of electronic tolls throughout the country rather than moving from one toll jurisdiction to another. One can get an Eazy Pass slip on the M50 which allows drivers to keep going — one must pay for it, of course — and there are other systems in place for other tolls. I remember that Senator Ryan and Senator

Ormonde used to meet on the Naas Road. I do not know if they are still doing that, but the thought struck me when the Senator was talking about the roads issue.

Senator Ryan remarked there had been a good debate on defamation, which is the case. I did not speak in the debate but I listened and thought it was a good, balanced debate. The Senator thought more speakers should be quoted on what they had said in the debate.

Senator Ryan also referred to a remarkable event, which I also thought remarkable when I saw it on television. This involved Sheola Keaney's parents, who went to the parents of the young man who had committed the crime and embraced them. I thought it was a real act of Christian charity.

Senators: Hear, hear.

Ms O'Rourke: If we put ourselves in that position, how could anyone do that? It was a remarkable act and a headline for others. That beautiful young woman was their only child.

Senator Leyden asked for time to be made available for the Committee and Report Stages of the Registration of Wills Bill 2005. I am glad to tell the Senator the Bill will be taken in Fianna Fáil Private Members' time next week. I hope the Senator will line up his speakers.

Mr. Leyden: I thank the Leader.

Ms O'Rourke: Senator Finucane referred to the Curtin committee and the roadmap. He also stated there was still merit in buying out the toll roads.

Senator Glynn raised the issue of mental health services. The House had decided — I realise the Senator was about his business in London — that we would have a debate on youth mental services, following from the matter concerning the Minister of State, Deputy Tim O'Malley.

The Senator expressed his annoyance that the UK does not accept the euro. It is a bad situation. Every time one goes to Britain, one has to change money but one then finds it in a pocket ten months later. However, the UK did not adopt the euro. It has a sovereign government and we cannot make it do this. Most proper hotels and shops will change money.

Senator Norris referred to landmines, an issue on which Senator Mooney has spoken publicly as well as speaking privately to me. We will be able to compose a composite motion, which will embrace the ideas of Pax Christi and others. I hope we can have the debate in Government time next term. It will be a worthy debate.

Mr. Norris: That is splendid.

Ms O'Rourke: Senator Jim Walsh told the House of the Massachusetts committee, composed of lay people and legal officers, which has

called to order those who have committed legal misdeeds. The Senator also referred to the report on the Dublin and Monaghan bombings, which is still under consideration. He asked if the matter could be debated in the House. I do not have autonomy of action on such matters. I would have to go back to the Taoiseach's office on a matter such as that.

Senator Coghlan referred to the psychological and psychiatric services. He also asked what Bills and debates would be taken next week. Last week my offices sent an e-mail to the various group leaders advising them of the Bills to be debated this week and next week. Perhaps the Senator could obtain this information from Senator Brian Hayes.

The business for next week is as follows. All Stages of the Appropriation Bill and the Social Welfare Bill will come before the House, and we must move the Houses of the Oireachtas Commission (Amendment) Bill or there will be no money to run the Houses. We will also deal with Committee and Report Stages of the European Communities Bill; Second Stage (Resumed) and perhaps further Stages of the Defamation Bill; Report and Final Stages of the Local Government (Business Improvement Districts) Bill; and the Investment Funds, Companies and Miscellaneous Provisions Bill. It is hoped to give one hour to Senator Coghlan's Private Members' Bill next week, although I do yet have a time for that.

In January I will endeavour to take whatever other Private Members' Bills are on the Order Paper. I have put forward a Bill with regard to women who have been trafficked, which the Tánaiste and Minister for Justice, Equality and Law Reform has said he will take, and Senator Brian Hayes has put forward a Bill with regard to fines. We will try to get through Private Members' business systematically.

Senator Terry raised the issue of women who have been forced to give up work. She asked why they must wait until September for the scheme to begin and why it could not begin earlier, perhaps in April. I will put that question to the Minister. The Senator also asked about child care services. I recommend reading the Minister for Social and Family Affairs's excellent budget factsheet in which he has outlined comprehensive information with regard to children, carers and parents. Senator Hanafin wished to be associated with the call for a debate on the landmine issue.

Senator Bradford referred to decentralisation, which we discussed with the Minister earlier in this session. I am aware the Senator has European duties. The Minister of State, Deputy Parlon, addressed the issue briefly last night. The Senator is incorrect to suggest that the decentralisation programme has been entirely unsuccessful, as there have been significant successes in Tullamore, Athlone, Longford and Roscommon. Public servants are pouring into the areas to which jobs are being decentralised. While the programme may not be 100% successful, there is

[Ms O'Rourke.]

no point in denying that it has had some success. It was incorrect of Senator Bradford to suggest — I took down what he said — that the programme has gone “entirely off the rails”.

Mr. B. Hayes: It has gone slightly off the rails.

Mr. Cummins: It is not even 33% successful.

Mr. Coghlan: What about Birr?

Ms O'Rourke: If the former Minister, Charlie McCreavy, had not set out his stall in good and bold headlines, we would not have got anywhere. The process of decentralisation would not even have started. I resent the suggestion made by some people — I do not refer to Senator Bradford or anybody else in this House — that all life is in Dublin. There is a great deal of wisdom, good life, proper decision-making and a decent standard of living outside the Pale.

Mr. B. Hayes: Hear, hear.

Ms O'Rourke: Senator Maurice Hayes wanted to be associated with the proposal to agree a composite motion on the issue of landmines. He paid a great tribute to the thoughts and comments of Senator Jim Walsh. This is a sensitive matter. I agree with Senator Hayes that the manner in which we deal with the memory of historical matters is hugely important. We know that Senator Walsh is one of the most eminent Members of this House. It is no mark against him that Senator Hayes addressed the matter in a very sensitive fashion. The Seanad is lucky to benefit from the voices of Senators Walsh and Hayes. I ask Senator Maurice Hayes not to blush too much when I say that he brings great dignity, knowledge and professionalism to his job.

Senator John Paul Phelan picked up on the point made by Senator Terry about decentralisation.

Senator Ó Murchú said that he is inclined to agree with Senator Jim Walsh in the debate about foreign and sovereign Governments.

Order of Business agreed to.

Criminal Justice (Drug Trafficking) Act, 1996: Referral to Joint Committee.

Ms O'Rourke: I move:

That the proposal that Seanad Éireann resolves that sections 2, 3, 4, 5 and 6 of the Criminal Justice (Drug Trafficking) Act 1996 (No. 29 of 1996), shall continue in operation for the period ending on 31st December, 2008, be referred to the Joint Committee on Justice, Equality, Defence and Women's Rights, in accordance with paragraph (1) (Seanad) of the Orders of Reference of that Committee, which, not later than 14th December, 2006, shall send a message to the Seanad in the manner prescribed in Standing

Order 67, and Standing Order 69(2) shall accordingly apply.

Question put and agreed to.

Energy (Miscellaneous Provisions) Bill 2006: Committee Stage and Remaining Stages.

Acting Chairman (Mr. Moylan): I welcome the Minister for Communications, Marine and Natural Resources, Deputy Noel Dempsey, to the House.

SECTION 1.

Mr. Finucane: I move amendment No. 1:

In page 5, subsection (1), line 25, after “Energy” to insert “Regulation”.

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): While I can understand the reason for Senator Finucane's proposal, I do not think he has proposed the best means of executing his intention. The Short Title of the Bill is simply a shorthand reference to it. The real name of the Bill is contained in the Long Title, which was changed during the Bill's progression through the Dáil. There is a precedent for this in the Energy (Miscellaneous Provisions) Act 1995, which contains a number of provisions outside the scope of energy matters, including the payment of debts by Bord na Móna. There is a further precedent in the Maritime Safety Act 2005, which amends the landlord and tenant legislation. In both cases, the additional matters covered in the Bill are referred to in the Long Titles of the Acts. Senator Finucane's proposal is unnecessary because the Long Title of the Bill covers the matters in question — it is not necessary to mention them in the Short Title.

Amendment, by leave, withdrawn.

Acting Chairman: As amendments Nos. 2, 3, 5, 6, 22, 26, 27, 29 to 33, inclusive, 35, 40 to 42, inclusive, and 44 are related, they may be discussed together by agreement.

Mr. Finucane: I move amendment No. 2:

In page 5, subsection (2), line 31, to delete “provisions” and substitute “provisions, subject to Oireachtas approval”.

Having discussed this matter with my colleagues, I have decided not to pursue the amendments in this group. I understand that the Minister gave a satisfactory response when the amendments were considered in the other House.

Amendment, by leave, withdrawn.

Section 1 agreed to.

Section 2 agreed to.

SECTION 3.

Amendment No. 3 not moved.

Mr. Finucane: I move amendment No. 4:

In page 6, line 35, after “Commission” to insert the following:

“or from the Commission on the Direction of the Minister”.

Mr. N. Dempsey: I do not propose to accept this amendment because the directions of the commission referred to in the proposed new section 9B(3)(b) of the 1999 Act relate to the operation and management of the single electricity market and some other day-to-day matters, including the power to direct the transmission system operator to undertake specific expenditure on the single electricity market. The directions in question also include directions aimed at resolving disputes between the transmission system operator and other persons, directions relating to transmission planning matters and directions concerning the infrastructure agreement with the transmission system operator. The Oireachtas has already decided that the regulator is responsible for all of those matters.

The Minister has no role in such day-to-day market operational issues. Therefore, this amendment is inappropriate and unnecessary. In some instances, it would mean that the Minister would have to try to run the electricity system. I would pass on that one, with all due respect to my enormous capabilities.

Amendment, by leave, withdrawn.

Amendments Nos. 5 and 6 not moved.

Mr. Finucane: I move amendment No. 7:

In page 7, line 21, after “seas” to insert “as specified in the Schedule”.

Mr. N. Dempsey: I am advised that the island of Ireland, which Senator Finucane is concerned to define in this section, is defined in section 3 in the context of and for the sole purposes of the regulation of an all-island wholesale electricity market, as set out in the Long Title and as prescribed in section 3(6). It is not defined for any other purposes. It is a very specific definition. It is drafted in such a specific way to ensure that in developing the all-island electricity market, account is taken of all the islands within Irish jurisdiction. As the definition is provided solely for the purposes of this section, it could never be invoked in relation to other matters such as mineral exploration rights and fisheries. A more detailed definition of Irish seas is not necessary for the specific purposes of this legislation. It is specific to this legislation. It cannot be used in

any other legislation and, therefore, it would not be right to amend it as it stands.

Mr. Finucane: I presume the Minister would never consider it in the context of legislation that might be required to deal with a controversy like Rockall.

Mr. Dempsey: No.

Amendment, by leave, withdrawn.

Acting Chairman: Amendments Nos. 8 and 9 are related and may be discussed together. Is that agreed? Agreed.

Mr. Finucane: I move amendment No. 8:

In page 7, line 39, after “services” to insert “affecting other forms of home heating”.

Mr. Dempsey: I accept the reasoning behind the amendments. Senator Finucane is trying to achieve as wide a coverage as possible but the wording of the amendment is unnecessarily restrictive in that it appears to seek to confine energy efficiency services to other forms of home heating only.

The term “as may, from time to time, be determined by the Minister” in amendment No. 9 is superfluous because the term used in subsection (e) is all-embracing. What the Senator is trying to achieve is more properly achieved in the Bill as outlined.

Amendment, by leave, withdrawn.

Amendment No. 9 not moved.

Section 3 agreed to.

SECTION 4.

Acting Chairman: Amendment No. 10 is in the name of Senator Finucane. Amendments Nos. 10 and 13 are related and may be discussed together by agreement. Is that agreed? Agreed.

Amendment No. 10 not moved.

Acting Chairman: Amendments Nos. 11 and 12 are related and may be discussed together. Is that agreed? Agreed.

Mr. Finucane: I move amendment No. 11:

In page 12, line 19, after “contractor” to insert “and individual”.

Mr. Dempsey: This amendment is not appropriate because the appeal relates to the decision to suspend or revoke a registered electrical contractor. The registered electrical contractor, therefore, must be informed of the decision of the Commission for Energy Regulation and not any other individual.

[Mr. Dempsey.]

Amendment No. 12 is not necessary because any decision of CER regarding an individual decision of a designated body will take into consideration the circumstances involved. The current wording will cover what the Senator is trying to achieve in his amendment. The Senator might want certainty in that regard but it is covered in the section as stands.

Amendment, by leave, withdrawn.

Amendments Nos. 12 and 13 not moved.

Acting Chairman: Amendments Nos. 14 and 15 are related and may be discussed together by agreement. Is that agreed? Agreed.

Mr. Finucane: I move amendment No. 14:

In page 13, line 45, to delete “inspection” and substitute the following:

“inspection, within a reasonable time and taking the circumstances into account.”.

Mr. Dempsey: The current wording already addresses the proposals. I accept the Senator was probably trying to ensure certainty but the legal people tell me the current wording addresses the proposals and that the amendments are not necessary.

Amendment, by leave, withdrawn.

Amendments Nos. 15 to 17, inclusive, not moved.

Mr. Finucane: I move amendment No. 18:

In page 14, line 16, after “maintained,” to insert the following:

“and”

(c) a standard checklist.”.

Mr. Dempsey: What the Senator is trying to achieve in this amendment will be in place. The various procedures to be followed by registered electrical contractors will be specified in detail in the criteria document the Commission for Energy Regulation will be obliged to prepare. What the Senator is trying to achieve, therefore, is already catered for in the Bill. The CER, which is an independent body, will prepare that list.

Mr. Finucane: Will it be prepared when the legislation is passed?

Mr. Dempsey: Yes.

Amendment, by leave, withdrawn.

Amendment No. 19 not moved.

Acting Chairman: Amendment No. 20 is in the name of Senator Finucane. Amendments Nos. 20, 21 and 45 to 48, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

Mr. Finucane: I move amendment No. 20:

In page 15, line 48, to delete “€5,000” and substitute “€8,000”.

Mr. Dempsey: The advice from the Attorney General’s office is that the €5,000 fine is the standard maximum allowed in this case, although the maximum can be updated from time to time. It is for the courts to determine the actual amount of the fine subject to the maximum amount.

Regarding the €15,000 fine, it is appropriate given the characteristics and the gravity of the offences involved. On that basis I ask the Senator to withdraw the amendment.

Mr. Finucane: I accept what the Minister has said and will withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments Nos. 21 and 22 not moved.

Section 4 agreed to.

SECTION 5.

Acting Chairman: Amendment No. 23 is a Government amendment. Amendments Nos. 23, 24 and 51 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 23:

In page 16, to delete lines 47 to 49 and in page 17, to delete lines 1 to 12 and substitute the following:

“(c) to supply electricity to final customers which is generated by that supplier or purchased by that supplier and which electricity is generated, in whole or in part, using renewable, sustainable or alternative forms of energy, in accordance with any trading arrangements provided for in regulations made under section 9(1)(d),

(d) to supply electricity to final customers which is generated by that supplier or purchased by that supplier and which electricity is generated, in whole or in part, using combined heat and power, in accordance with any trading arrangements provided for in regulations made from time to time by the Commission under section 9(1)(d),”.

Mr. Dempsey: Some of these amendments are technical in their appearance. They were drafted on foot of consultations with the Parliamentary Counsel’s office. There is no policy change

regarding the sections but they are proposed to clarify some of the provisions. On the advice of the Parliamentary Counsel, amendments Nos. 23 and 34 amend the wording slightly regarding the green and combined heat and power, CHP, licences to provide more clarity to the text. The purpose of the provisions is to ensure that CER has sufficient flexibility in providing for trading arrangements for green and CHP licence holders. The original text contained a slight ambiguity regarding the purchase of electricity generated from CHP and renewable, sustainable or alternative forms of energy. The new text removes that ambiguity and makes it clear trading can take place.

Amendment No. 51 replaces the formula used for calculating the relative amount of primary energy savings provided by combined heat and power production as it was identified that it must be updated for clarity and consistency with the relevant European Union directive from which it is derived. The formula is outlined.

Mr. Finucane: I accept what the Minister has said.

Mr. Kenneally: Would the Minister like to take us through the formula?

Mr. Dempsey: No.

Amendment agreed to.

Section 5, as amended, agreed to.

SECTION 6.

Government amendment No. 24:

In page 19, to delete lines 40 to 48 and substitute the following:

“(d) to supply electricity to final customers which is generated by that supplier or purchased by that supplier, and which electricity is generated, in whole or in part, using high efficiency combined heat and power, in accordance with the trading arrangements provided for in regulations made by the Commission under section 9(1)(d),”.

Amendment agreed to.

Section 6, as amended, agreed to.

Amendment No. 25 not moved.

Section 7 agreed to.

SECTION 8.

Amendments Nos. 26 and 27 not moved.

Mr. Finucane: I move amendment No. 28:

In page 23, line 20, after “plan” to insert “following a competitive tender process”.

Mr. Dempsey: The issue of competitive tendering seeks to remove the option of the CER securing the construction of an interconnector by any means other than a competitive tender. I fully understand the reason the Senator tabled this amendment but I assure him that a competitive tender is the preferred option. It is difficult to envisage a situation where a tender process would not be put in place for an interconnector. I am advised that it should not be the only means open to the CER to secure the construction of an interconnector in case an emergency or a matter of urgency arose and the CER needed a number of options.

With regard to the Senator’s concern for tabling this amendment, namely, that an interconnector would be constructed and it would be simply a matter of the CER selecting a contractor, that is not what is intended. It is not proposed to amend the provision. Where an interconnector is part of the Irish transmission system and owned by the ESB, it would fall to the ESB to procure or carry out the works to construct it. That is what we are trying to cover in this section. If the ESB had responsibility for a North-South interconnector and it procured it, it would be subject to the normal procedures for State and semi-State companies applying to EU procurement rules. I am advised that the wording must be as it stands to allow for that. The only other circumstances that comes to mind where shortcuts might be taken in securing the construction of an interconnector would be in an emergency situation but again public procurement rules would apply in such a case.

Mr. Finucane: There has been much talk about interconnectors but who would be the eventual owner of such an interconnector?

Mr. Dempsey: With regard to a North-South interconnector, as it would be part of the transmission system in this country, our side of the Border would be owned by the ESB. With regard to an East-West interconnector, the Government has decided it would be owned by EirGrid, the independent transmissions systems operator.

Amendment, by leave, withdrawn.

Amendments Nos. 29 to 31, inclusive, not moved.

Section 8 agreed to.

Amendments Nos. 32 and 33 not moved.

Section 9 agreed to.

SECTION 10.

Acting Chairman: Amendments Nos. 34, 36, 38 and 39 are related, amendment No. 37 is an alternative to amendment No. 36, therefore, amend-

[Acting Chairman.]

ments Nos. 34, 36 to 39, inclusive, may be discussed together by agreement.

Government amendment No. 34:

In page 35, subsection (2), between lines 36 and 37, to insert the following:

“(a) in paragraph 2, by the deletion of ”, to hold office in a full-time capacity for a period of not less than three and not more than five years,”

Mr. N. Dempsey: I am not sure if the Acting Chairman said that Opposition amendment No. 37 is included in this grouping. Is it included?

Acting Chairman: Yes.

Mr. Dempsey: Government amendments Nos. 34, 36, 38 and 39 are consequential on my acceptance during Report Stage in the Dáil of an Opposition amendment to provide for a rotating chairperson for the Commission for Energy Regulation. I accepted the argument that it is a useful mechanism to allow greater flexibility in the CER decision-making processes and it is consistent with the arrangements currently in place for the chairperson of ComReg.

The text of the Opposition amendment allowed me, as Minister, by direction, to provide for a rotating chair. I accepted the amendment on the floor of the other House but the Parliamentary Counsel indicated that the wording of it is not consistent with the provisions for the Minister to appoint a chairperson. We decided to bring this legislation in line with the legislative and administrative arrangements for the appointment of the ComReg chairperson. ComReg legislation does not specifically provide for a rotating chair, instead it allows for greater flexibility for the Minister to appoint the chairperson and rotate the position as appropriate.

The Electricity Regulation Act 1999 provides for a chairperson of the CER to be appointed for a minimum of three years and a maximum of five years. That is inconsistent with the concept of a rotating chair. The minimum and maximum terms are removed by amendment No. 34. The term of office will be determined when appointing a chairperson. In the case of ComReg, we have allowed everybody to have his or her turn in one-year chairmanships and we reached the point where we are appointing individuals for two years.

In order to provide greater flexibility for the Minister in appointing a chairperson and to provide for internal consistency with the 1999 Act as well as consistency with the underpinning legislation for ComReg, amendments Nos. 36 and 38 delete the amendment which would have required me, as Minister, to make a direction in

order to rotate the chair. The chair may now be rotated simply through the terms and conditions of appointment. The 1999 Act states that a commissioner may serve a maximum of two terms of office but amendment No. 39 makes minor changes to the text to clarify that this is a maximum of two terms as a member of the CER rather than as chairperson for the CER.

The opposition amendment No. 37 is not acceptable on the basis that it is much too detailed for primary legislation. It is an administrative matter for the CER to deal with in terms of its own procedures.

Amendment agreed to.

Amendment 35 not moved.

Government amendment No. 36:

In page 26, subsection (2), lines 9 and 10, to delete “have a second and casting vote.” and substitute “have a second and casting vote.”.

Amendment agreed to.

Amendment No. 37 not moved.

Government amendment No. 38:

In page 26, subsection (2), to delete lines 11 to 15.

Amendment agreed to.

Government amendment No. 39:

In page 26, subsection (2), between lines 15 and 16, to insert the following:

“(b) in paragraph 3 by the substitution of “A member of the Commission whose term of office expires” for “A member of the Commission, including the chairperson, whose term of office expires”,

(c) in paragraph 4 by the substitution of “two terms of office as a member” for “two terms of office”,

Amendment agreed to.

Section 10, as amended, agreed to.

Section 11 agreed to.

Amendments Nos. 40 to 42, inclusive, not moved.

Section 12 agreed to.

SECTION 13.

Mr. Finucane: I move amendment No. 43:

In page 28, between lines 38 and 39, to insert the following:

“A9F.—It shall be a function of the commission to establish standards of training of heating and plumbing contractors in relation to the safety of home heating and plumbing installations.”.

Mr. Dempsey: I cannot accept this amendment because through its gas technical standards committee, the National Standards Authority of Ireland established the Irish technical standards and code of practice for the safe transmission, distribution and utilisation of natural gas. These standards are based on international best practice in the sector. They underpin the content for the training syllabi for the gas installers. Sustainable Energy Ireland has programmes to promote improved training of central heating installers, with a particular emphasis on energy efficient technologies. The scope of the Senator's amendment is far too narrow and the Bill is much wider than that. The proposed additional functions of the commission on downstream natural gas safety, including the regulation and certification of installers and the proposed regulatory framework, are set out in section 12. Anything the Senator wanted to achieve with his amendment is catered for in this section and in section 12.

Mr. Finucane: I accept the Minister's reassurance and he has certainly gone to great detail to improve standards. He would have been concerned about what happened in the past regarding fatalities in this area. I accept that he has tightened it up considerably, so I will withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments Nos. 44 to 48, inclusive, not moved.

Section 13 agreed to.

Sections 14 to 16, inclusive, agreed to.

Amendment No. 49 not moved.

Sections 17 to 20, inclusive, agreed to.

Amendment No. 50 not moved.

Sections 21 to 30, inclusive, agreed to.

SCHEDULE.

Government amendment No. 51:

In page 61, to delete lines 1 to 5, and substitute the following:

“

$$PES = \left[1 - \frac{1}{\frac{CHP \eta_H}{Ref \eta_H} + \frac{CHP \eta_E}{Ref \eta_E}} \right] \times 100\%$$

Where:

”.

Amendment agreed to.

Schedule, as amended, agreed to.

Title agreed to.

Bill reported with amendments and received for final consideration.

Question proposed: “That the Bill do now pass.”

Mr. Kenneally: I thank the Minister for coming to the House this morning and the Minister of State, Deputy Browne, for being in the House when we discussed the Bill the last day. I thank Senator Finucane for his co-operation in bringing this Bill through the House so quickly.

Mr. Finucane: I thank Senator Kenneally for his remarks. Energy has become so vital that the Minister now has a very important brief. This is a very important Bill for the future. The main message in the Bill is the safety factor and it will re-assure many people. Therefore, I am pleased that we were able to finish it today.

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): I thank everybody involved in the House for their speedy consideration of this Bill. I especially thank Senator Finucane for his co-operation today. It is an important Bill and there are provisions in it which have been supported by all sides. I also thank Senator Kenneally as Acting Leader of the House, as well as the staff of the House for their assistance.

Question put and agreed to.

Sitting suspended at 12 p.m. and resumed at 1 p.m.

Health (Nursing Homes) (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. S. Power): I am pleased to have the opportunity to introduce to the House

[Mr. S. Power.]

today the Second Stage of the Health (Nursing Homes)(Amendment) Bill 2006. Government policy in relation to older people has long been to support them to live in dignity and independence in their own homes and communities for as long as possible and to support appropriate long-term care where this is no longer possible. It was for this reason that the nursing homes subvention scheme was introduced in 1993. The aim of this scheme is to provide financial assistance to older people towards the cost of maintenance in a private nursing home. The Bill is designed to ensure that the existing subvention scheme for private nursing home care is grounded in primary legislation, and it will also help the Health Service Executive to implement the scheme on a standardised basis across the country.

Before getting into the detail of the Bill, I want to outline some of the major developments that the Government is pursuing to improve services for older people. It has been the policy of successive Governments to endeavour to help older people maintain themselves in the community — while at the same time providing for appropriate residential care, where living in the community is no longer possible. The policy of this Government as regards the development and delivery of services for older people is to maintain them in dignity and independence at home for as long as possible, in accordance with their wishes.

The last two years have seen an increased focus on services for older people, particularly in relation to long term care, whether residential or community based. Additional funding for services for older people and palliative care amounting to €150 million was allocated by the Government in the 2006 budget — an additional €110 million for 2006 and €40 million for 2007. As part of the budget yesterday, additional full year funding of €170 million — €120 million is for allocation in 2007 with the rest for 2008 — was announced to improve services for older people and palliative care. This is the largest ever annual increase in funding for older people and clearly shows the Government's commitment to improving the quality of service provided to older citizens.

Approximately two-thirds of the money announced in 2006 was allocated to community support for older people. The announcement yesterday will continue this philosophy as the funding will provide for 2,000 additional home care packages, to benefit over 4,000 older people. The number of home help hours will be increased by 780,000 in 2007. An additional €3.5 million is being allocated to further increase day and respite care. This is in line with the focus on keeping people in their own homes, in independence and dignity, with proper health and social support systems in place in the form of home care packages, increased home help hours and increased day and respite care places.

Not every older person can, or wishes to, remain in his or her own home. Of the budget investment that I have outlined, €60 million has been allocated in 2007 towards the provision of additional long-stay care bed capacity, with a follow on cost of €22 million in 2008. This is a significant investment, ensuring that those who can no longer be cared for at home, for whatever reasons, have access to appropriate long-term care.

I now wish to briefly discuss the background to the subvention scheme. The nursing homes subvention scheme was introduced in 1993 on foot of the Health (Nursing Homes) Act 1990 and the subsequent Nursing Homes (Subvention) Regulations 1993, which were made under the 1990 Act. The purpose of the subvention scheme is to provide financial assistance to older people towards the cost of maintenance in a private nursing home. The scheme does not cover, and was never intended to cover, the full cost of private nursing home care. The 1993 regulations provide that a subvention can be paid to an applicant qualifying on both dependency and means grounds. Dependency is assessed according to an applicant's ability to carry out the tasks of daily living, such as washing and dressing. There are three levels of dependency set out in the regulations — maximum, high and medium, which are referred to in the Bill as categories I, II and III.

The maximum rate of subvention that may be payable to a person is determined in the first instance by his or her level of dependency, and the current maximum rates of subvention, as set out in the regulations, are €114.30 per week for a person of medium dependency, €152.40 per week for a person classed as high dependency, and €190.50 per week for a person at the maximum rate of dependency.

Once a person's rate of dependency has been determined, the HSE then carries out a financial assessment of the applicant which takes into account the value of his or her income and assets, subject to certain exclusions as outlined in the regulations. The appropriate level of subvention to be paid is then determined, based on the level of dependency and the outcome of the financial assessment of the applicant, and may result in the maximum level or a reduced level of subvention, as appropriate to that dependency level, being paid, or indeed no subvention being paid. Where a person is married or cohabiting, the means assessment is based on half of the combined means of the couple.

The Health Service Executive has the discretion to pay an enhanced rate of subvention, over and above the rates I have just outlined, in a case, for example, where personal funds are exhausted. This discretion regarding individual cases is a matter for the HSE. The average rate of subvention paid by the HSE generally exceeds the current approved basic rates.

As previously stated, the subvention scheme is provided for in the Nursing Homes (Subvention)

Regulations 1993 at present. These regulations, which are made under section 7 of the Health (Nursing Homes) Act 1990, outline the scheme in detail, including such matters as how an application should be made or determined, how to appeal a decision made under the scheme and so on. Legal advice received from the Attorney General has indicated that new primary legislation is needed to underpin sufficiently the principles and policies of the scheme.

Sections 6 and 7 of the Health (Nursing Homes) Act 1990 were amended by section 3 of the Health (Miscellaneous Provisions) Act 2001. The purpose of this amendment was to incorporate principles and policies into the 1990 Act that would facilitate the making of new subvention regulations under the Act. However, the available legal advice indicates that section 3 of the 2001 Act does not adequately provide for the making of regulations under that Act. Consequently, section 3 of the 2001 Act has not been commenced and this section will fall on the enactment of this Bill.

The Ministers for Health and Children and Social and Family Affairs established last year an interdepartmental group to examine the entire subject of long-term care for older people. The group included senior officials from the Departments of the Taoiseach, Health and Children, Social and Family Affairs and Finance and was chaired by the Department of the Taoiseach. The group had a number of reports available to it, including the Mercer report on the future financing of long-term care in Ireland, which was commissioned by the Department of Social and Family Affairs. The group also considered Professor Eamon O'Shea's report, Review of the Nursing Home Subvention Scheme, commissioned by the Department of Health and Children. Both reports were published in 2003.

The group reported to the Government earlier this year and, consequently, the Government is considering policies on long-term care for older people. Several principles underlying this policy were agreed with the social partners in Towards 2016. For example, these principles specify there should be a single standardised national needs assessment for older people who need care. Moreover, the use of community and home-based care should be maximised. When required, residential care should be of a high quality and there should be appropriate and equitable levels of co-payment by care recipients based on a national standardised financial assessment. The level of support for residential care should be indifferent as to whether such care is provided in a public or private facility. The financial model to support any new arrangements must also be financially sustainable.

Consultation has taken place with the Departments of Finance and Social and Family Affairs, the Office of the Attorney General, the Office of the Taoiseach and the Health Service Executive in respect of the provisions contained in the Bill.

There will be ongoing discussions with the relevant Departments regarding any developments or changes made in the area of services for older people, including any regulations to be made under this Bill. Naturally, discussions have taken place throughout the drafting of the Bill with the Health Service Executive, which has responsibility for the implementation of the subvention scheme.

The purpose of this Bill is solely to put the existing subvention arrangements on a sound legal footing and to underpin sufficiently the principles and policies of the current subvention scheme. I now propose to outline briefly the main provisions of the Bill.

Section 1 contains a minor drafting provision and simply will insert a heading into the Health (Nursing Homes) Act 1990. Section 2 of the Bill will amend section 2 of the Health (Nursing Homes) Act 1990 to specify that subvention shall only be paid to a person maintained in premises in which a majority of its residents are members of a religious order or priests of any religion if the premises are a registered nursing home.

Section 3 is the main section of the Bill. It will replace section 7 of the Health (Nursing Homes) Act 1990 by inserting the provisions of the 1993 Nursing Homes (Subvention) Regulations into primary legislation, after which those regulations will be revoked in the Bill. Given the length and amount of detail contained in this section, I propose to go through it subsection by subsection.

The new section 7 will define the various terms used in the Bill. Subsection 7A specifies that all dependent persons may make an application to the Health Service Executive, HSE, for a subvention. It specifies that making an application to the HSE is required and outlines the manner in which it must be made. It also provides for an offence in which false or misleading material is provided in a subvention application.

Subsection 7B provides that once the HSE receives an application for subvention, it shall arrange for an assessment to be carried out regarding the degree of dependency and the means of the applicant. The assessment to be carried out in this regard will be based on the applicant's ability to carry out the activities of daily living, such as walking and dressing. Other factors affecting an applicant's ability to care for himself or herself will also be taken into account, such as the receipt of medical services and family support.

The subsection provides that the person carrying out the assessment must be suitably qualified to do so in the opinion of the HSE and may or may not be an employee of the HSE. This will allow the HSE to arrange for suitable medically-qualified professionals, such as, for example, physiotherapists who are not employed directly by the HSE, to carry out such assessments. An amendment will be tabled on Committee Stage to reflect the change of names of the social welfare payments mentioned in this section.

[Mr. S. Power.]

Subsection 7B also provides that the HSE shall arrange for the means of an applicant to be assessed, either by an employee of the HSE or a person nominated in writing by the HSE. It provides that the financial assessment shall take into account all of the applicant's assets and sources of income, such as, salary, pension, savings, etc. It also provides that certain assets and income shall not be taken into account, including the applicant's principal private residence, where occupied by certain relatives as prescribed in the subsection, as well as the first €11,000 of the applicant's assets. When an applicant is married or cohabiting, the means assessment will be based on half of the combined means of the couple.

As for an applicant's property, where an applicant's principal residence is not continuously occupied by a relative as prescribed in the subsection, such as a relative whose sole income is the old age pension or a spouse, the HSE shall exclude 95% of the estimated market value of the principal residence from the financial assessment of the applicant. This means that an imputed income of 5% of the market value of the principal residence shall be taken into account.

The subsection further provides that the principal residence of the applicant will not be taken into account if that could give rise to destitution or homelessness of a person with a close connection to the applicant. This provision is to allow for exceptional circumstances and will generally apply in the case of a relative who does not fall into the categories prescribed in the subsection.

Subsection 7C outlines the basis on which the HSE will determine subvention applications, the amount of subvention payable and the grounds on which it may refuse to pay a subvention. This subsection also provides that the HSE may pay an enhanced rate of subvention, referred to in the Bill as an alternative subvention, when a person cannot meet the costs of care without undue hardship, the amount of alternative subvention having been decided after taking available resources into account.

The section also provides the HSE with discretion to refuse to pay a subvention if the value of the applicant's assets exceeds a certain threshold, or the applicant's principal residence exceeds a certain threshold and his or her income is above a certain level. Such thresholds were recently increased by way of the Health (Nursing Home)(Amendment) Regulations 2005 and the following thresholds apply at present. The threshold for assets to be disregarded for the purposes of subvention assessment is €11,000, the asset threshold above which subvention may be refused is €36,000 and the income threshold above which a subvention may be refused is €36,000. The threshold of principal residence value above which subvention may be refused is €500,000 or more when the residence is located in the Dublin area or €300,000 or more when the residence is located outside the Dublin area,

when the income of the applicant is above the threshold of €9,000. The Dublin area is defined as Dublin city and county.

Members should note that while the threshold regarding income was not included in previous regulations, it has been added to this Bill for consistency. This section also provides that the HSE can, at its discretion, pay a subvention to the proprietor of the nursing home in question instead of directly to the applicant himself or herself.

Under subsection 7D, the HSE can arrange for a review to be carried out on the degree of dependency or means of a person who is in receipt of a subvention. When the HSE is satisfied the person no longer qualifies for subvention or qualifies for a different rate of subvention, it can arrange for the payment to stop or be altered appropriately and for notice of same to be sent to the applicant and the nursing home proprietor, if appropriate. When a person's subvention payment is being stopped or decreased, the HSE will not implement this decision for 60 days to give the person time to get his or her affairs in order.

Subsection 7E allows for an appeals mechanism against decisions made by the HSE in respect of an application not being considered because some condition of the application has not been met, the level of subvention to be paid, or a decision to pay a different level of subvention following a review.

The HSE must appoint a person to consider the appeal who may be, but is not necessarily, an employee of the HSE. The person must consider the appeal based on guidelines issued by the HSE. He or she must make his or her decision as soon as is reasonably possible and must send a copy of that decision in writing, together with the reasons for the decision, to the person making the appeal. A further appeal is also possible regarding the decision of the High Court, whose decision is final, except where a further appeal is made to the Supreme Court on a specific point of law.

Subsection 7F states that a nursing home owner must inform the HSE in writing of the death, discharge or permanent departure of a resident within 48 hours. This is to ensure that subventions do not continue to be paid in respect of persons no longer in the home. When a nursing home proposes to discharge a person, its proprietor must inform the HSE in writing 14 days in advance and must outline the reasons for so doing. The Bill provides for an offence where a nursing home proprietor does not fulfil his or her obligations in either of these situations. This subsection also provides that where a person in a nursing home starts or ceases to be paid a subvention, the Health Service Executive will inform that nursing home proprietor of this fact as soon as possible.

The new section 7G provides that the HSE may recover all or part of any payment or overpayment if the HSE is satisfied that an overpayment occurred or that the payment was procured through fraud or misrepresentation. The

new section 7H allows the Minister to make regulations, with the consent of the Minister for Finance, on the rates of subvention payable, the amount of assets to be disregarded when assessing a person for subvention, the thresholds above which subvention may be refused, the percentage of the family home to be disregarded and the percentage of the spousal income to be assessed, as required. It provides that, when making regulations, the Minister will take into account the cost of living and nursing home care in the State and the rate of inflation, as appropriate.

The rates of subvention payable relative to a person's degree of dependency are also laid out in this section. This section provides that the Minister will only make regulations on the rates of subvention after taking into account available resources and the prevailing cost of nursing home care for persons falling under the various dependency categories. It also provides that the maximum rate of subvention that may be payable to a person, based on his or her level of dependency, is reduced by the amount by which the person's means exceed the weekly rate of the old age non-contributory pension, or State pension as it is now known, payable at the time of assessment. This represents no change from current practice. This section outlines the basis on which it is decided whether a person falls under one of the categories of dependency — category I, II and III of dependency, otherwise known as maximum, high and medium dependency — based on such factors as the person's degree of mobility and the extent to which he or she is confused or disturbed.

The new section 7I provides that where a person is in receipt of subvention immediately before the passing of this Bill, he or she will continue to receive a level of subvention equivalent to what he or she received prior to its enactment. However, the HSE may still carry out a review of the degree of dependency and means of any person in receipt of subvention at any time and may discontinue paying subvention or pay a different level of subvention if the review shows that he or she is not being paid the correct level of subvention. The new section 7J provides for guidelines to be issued by the HSE to provide practical guidance in respect of the provisions of the Bill and how the subvention scheme will work, for example, the process to be followed to decide the amount of subvention to be paid to an applicant.

Sections 4 and 5, like section 1, are minor technical provisions which insert a heading into the Health (Nursing Homes) Act 1990. Section 6 replaces section 14 of the Health (Nursing Homes) Act 1990 with a new section, which provides that regulations will only be made after a resolution approving the regulations has been passed by both Houses of the Oireachtas. At present, regulations are made before being laid before both Houses of the Oireachtas, which can subsequently annul them.

Sections 7 to 10 also contain minor drafting and technical provisions. Section 7 repeals section 3 of the Health (Miscellaneous Provisions) Act 2001. Section 8 amends Schedule 7 of the Health Act 2004 by deleting item 6 in Part 4, as this item updates a section of the 1990 Act that is being replaced under section 3 of this Bill. Section 9 revokes the 1993 Nursing Homes (Subvention) Regulations, as the provisions contained in those regulations are now contained in the Bill. Section 10 amends section 2 of the Health (Repayment Scheme) Act by replacing section 3(10)(c) with section 3(10) in the definition of "spouse". This is a technical provision. Section 10 also contains a provision relating to commencement. Section 11 cites the Short Title of the Bill and cites the Health Acts of 1947 to 2006 collectively as the Health Acts 1947 to 2006.

At this stage, I want to speak briefly about the Health (Nursing Homes)(Amendment) Bill in the context of other developments and legislation ongoing at this time which are related to services for older people. The Health (Repayment Scheme) Act 2006 came into effect on 30 June 2006. The repayment scheme was launched publicly by the Health Service Executive, HSE, and the scheme administrator, KPMG/McCann Fitzgerald, on 14 August 2006. A national advertising campaign and a helpline also commenced on this date.

The HSE has informed the Department that more than 22,000 forms have been submitted to the scheme administrator applying for repayments and these applications are being processed at present. The timeframe for payment is predicated primarily on whether the applicant is alive or whether the application is being made by a family member or the estate of a deceased person. Priority is being given to pay those who are still alive, of whom it is estimated there are 15,000. The HSE has advised that the first payments have now commenced. It is expected that the bulk of payments to estates will commence in the spring of 2007. Provision has been made for applications to be received up to 1 January 2008.

The Health Bill 2006 will establish the Health Information and Quality Authority, HIQA, and will put the social services inspectorate, SSI, on a statutory basis within the HIQA. The intention is that the SSI will be required to monitor residential services provided to older persons against standards adopted or set by the HIQA. This is in accordance with the commitment in the health strategy, Quality and Fairness — A Health System for You, to extend the remit of the social services inspectorate to other social services, including residential services for older people. As previously stated, my Department is in discussion with the interim HIQA on standards for residential care for older people.

The fundamental objective of the Health Bill 2006 is a health and personal social services system which has quality and safety embedded at all levels and in all settings. The registration and

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inspection system for residential services will provide a quality assured residential system for persons in receipt of these services. The inspectional system in the Bill will take account of situations where centres are not in compliance with regulations and standards and provide for attaching conditions to registration or cancellation of registration, if appropriate. This will ensure that, ultimately, only services which are provided in line with the regulations and meet the standards set by the HIQA will be allowed to operate. It is, therefore, a priority to establish the HIQA and the Office of the Chief Inspector of Social Services on a statutory basis. The Department has been working very closely with the Office of the Parliamentary Counsel and work is at an advanced stage on the draft provisions. It is intended to have the Bill published before the end of the year.

The HIQA's main role will be to enforce internal quality assurance practices at all levels within the health delivery system and at the same time bring external quality assurance to bear in an objective manner. To that end, the Bill ensures that quality of services will be monitored and evaluated against transparent standards on an ongoing basis. Safety is the most fundamental aspect of health care quality.

The Minister established a working group last year to produce draft standards for all long-term residential settings — public, private and voluntary — in conjunction with the relevant bodies. My Department is in discussion with the interim HIQA on a consultation process on these draft standards. The standards are based on legislation, research findings and best practice. While broad in scope, the standards acknowledge the unique and complex needs of the individual person at the centre of care and the additional specific knowledge, skills and facilities needed for service providers to deliver a person-centred and comprehensive service that promotes health, well-being and quality of life.

The standards are set out in two parts. The first part focuses on the standards concerning the resident as an individual, and includes personal identity, social connectedness, rights, and health care. The second part focuses on the organisational aspects of the residential care setting and includes management, staffing, care environment, and health and safety.

The Department is also preparing legislation to update and clarify the current legislation on eligibility for services. The main aim is to make the system clearer and to bring it up to date with developments in service delivery and technology that have occurred since the Health Act 1970. The legislation will define specific health and personal services more clearly, define who should be eligible for what services, set out clear eligibility criteria, including for older people, and establish when and in what circumstances charges may be

made. It will also deal with an appeals framework.

I reiterate that this Government has made services for older people a priority by supporting older people to live in dignity and independence in their own homes and communities for as long as possible and, where that is no longer possible, by supporting the provision of quality long-term care. The significant progress that has been made in terms of the growth in funding available for this sector in recent years and, in particular, the investment package put in place in the 2006 budget is indicative of the Government's commitment to the ongoing development of health-funded services for older people.

This Bill will ensure that the existing subvention scheme for private nursing home care is grounded in primary legislation and will also go a long way towards helping the Health Service Executive to implement the scheme on a standardised basis throughout the country. Further announcements about the subvention scheme will be made shortly. These will have implications for the Bill and I intend bringing forward amendments at a later stage.

I commend the Bill to the House.

Mr. Browne: I welcome the Minister of State and his officials to the House. If the House agrees, I wish to share my time with Senator Finucane.

An Cathaoirleach: Is that agreed? Agreed.

Mr. Browne: The one political issue about which I have changed my mind is the need to plan ahead. Care for the elderly is an integral part of that concept. When I worked as a teacher, I took for granted the fact that I would have a nice pension on retirement. Many older people find themselves in nursing homes and, consequently, under severe financial hardship. The Bill is designed to place the current regulations in a legislative framework. Fine Gael's concern, however, is that it will make it more difficult to obtain basic or enhanced subventions. The Minister of State spoke of standardising subvention rates throughout the country but it remains to be seen how that will work in practice. The current system is far from perfect but at least there is some scope for appealing and making representations on individual cases. Will that scope be removed in the standardised approach? Will it be a black and white situation with someone being either under or over the limit?

I am puzzled by the provision whereby 5% of the value of a person's home is taken into account when calculating subvention rates. We will all die some day but we never know when and therein lies the difficulty. An elderly person could spend three weeks, six months or ten years in a nursing home. Due to advances in medicine, patients are now living longer. I am sure Members of the House have made representations to their local

geriatric hospitals to get people admitted, but the answer is always that all the beds are occupied and there is no regular turnover of patients. That is a particular problem in the case of women in nursing homes who tend to live there for two to three years on average. The lifespan of patients in nursing homes has increased, which has put great pressure on those involved. People seeking to have their elderly relatives accommodated in nursing homes must often seek places in private nursing homes.

The 5% rule is unfair in some cases. I was approached by a couple whose relative was in a nursing home. The man was single and in calculating the equation they were going to take into account 5% of the value of his house. He would not sign over the house at the time, however, so the couple were left in an impossible situation. Some days he was for signing over the house, while on other occasions he was against doing it.

There is an onus on everyone to plan ahead. Has the Minister of State considered the idea of encouraging people to set aside money in case they have to go into a nursing home? Could he discuss with the VHI a possible expansion of its scheme to give people that option? If they wished to pay extra money into the VHI, it might cover them for future nursing home charges. We should examine this matter and encourage people to plan ahead. None of us knows whether we will end up in a nursing home. My own grandfather had a peaceful death in his 80s. He got up one morning, did not feel well and so lay back in his own bed and died a few minutes later. It is a lovely way to go but others who are unwell may spend years in a nursing home. I am thinking of patients with Alzheimer's disease in particular. They are physically well but unfortunately their minds are not.

The Minister of State should negotiate with the health insurance companies or establish a scheme, similar to the SSIA's, whereby people could set aside money to cover the cost of nursing homes in later life. The population is living longer and the number of 65 year olds is set to treble in the coming years. That statistic represents a timebomb waiting to explode.

The Government's record on the elderly is not good and the Minister of State knows that. It took the Fine Gael Party to highlight the issue of medical cards and overcharging for nursing home care. As we have seen, the repayments are not coming on line as quickly as they should be. In addition, nursing home patients are still being charged for clothing and social outings. Recently, I received representations from a lady whose brother was in an institution for people with mental disability. She claims that he is being charged for clothing and social outings, including a trip to Lourdes. She is concerned about the interpretation of the regulations. Perhaps the Minister of State could re-examine whether it is appropriate to charge for such facilities?

Last year, the Minister for Health and Children, Deputy Harney, promised a better home-care package, yet there is great ambiguity over the increased number of home-care hours. In his speech, the Minister of State referred to additional hours. In the Dáil, Deputy Twomey said that home-care hours had been cut, a claim never conclusively refuted by the Minister.

Mr. S. Power: We provided 1.75 million extra hours this year. In yesterday's budget, that was increased by a further 780,000 home-help hours.

Mr. Browne: I raised this question because during the Kildare by-election I was taken to task on the doorstep by a lady involved in home care. I promised to check it out for her and the reply I received said that everything was perfect. However, that lady, who was involved in providing the home-care service, was adamant that the hours had been cut. I am confused about that point. Deputy Twomey took up the matter subsequently in the Dáil.

According to the Minister of State's speech, there seems to have been no consultation with outside groups concerning this Bill. The Department of the Taoiseach, the Department of Social and Family Affairs, and the Department of Health and Children were involved in the process, but no input appears to have been sought from outside bodies. No Opposition amendments were accepted in the Dáil debate, although the Minister of State referred to tabling amendments on Committee Stage.

As the Bill adopts a standardised approach, there is a danger that it will tie the hands of officials who hitherto had some discretion in awarding nursing home subventions. It remains to be seen what limits will be put in place. I plead with the Minister of State to seriously examine my suggestion to have some scheme in place so people can plan for the future. In that way, they would avoid the financial pressures of nursing home care in later life. The public would be happy to take that route. Half the population has private health insurance, while others choose not to avail of such schemes. Major costs are involved in nursing home care and much heartache could be prevented by establishing a scheme to provide for such future costs. Some elderly people can find themselves in difficult financial circumstances. This is also the case for relatives of single persons because 5% of the value of their property is taken into account. That is where difficulties can emerge.

Mr. Finucane: I hoped the Minister of State's speech would include some changes in nursing home subvention rates, although I understand he will table amendments later in order to revise those rates. I remind the Minister of State that those subvention rates have been in place since 2001, despite the changes that have occurred since then, including the increased cost of private

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nursing home care. In the past, when one applied for private nursing home care, family members were taken into consideration in factoring whether or not one was entitled to subvention. Even though that provision was removed subsequently, it happened in a surreptitious way. If one takes the maximum subvention level of €192 and the new pension rate of €200, that makes a total of €392. That means that a person attending a nursing home must find an extra €300 or more to cover the required costs. That is what is causing these problems.

While the provision involving family members may have been dropped from the application form, the same thing is now happening by stealth. In many cases, when an elderly person faces financial difficulty in paying nursing home costs, his or her family members will make up the differential. The Government should recognise what is happening and increase the subvention rates so they will be compatible with current costs. Over the years, the Administration has gradually, by stealth, reduced the number of beds in public nursing homes. By definition, all incentives are going towards private nursing homes. Private nursing homes operate to make profit, which is one of the main reasons some of the inherent difficulties encountered in Leas Cross and other nursing homes occurred. In my constituency public nursing home beds are not available to many of those aged 70 years and over who hold a medical card and are, therefore, entitled to one. The case assessment unit will assess people for public beds but finding a place for them is as difficult as getting a camel through the eye of a needle.

I take issue with the practice of imputing a value of 5% of a person's house. The house of an elderly person living in a rural location was recently valued at €95,000. While this may not seem a great deal of money, is it fair that the 5% imputation, which amounts to almost €5,000 in this case, will reduce the low level of subvention available to the gentleman in question by as much as €90?

The Government has received many plaudits for increasing pensions above the €200 figure. I remind Senators of the much vaunted fact that Ireland is one of the wealthiest countries in the world. The new pension rate is equivalent to 40% of the average weekly income. This is in sharp contrast to the figures in many European countries, specifically the Nordic countries where pensions are 70% of average weekly income. Let us not get carried away with the increase in pensions.

I am annoyed by the layers of bureaucracy attached to dealing with elderly people. It is understandable that the adjudication process for determining eligibility for home care requires an assessment to be carried out by a home help organiser. However, the process also requires that a financial evaluation of eligibility be carried

out and a determination made of the number of home help hours the person will receive. If a person is unable to look after himself or herself and moves to a private nursing home, another layer of bureaucracy applies. A further means test, financial determination and an assessment of medical capacity are carried out to determine the level of subvention. Given that the home help organiser will be familiar with the person in question, it must be possible to short circuit much of this work and remove many layers of bureaucracy and administration.

What do officials in the Department of Health and Children do? Every time Members query a decision taken in any area of the health service we are told to refer to the Health Service Executive. The HSE has created layers of administration and tiers of management all over the place. The greatest cause of frustration is the inability to find out who in the HSE is responsible for what areas. I am aware the Government is trying to address this matter by establishing a parliamentary affairs division in the HSE.

Elderly people have major concerns. I hope the package to which the Minister of State referred, including an additional 780,000 home help hours per annum, materialises because most elderly people like to live at home. My mother is 90 years of age and lives at home, thank God. I hope her good health prevails and she will be able to continue to do so. This is not an option for many elderly people who do not have someone to look after them.

The Minister of State, in his 30 minute speech, referred to a series of new regulations which will tighten up matters. I share Senator Browne's concern that the new regulations will give administrators even more power to tighten up rather than relax criteria. It is extremely difficult to receive enhanced nursing home subvention from the Health Service Executive.

If a person is deemed eligible for subvention, by definition he or she will be entitled to a home care package if he or she chooses to remain at home. Is the value of the home care package equal to the maximum amount of nursing home subvention? For example, if the nursing home subvention is €192, will fairness dictate that the person will receive the maximum number of hours of home care? I am concerned that this is not the case and that a person who has been determined eligible to receive the maximum level of nursing home subvention will not receive home care hours of an equivalent value. I ask the Minister of State to investigate this matter. His officials should examine whether equity and fairness apply when a person decides to remain at home. I care about this subject because, like all public representatives, I encounter it on the ground.

A fortune has been spent on an extensive advertising campaign encouraging victims of abuse in long-term residential institutions to claim compensation. How many compensation

claims have been paid out? Will there be a sudden rush in April or May next year to pay compensation with a view to impressing people before they go out to vote? The same incentive was used last year when child benefit payments were deliberately delayed and paid in one instalment the week before elections were held. This was done to ensure people voted for Fianna Fáil. I hope the Government is not deliberately withholding compensation payments to people who spent time in residential institutions. Shame on it if that is the case.

Mr. S. Power: It is not the case. There is no need for the Senator to get so excited.

Mr. Finucane: The scheme has been operated and advertised for long enough. People should be compensated but I have met people who have encountered bureaucracy.

Mr. S. Power: The Senator is talking nonsense.

Mr. Finucane: It is not nonsense. How many compensation claims have been paid out? The figure is small and I can guarantee there will be a rush to pay the others before next May. I know how the Government behaves and the tactics it adopts in these kinds of circumstances. It should not play with the elderly.

Mr. Glynn: Cuirim fáilte roimh an Aire go dtí an Teach. This is an important Bill which reflects in practice the Government's interest in the elderly. As has been proven, elderly people are a core priority for the Government. It is one thing to talk and another to act but this Government does what it says. It is committed to developing a comprehensive range of services for older people and wants to ensure they can live in dignity and, where necessary, receive care at home. In so far as practicable, it is the objective of the Government to maintain older people in dignity and independence at home in accordance with their wishes. It also wants to restore independence at home to those older people who become ill or dependent. As the Minister for Finance, Deputy Cowen, pointed out in his Budget Statement yesterday, the Government is investing to improve the level and quality of services for older people.

Those with knowledge of care of the elderly will be aware that elderly people perform best in their own homes. Many people in the early stages of Alzheimer's disease become confused when moved to the unfamiliar surroundings of a new care setting. For this reason, it is vital they are cared for in their own homes, subject to the availability of appropriate supports.

People are living longer with the result that the number of those in what are considered older age categories is increasing. People aged 70 years are no longer considered to be very old, while those aged 80 years could be described as "getting there" and those who hit 90 years are a good bit

up the road. Not too far from my home, a person aged more than 100 years still drives a car and enjoys a little shot of whiskey.

Mr. S. Power: I hope it is Powers.

Mr. Glynn: More power to the person's elbow regardless of whether it is Powers.

The Bill gives effect to the concept that people should be cared for in their own homes. This should be applied where possible. Statistics show that people are living longer and a greater percentage of the population is aged. This must be addressed by means of the recruitment of more consultant physicians with an interest in old age. I am pleased to note that my own hospital, St. Loman's, has a very good department dealing with the psychiatry of later life. I exhort An Bord Altranais to ensure more nurses are trained in geriatric nursing care. I applaud the role of religious orders in the care of the elderly. While it is argued that the religious orders have outlived their role in the care of the elderly and in other care situations, I do not agree. In my view, they were never more needed.

Last year the Government allocated €150 million for service improvement in this area and next year an additional €255 million will be allocated to augment the enhanced spend. The measures include 2,000 more home care packages providing a total of more than 5,000 packages. Further increases in home help hours have been outlined by the Minister of State and there will be an increase in the number of day and respite places. Home helps provide a very important service. I have a family relative who is fast coming to the stage when they will require ongoing care. The home help service is providing an excellent service which ensures this person can live in the dignity of their own home and look after themselves to the degree their illness allows.

The Bill provides that the agency can arrange for a review to be carried out of the degree of dependency or means of a person in receipt of a subvention. Where the HSE is satisfied that the person no longer qualifies for subvention or qualifies for a different rate of subvention, it can arrange for the payment to stop or be altered appropriately and for a notice of same to be sent to the applicant and the nursing home proprietor, if appropriate. Where a person's subvention payment is being increased or decreased, the HSE will not implement this decision for 60 days to give the person time to put their affairs in order. This is a *de facto* acceptance that geriatric medicine works and that people who must be placed in care situations can often recover sufficiently to be discharged. A person while in care may require additional care such as total nursing care instead of partial nursing care. This would require a higher level of subvention.

The appeals mechanism is provided for in the new section 7E inserted by the Bill. The new section 7F is of particular importance with refer-

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ence to what happened in a certain nursing home and where people died. It provides that a nursing home must inform the HSE in writing of the death, discharge or permanent departure of a resident within 48 hours. This is to ensure that subventions do not continue to be paid in respect of persons who are no longer in a home as this is what happened in some cases. Additional residential places should be required for the reasons I have stated in my contribution because people are living longer.

I ask the Minister of State and my colleague on the Independent benches, Deputy Henry, how much use is made of the new drug for the treatment of Alzheimer's. There is controversy in Britain where it was proposed that addicts in prison would be given heroin whereas those with Alzheimer's cannot receive treatment. To what degree is the new treatment for Alzheimer's being used?

Since my time in the nursing service I have been aware of the lack of visits made to those in long-term care. I ask the Minister of State to consider making a provision in this legislation that it would be mandatory, within reason, for people in both short-term and long-term care to receive visits. I have many times seen where weeks, months and years come and go and there is not a sign of a relative. This may not be to the liking of some people but the truth hurts.

It is the case that some older people will require nursing home care. To help with this, the Government provided additional funding of €20 million for the nursing home subvention scheme in 2006. The new funding brought the budget for the nursing home subvention scheme to €160 million. This is a far cry from the €5 million that obtained in 1993 when the scheme was first introduced. The additional €20 million is to support more basic nursing home subventions and reduce waiting lists for enhanced subventions. It is also designed to bring more consistency to subvention support throughout the country.

To ensure the existing subvention scheme for private nursing home care is grounded in law and to implement the improved scheme on a standardised basis, the Government has introduced the Health (Nursing Homes) Amendment Bill 2006. I look forward to considering the proposals which the Minister of State will bring forward by way of amendments on Committee Stage. It is an important Bill which is badly needed. We all know what happened in the past. There has been criticism from certain quarters in the House about the charging of medical card patients in hospital but as I have already said, it was the worst kept secret in the history of the State and it obtained under successive Governments. However, it is never too late to do the right thing and this Bill is a further step in the right direction.

Dr. Henry: I welcome the Minister of State to the House. The legislation has been brought forward because we have legal advice once again that primary legislation is required to give these provisions a statutory basis.

I support the Government's aim to keep people within the community and in their homes as they grow older, and this is what most people want. However, I have not found in practice that there is as much support as people need. I commend those voluntary organisations which give social support to so many people as they grow older, some of which, such as Action Age, have been specifically set up to help older people. I also commend the ICA in rural areas which plays a very caring role in ensuring that those who live on their own do not become isolated. Senator Glynn is correct when he refers to the lack of visits received by people in residential institutions. It is frequently the case that older people receive fewer visitors to their home. As a doctor I frequently heard people say that what they missed most was people calling to see them, especially in winter.

The situation regarding keeping people in their homes is lamentable. The money may be available but I have frequently found the supports, which are supposed to in place, are not. I will give an example of the type of complaint I have received.

2 o'clock

Changes can be made to people's houses if they have difficulty using baths, taps, etc., but before they can get a grant to have work done they must be visited by an occupational therapist. A person could be on the waiting list to see an occupational therapist in the public service for years. Even if a person employs a private occupational therapist to carry out an assessment at considerable expense — perhaps €180 or €200 — there is a considerable delay. This is counterproductive because people may be able to stay in their own homes if they were in a position to use the facilities in them in a better manner. I have seen what can be done following one of these assessments by an occupational therapist. It is remarkable and has transformed people's lives. While money may be provided, the organisation on the ground sometimes leaves much to be desired.

The Oireachtas Joint Committee on Health and Children discussed older people with chronic illnesses at this morning's meeting. We discussed, in particular, the lack of neurological services. In the past, we discussed the lack of rheumatological services. These are two areas in which older people, in particular, may need to see a rheumatologist or a neurologist having been referred by their general practitioners because of the development of arthritis, Parkinson's disease, Alzheimer's, as was mentioned by Senator Glynn, or any of these chronic conditions for which there are huge improvements in treatment. However, people need to get this treatment early on. We do not want to see them wait for four or five years for it, as is happening, because they will be so

much more disabled. Although we are putting money into this area, we will not be in a position to keep these people at home. We should not only look at the person's situation in the home and at bringing in a home help, which would be useful, but we should also deal with whatever medical problems associated with ageing he or she has.

Many HSE staff are extraordinarily helpful to older people, including community nurses, public health nurses and mental health nurses, and are very conscientious about what they do. However, they are very thinly stretched in many places and they do not have the back-up teams they need in some areas. The postman is even an important person for many older people. There was a huge campaign years ago in regard to door to door postal deliveries. One forgets how important postmen are to older people.

The home help service is very good and I am delighted to see more money is being put into it and that the hours are to be extended. It is essential to do so because there are more older people each year given the better survival rate. I have had several complaints about the fact that when the very good and industrious home help goes on her — it is usually her — well entitled break of two weeks, it is not possible to find a locum to look after the person. I asked Mr. Aidan Browne of the HSE at a meeting of the Joint Committee on Health and Children if people were entitled to a locum. The answer was that they were if a locum was available. However, if the person is severely limited from a mobility point of view, that is not a very helpful reply. We must ensure there is someone available to take over the work of the home help for those two weeks. The money may be provided but we must ensure the structures are in place.

When Professor Desmond O'Neill, who wrote the report on the Leas Cross nursing home, appeared before the Joint Committee on Health and Children, we discussed nursing homes in general. He was asked what type of advice he would give to people who had an older relative or someone who was disabled whom they wanted to put into a nursing home. He said the first type of nursing home he would advise was one run by a voluntary organisation. These are the not-for-profit nursing homes, many of which have a background in a denominational or religious organisation which would have set them up years ago. Thankfully, they continue to operate and from what Professor O'Neill said, they seem to be well run. The next type of nursing home he would advise is the public one. Senator Finucane mentioned the large drop in the number of beds in the public nursing home service. The Minister of State said he would put another €22 million into bringing forward long-stay beds. I hope these beds are in the public service.

Mr. S. Power: It is approximately half and half.

Dr. Henry: While I do not have a problem philosophically with public-private partnerships or with private nursing homes being set up, we must note that these are being set up to make a profit and that they are businesses. The people who received the tax breaks to set them up have set up businesses and it is a hard business in which to make a profit. Some nursing homes charge as little as €650 per week. If a person progresses to being a high dependency patient, that would not cover anything. One would have to pay someone nursing such a patient €10 per hour, although they will not be a qualified nurse. It would cost €80 for someone working an eight hour day. One is talking about huge money for staff, not to mention money borrowed or the extra facilities one might have to provide. The cost of these nursing homes varies from €650 to €1,300 per week. There is almost certainly a huge difference in the amount of care being given. I am concerned about that as people become more dependent. The maximum subvention is €190.50 and while I know it is to be increased, it would go nowhere towards helping with the cost of a nursing home.

Many of these private nursing homes have been set up in the country because it is much cheaper to buy land there. That is the reason there are people from Dublin in nursing homes in Galway. The number of visits they will get from their relations from Clontarf and Rathfarnham will be strictly limited. We must ensure the public service gets back to what it was. One cannot blame people who have set up a business and find themselves in a loss-making position, no matter how compassionate they are, wondering how they will deal with the situation.

People are always suffering so I visit accident and emergency departments now and again, particularly in the evenings, to see how they are getting on. One sees very distressed older people who are frequently disorientated and who have come from nursing homes. Perhaps the people who have come with them are trying to get them admitted because they are too ill for them to deal with.

I am glad the Minister of State is to introduce standards in these homes because they are very much needed and that there will be a reassessment of people while they are in care. It is good that assessments on the degree of a person's dependence will be done by medically qualified people. I do not mind whether they are employed by the HSE or whether they are private practitioners hired by the HSE to do the work. However, it is essential they have some type of medical background, whether in nursing, physiotherapy, etc., because it is not fair — complaints have been made to me — to have clerical officers ask people in fairly public situations if they are incontinent. Such questions do not respect the dignity of the person. I am glad that the person who complained to me about this resisted answering strongly and said she would only take such

[Dr. Henry.]

questions from someone entitled to ask about such a personal matter.

I wish to refer to the situation regarding the value of people's houses and the intention to recoup 5% of their value if a person's house is valued over €500,000. Many of us, especially in Dublin, have through no skill of our own ended up with houses worth more than €500,000. I hope my children will not try to get me to downsize rapidly in case their inheritance is removed or diluted. I do not know what problems lie ahead as a result of the significant increase in property values in this country, even for people in fairly modest houses. I do not think a house can be bought in the Dublin area for under €400,000. Therefore, virtually everyone will be within the grasp of this provision.

I wish there was not within the Bill such a feeling of dependency on the private sector because private nursing homes are set up as businesses. People going into such businesses are not necessarily uncaring, but they frequently find the profits they expect are not forthcoming.

While subvention rates are not very high, in some psycho-geriatric institutions, the HSE pays in full for people in high-dependency units. I am glad this is recognised in the Bill because some people can go nowhere else. The problem with Leas Cross occurred in this context, but in that case the HSE tried to empty a long-term psychiatric institution into an unsuitable institution. The owner of Leas Cross had a contract or business arrangement with the health board and if he had not taken the patients he was sent, he would possibly have lost his contract. We must examine this sort of situation. As a colleague of mine, Dr. Mick Molloy, wrote in a recent article, acute beds might be quite a cheap way of keeping elderly patients if it were not for the fact that this blocks getting elective work done within acute hospitals.

Ms White: I welcome the Minister of State at the Department of Health and Children, Deputy Seán Power, to the House. Yesterday, I spoke in Donegal town at the regional meeting of the active retirement group about the research conducted for my document, *A New Approach to Ageing and Ageism*. The people attending the meeting represented active retirement groups from Donegal, Sligo and Leitrim.

At the meeting I spelled out the fact that we all live longer now owing to better and warmer home conditions and better food and medication. The 2002 census found we had 436,000 people over the age of 65. By 2016, that figure will have increased by 50%. Therefore we will have more older people who will all live longer, have a better quality of life and have greater expectations for that life. The people I addressed were group leaders from the different counties so I told them to go back and encourage the people in their active retirement groups, in Stranorlar, Tubbercurry or wherever, not to accept the ageism

prevalent in society. The chart on page 7 of my document demonstrates that before the age of 65, people are considered an asset to the State, but that after the age of 65, they are considered a liability. I tried to encourage the representatives of the active retirement groups to be proactive, lobby for their needs and not just accept what doctors, nurses or even the Government put forward.

There is no question that the 5% subvention charge is controversial. One of the gentlemen attending yesterday's meeting, Mr. Butler from Strandhill, said 23,000 members of active retirement groups would march and lobby against this. I said to him I was unable to discuss the issue yesterday because I was not 100% *au fait* with the provision, but that I would get back to him about it. I would like the opportunity to speak to somebody in the Department on that issue.

I am optimistic and positive for the future. I spoke for one and a half hours on ageing and ageism yesterday and was optimistic about the quality of life older people can expect. Last year €150 million extra was provided for home care for the elderly and yesterday provision was made for full-year funding of €170 million. This is what it should be about. This is the largest ever annual increase in funding for older people and it clearly demonstrates the Government's commitment to improving the quality of service provided to our older citizens. I was happy that yesterday's budget dealt with the issue of ageing. Not everything can be covered in each budget and this year was the year for the elderly. I have also issued a child care document which is there as a platform for the future.

My document on ageing also covers the current situation with nursing homes and institutional long-stay care. It states:

While the preferred option is to keep older people in their homes and communities for as long as possible, approximately 5% of older people [I was amazed it was only 5%] require long-stay residential nursing home care. The principal reasons for admission include chronic illness, mental infirmity, physical disability and social reasons.

Despite perceptions:

- 87% of those in nursing home care are there for less than 1 year.
- 77% for less than 3 months.
- 63% of those in institutional care go back into community.

It is because 63% go back into the community that it is so important we have home care facilities, speech therapists, physiotherapists and chiropodists in place and maintained at an optimal level for people in their homes. The fact that most older people leave residential care after a short period means that much of the reason they had to avail of residential care was that the supports were not available to help them remain at home.

The extra funding provided in the budget will assist greatly in helping people remain in their homes.

At the Oireachtas Joint Committee on Health and Children last week, Professor Des O'Neill spoke about the voluntary sector. We all live in fear that we may have to go into a private nursing home. I do not know what economic model is used for running these residential homes, but there seems to be something radically wrong as they must constantly cut corners with regard to care. Most of us, if we had to go into care, would now aspire to a public hospital where there are many more nurses to each patient. There is something radically wrong in this regard.

I am supportive of the Minister of State in his brief as the Minister with special responsibility for the elderly. I wish him continued success in his work. As a Fianna Fáil Senator, I am on a mission with regard to a new approach to child care, aging and ageism.

Mr. Ryan: Much of what has been said on this side of the House represents my views, although I would perhaps take a more radical view. I am intrigued about the way we put certain aspects of our society into boxes. While I may use the term "society", I should say "the present regime" because after ten years of the present Government, one must accept, regrettably, that perhaps it has an insight into the thinking of Irish society currently, which those on this side of the House will have to change.

With regard to the Bill, there is no point in anybody telling me that this is what was there before. This is not the Ireland that was there before. It is a classic case. At the end of the 1980s this was a country that had in preceding years come close to going the route of some of the countries of Latin America. It is always worth remembering that Argentina was a rich country by European standards 60 years ago but ended up in a Third World condition.

That is what this country had to deal with in the 1980s. A considerable amount of stress was involved, as well as debate and discussion about an agreed solution — I still believe many changes decided then were extraordinarily unfair. Nevertheless, that was the situation. It happened in the context of extraordinarily limited resources, added to the fact, about which nobody seems to talk any longer, that Germany's Bundesbank was continuously looking over our shoulder to try to keep us out of the European monetary system. Therefore, our finances had to be not only on the right side of the Maastricht conditions but vigorously and substantially so. Otherwise, we would have provided a very convenient way for the Bundesbank to assert itself. The Germans had to get a little humble later when their finances when out of control, but that was the view at the time. They wanted to use us as the proxy to get at Italy.

I say all this because this was the context in which the Government of the time was con-

strained with regard to public expenditure. Some of that period was led by a Fianna Fáil-Progressive Democrats Government and some by a Government in which Fianna Fáil and the Labour Party were involved — there was a variety of Governments. However, the fundamental values that arose at that time were wrong, and they are wrong today.

Section 7, which goes to the core of this issue, outlines the level of evaluation of an old person that must take place before he or she gets any subvention. The Bill does not specify that the person carrying out the evaluation must have a qualification but must be any person "who, in the opinion of the Executive, is suitably qualified to make that assessment". The Bill does not state the person should be a nurse, doctor or physiotherapist or otherwise, and we have no guarantee that it will not be bureaucrats who do this work. The capacity of the Health Service Executive bureaucracy to believe it can make decisions that professionals should make is remarkable, as any doctor or nurse in the service will know.

The Bill contains a long list of qualifications necessary for a person to be even classified as being at a level of dependency. There is also a long list of conditions with regard to income assessment. Why pick on the elderly in this way? This is what I mean by compartmentalisation. Imagine we did this with regard to primary education. Imagine we went through this level of evaluation of people's incomes before their children could attend free primary education. What is the difference? Why is it good to provide universal, free primary education? With all its limitations, it is undisputed that we have an extraordinarily good primary school system, with good teachers.

Ms White: I agree.

Mr. Ryan: The same is true of free second level education. When Donogh O'Malley introduced free second level education, he did not go through a rigmarole of means tests and cross-checking. He decided it would be free. While it is not entirely free, that is a separate issue. Ms Niamh Breathnach introduced the abolition of fees——

Ms White: That was not a good idea.

Mr. Ryan: ——a decision which was entirely correct but which has simply been diverted by the universities, which have managed to cream off the snobs of the fee-paying schools.

Members should consider the composition of those attending the institutes of technology and they will see the difference. They are not the children of the very poor but of middle income earners. Members should ask those in the bracket above the grant scheme threshold but below affluence what difference it makes not to have to fork out €5,000 to €10,000 a year for four or five

[Mr. Ryan.]

years as their children go through college. In any case, we introduced the change. The same holds for medical cards, for which, although the income level is stingy and ought to be changed, the basic principle is simple. It holds for every other area. However, when one approaches the area of the elderly, this rigmarole is required just to give people a maximum subvention of €190 per week. Am I wrong?

Mr. S. Power: The Senator is wrong. There is enhanced subvention.

Mr. Bradford: That has another set of rules and another rigmarole.

Mr. Ryan: I know there is the possibility of enhanced subvention but it is entirely at the discretion of the HSE. The Minister of State said in his contribution that the average amount is above the standard but that applies to a person who is deemed to be completely dependent. The subvention, at approximately twice what we spend per week on a primary school child, is a miserable amount to spend on 5% of the elderly population for the short number of years it is required, which is probably a shorter time than a child would spend in primary education and definitely a shorter time than children would spend in second and third level education. Yet, there is a transfixed obsession in the Department of Finance that looking after the elderly is some sort of threatening bottomless pit of expenditure. The fact is that if we had the same controls over how we use expenditure when the idea for universal free primary education was thought up, we would have the same rigmarole that applies in this case.

The elderly are not a threat to the stability of society. It is a matter of political and social choice. Care of the elderly is not cost-free and nobody should pretend it is, which I do not. Nonetheless, the Government can slip through — I do not disagree with it — a 0.5% increase in the health levy for people earning in excess of €100,000 per year. It took wonderful use of smoke and mirrors to reduce the top rate of tax by 1% and then slip a 0.5% increase somewhere else to halve the impact. I will leave the Government at it. It does these things and gets away with them better than anybody else, which is why it is still in power.

I will return to the basic question. What is the point of putting old people through this level of rigmarole for a maximum subvention, without enhancement, of €190 per week, and for a maximum standard subvention of €114 per week? We have failed to address the issue of our aging population, which is an issue, not a problem or a crisis. When we had a huge primary school population, not a single person suggested we should charge for primary education, even when the schools were full, which will happen again, as

another bulge is happening. When secondary schools were bursting at the seams, nobody suggested we should return to a university-style fee-paying second level system. Some daft people have suggested we should reintroduce third level fees. I repeat that is a daft idea. The level of additional funding that would accrue to third level colleges as a result, as a proportion of the total amount of money they need to spend, would not be worth it when one considers the significant disruption it would cause to people's personal finances. It would be daft. I do not understand how sensible people like the Minister of State, Deputy Seán Power, can justify telling elderly people that they intend to impute an income of 5% of the commercial value of their houses. The commercial value ascribed to a house may depend on whether it is one yard inside or outside the border of County Dublin. Who thinks up such schemes?

Mr. S. Power: It was the former Minister, Deputy Howlin, who came up with this scheme.

Mr. Ryan: I know that. It was a different world.

The fundamental problem is that the Department of Finance which runs the Department of Health and Children has set its face against a universalist system of provision for older people. It is determined to squeeze blood out of dying turnips. The fundamental issue in this regard is the Department's desire to make people pay, regardless of the human suffering involved. It is clear that this scheme is putting pressure on older people to dispose of their assets. The imputation of income to an older person from his or her private residence is astonishing. It would be more honest to say we want to put a charge on the estate — to tell potential inheritors that there is a charge on their estate, or that there is a mortgage on their house. If we tell old people and their families that they cannot get a subvention because we are imputing to them an income of 5% of the capital value of their houses, we will be suggesting to them that they should sell or rent out their houses. As Senator White said, there are not nearly as many in nursing homes as people pretend there are and they do not tend to stay in such homes for nearly as long as people pretend they do. The number in long-term care is not larger partly because people cannot secure long-term care. Many of those who get places in private nursing homes cannot afford to take them up.

I do not know where the idea that there is some rational or humane reason for all of this has come from. It is about as relevant to mention that somebody from my party thought it up 16 years ago as it is to quote what de Valera did in 1937. It is history. Many people in government have not yet got a handle on the fact that Ireland is now a rich country. They seem to think it simply means that they and their friends, supporters and funders can enjoy a lifestyle unimaginable ten years

ago. However, it also means that this country has resources which were unimaginable ten years ago.

We should celebrate the fact that the country has got its economic act together as a result of a succession of good political decisions by a succession of Governments, which means that we can now deal with the changes in society. That is what this whole thing is about. The manner in which we organise the funding of long-term care for older people is a reflection of the values of our society. The legislation before the House reminds us that our values at a time when we are prosperous are the same as they were when we were poor. Essentially, it seems that in the matter of long-term institutional care we cannot afford any more now when we are prosperous than we could some years ago when we were poor.

The home packages are most welcome. However, I would like to refer to the case of an elderly person with whom the Minister of State and I are acquainted. I am sure the Minister of State can guess whom I am talking about. The person in question was in an institution which she loves when the Minister, Deputy Harney, announced the extension of supports to keep people in their own homes. She thought that the Minister's announcement meant she would be forced to go back home. That is how vulnerable old people are. The lady in question is bright — she reads *The Irish Times* every day. Elderly people are vulnerable because they are unsure and uncertain. While the Minister's statement was well intended, it had the effect mentioned. If the Government starts telling elderly people that they have to meet some complicated formula, their vulnerability will be reinforced. One would almost need to be an accountant to understand the formula in question. I defy the Minister of State to tell me that he has ever explained it to a constituent at a clinic. It is utterly incomprehensible to an ordinary person. Even though I am a very numerate individual because of my profession, I still believe——

Mr. S. Power: What did the Senator say he was?

Ms White: He said he was numerate.

Mr. Ryan: I can do sums. I know what percentages are.

Acting Chairman (Mr. Dardis): My sums indicate that the Senator's time is up.

Mr. Ryan: I appreciate that. The Acting Chairman is also very good at sums.

Mr. S. Power: Senator Ryan's number is up.

Mr. Ryan: I have outlined my fundamental view. Other issues of detail will need to be considered. The fundamental value system that underlines this legislation is antiquated, outdated and ungenerous.

Mr. Leyden: I welcome the Minister of State, Deputy Seán Power, and his officials from the Department of Health and Children to the House. I am pleased to have an opportunity to speak on the Bill relating to the care of the elderly, a topical issue. I do not intend to revisit the Leas Cross issue which has been discussed in the House previously. I would like to ask the Minister of State a few questions and hope he will respond to them later in the debate.

What is the current position on the repayment of nursing home charges which were illegally imposed? How many people have been repaid? Are many repayments outstanding? I understand that a considerable sum of money — approximately €300 million — is involved. Most of those who have received refunds are pleased with the service provided for them. That is history because the Government has acted appropriately on foot of the decision of the courts. Some estates have not received moneys because decisions have not yet been taken in those cases.

It has been brought to my attention that residents of psychiatric nursing homes are not catered for in this legislation. I would like the Minister of State and his officials to indicate whether my information is correct. I have received a query about the matter. I understand the allowances due to people in long-stay psychiatric hospitals were taken from them and lodged for them in banks.

I would like to speak about nursing homes in general. I accept that many of the concerns about the Bill relate to the question of the primary family home. When the legislation and regulations were first introduced, I was still a member of the former Western Health Board. At the time the family means test was introduced, which meant that sons and daughters were contacted to find out how much they could contribute. That system was not working. It was impossible to operate. The family member who inherited the land or the house, rather than the family member who had left 20 years earlier and become wealthy and successful, was deemed to be liable for meeting the costs of the upkeep of the parent in the nursing home. That system collapsed and was withdrawn. Under the new system that has been introduced, the person in the nursing home is assessed. I think the family home should be excluded from the assessment. If a person in a nursing home sells his or her family home, he or she is deemed to be a permanent resident of the nursing home. Such a person is not able to retain the aspiration of returning to the family home. I am sure the Minister of State will ensure the HSE takes a humanitarian approach to this matter. The Bill provides for every circumstance to be taken into account.

As I have said previously, it is ludicrous that the staff who assess and process medical cards are required to undertake a review every year. It is the most time-consuming and cost-ineffective method of assessing a person's right to a medical

[Mr. Leyden.]

card. A person's circumstances do not change very much in a single year. Even though medical cards are renewed in most cases, each medical card holder has to contact the local community welfare officer who has to fill in a form which then has to be processed. The officer may have to travel to the medical card holder's home to see him or her. At the end of this process, it is usually decided that the medical card can be renewed. All that work is unnecessary. Random checks, perhaps one in ten, could be done or it could be done every three or five years. The staff could be gainfully employed because the community welfare officers are used to carrying out assessments. I appeal to the Minister to streamline the application system and the speed with which decisions are made.

I have no complaints on my books about the western region. I may create a demand from people who say they have a case but I speak as a long-serving Oireachtas Member from County Roscommon. I welcome representations and, like every other public representative, I am available to people.

I heard the debate in the Dáil which may have been somewhat over the top. The Bill is before us at a bad time in terms of yesterday's very good budget because it created a certain reaction and the possibility of people picking holes in this Bill. I appeal to anyone listening to this debate, which is broadcast on the Internet worldwide, that if they have an issue regarding a nursing home subvention in my area, I would be delighted to take up their case. To date, however, I have not received any complaints. Complaints in general have decreased compared to previous years. Even the enhanced subvention system has been handled extremely well.

In the last case I dealt with, the person died before the final decision was made. She had a very good teacher's pension which meant she did not qualify but covered the cost of the nursing home. Her house would have been taken into consideration in the process but, unfortunately, she went to her reward. She was very well cared for in a private nursing home.

On the overall regulation of nursing homes, there is a tax incentive for the building of nursing homes but there should be a certification of the need for a private nursing home in an area. There is no justification for adding additional nursing homes to the list when there is adequate space in the area. We have three major nursing homes in County Roscommon. The Sacred Heart Hospital, which I had renamed from the Sacred Heart Home because it is more of a step-down facility close to the county hospital in Roscommon, provides a full geriatric service. A geriatrician attends the facility and it has a medical officer in attendance full time also. It now has an Alzheimer's ward. I hope the Minister will give a major capital grant to refurbish one of the wards for another Alzheimer's unit or to build a new

unit, which is in order. We also have the Plunkett Home in Boyle and Aras Mathair Pol in Castlerea, two well-run nursing homes about which I never get complaints. The private nursing homes in County Roscommon are very effective and a number were established recently.

I emphasise that the decision-making process to provide private nursing homes should not be tax led. Nursing homes should be provided because the State requires them in certain areas and where a need has been identified in certain areas, a certification should be given that they will be subvented. If a person wants to build a nursing home on the basis that he or she will not get subvention for the patients, that is his or her own business but that aspect should be considered.

I want to mention one nursing home in the public sector with which I am very impressed. It is located in Achill Sound and is one of the most beautiful nursing homes in the country. It was built beside the sea. It has its own oratory and is near the House of Prayer, although it is not connected to it. Every room in that nursing home displays the name of the person resident in the room on the door. When I visited I thought these were consultant rooms because every room had a nameplate on the door.

Ms White: That is very personal.

Mr. Leyden: Those persons were empowered by that. Every staff member had his or her name displayed. It is a beautifully managed nursing home. Entertainment is provided two or three times a day including people singing with accordions, others telling folk tales and so on. That is what I like to see in a nursing home. I hope the Minister has an opportunity, when he visits the west, to see a public nursing home being run the way I believe is required. It is also well designed.

I said recently there should be nursing home committees in public nursing homes. There are many active people who would be prepared to join a small committee to run these home. That would empower those older people.

I commend Senator White on producing the report, *A New Approach to Ageing and Ageism*, and the effort she put into it. Everything in the section regarding residential care is included in that report. I ask the Minister and her officials to read it. The report will be presented to the Fianna Fáil Parliamentary Party and that section is very much in keeping with what is required. I understand the Minister has already commended Senator White on her work. I wish the Minister well in getting the Bill passed in the House.

Mr. Bradford: I welcome the opportunity to contribute to the debate on this legislation. The contributions of previous speakers were very interesting. In particular, those of Senators White and Ryan provided much food for thought, on which we must reflect strongly.

Some of the Minister's colleagues at both senior and junior ministerial level are contemplating the possibility of a constitutional amendment dealing with the rights and protection of children, something I look forward to dealing with and will support. What would be the political ramifications if our Constitution contained a clause on the protection of the elderly, guaranteeing their rights and ensuring their entitlements and comfort? If we had such a constitutional provision to provide for services, entitlements and all the other needs of the elderly, much of the legislation with which we have dealt here from the Minister's Department, including the legislation before us, probably would be deemed unconstitutional. We must seriously reflect on where we are going and what we are trying to do from a policy perspective regarding the elderly.

Yesterday, the Minister for Finance made his Budget Statement. The Minister had responsibility to spend a huge amount of money, which is welcome not only from the Government's point of view but also from that of every citizen. The country is now officially very wealthy, with tens of billions of euro available to him to be distributed yesterday by way of the budget. In the context of our relatively new-found but abundant wealth we must put in place the services and financial commitments we are setting aside for the elderly in our community.

Senator White spoke of the relatively small percentage of the elderly or the ageing community who will rely on nursing home care at some stage. This Bill is about nursing home care and deals with approximately 6% or 7% of the population. I am somewhat concerned that when we debate ageing and services for the elderly in this House and elsewhere we concentrate too much on the nursing home aspect and do not consider the bigger picture. As I said last week when we discussed Leas Cross, along with all Members I want to ensure people in nursing homes have all their entitlements, that the home is of the highest standard, the accommodation is of the highest quality and that the supervision, medical assistance and inspectorate procedures are of top quality. Much needs to be done in that regard but that is only one side of the equation. The majority of our elderly and ageing population wish to remain in their homes in their communities. We must also examine services for those people.

Yesterday's budget gave the annual increase in the carer's allowance, which I welcome, but I raised last week during the nursing homes debate and earlier this year during the various social welfare debates with the Minister, Deputy Brennan, the possibility of removing the means test for the carer's allowance. The Minister presented the House with his estimate of the cost of doing this. I do not remember the figure but it was a modest sum. It is like the analysis put forward by Senator Ryan on the question of universal care for the elderly. The cost of removing the means test for the carer's allowance and of ensuring all people

in need of full-time care receive it would be modest.

Provision in this respect should take account of the societal aspect and of giving people a choice of where they want live in their senior years — I do not like the phrase "in their final years". It is great that people are now living longer. We debated the concept of removing the title "old age pension" during the debate on the Social Welfare Bill last year in this House, a matter for which I take some credit. People aged 65 and over are not old. In fairness, the Minister, Deputy Brennan, reflected on that and introduced the phrase "State pension" rather than "old age pension". It is not a question of people in their final years but people who have aged who require the maximum possible support and services from the State to enable them to remain, where possible, in their homes and communities.

Senator Henry spoke about the issue of applications for disabled persons' grants in Cork. I gather from what she said that apparently we should almost be thankful that the waiting list for an occupational therapist report at Cork County Council level is 26 weeks, but that is 26 weeks too long. Where a person requires the provision of a bathroom, shower or some other lifestyle improvements, such a delay should not be countenanced. It adds not only to the misery of the person who must endure the inferior facilities but by the time the application is made, the grant processed, the occupational therapist report completed and the engineer has called out three or four times, it is probably 12 months from the date the application was submitted. By the time the application is approved the cost of carrying out the work has increased. Such delay costs the taxpayer and the applicant more and it costs much misery in the meantime. We need to ensure that small issues, which can be resolved easily, are dealt with. In this respect, councils should have sufficient staff to complete these reports, sufficient engineers to assess such jobs and the applications should be processed quickly. That should be easy to do in our new wealthy Ireland.

I welcome the slight improvement in the level of respite grants announced yesterday, but much more progress could be made in this area. The issue of stamp duty was discussed in the other House yesterday and we debated it in this House last week. A suggestion made, which is generally supported across the political spectrum, is that stamp duty exemption should be provided where elderly people wish to trade down, in other words, sell a large house and move to a smaller house. That issue needs to be re-examined.

One of the tax reliefs announced by the Minister during the Budget Statement yesterday is pathetically insulting to the elderly. I refer to the adult dependent allowance, which amounts not to thousands but to only hundreds of euro for an incapacitated relative. I am not referring to the allowance for employing a person to look after an elderly relative but the tax allowance or tax

[Mr. Bradford.]

relief which a person receives for looking after an incapacitated relative in his or her house. It amounts to only a few euro per week. That is highly insulting and the allowance should be reviewed. While these issues are slightly removed from this Bill, they need to be reflected on in the broader debate on services for elderly.

When the nursing home subvention scheme 1993 was introduced by the then Minister, Deputy Howlin, in the then Fianna Fáil-Labour Government it appeared to be a forward-looking proposal. However, a subvention of €190 per week or thereabouts, which is the figure before an enhanced subvention might be given, does not go far towards paying for the cost of weekly care in an average private nursing home. The subvention is a modest amount and the bureaucracy, red tape and regulation surrounding the application for it is pathetic.

The political challenge facing us, particularly Members on this side of the House, was set down by Senator Ryan when he spoke strongly about what we do with the financial choices available to us. He asked us to reflect on the fact as we have decided that young people, be they at primary, secondary or third level, have universal entitlement to education and should elderly people not also have universal entitlement to care? If we had a constitutional amendment and constitutional protection for the entitlements of the elderly, in terms of their entitlement to care, security and accommodation, it would throw a lot of present regulations, legislation and rules out the window.

I hope that the Bill — which the Government will enact given its majority — when enacted and when other such debates on the elderly and our ageing population take place, we will show more vision and policy initiative towards using our unprecedented wealth and resources to give something real back to the people who built up this country, whether it be provision for the 5% of people who need nursing home care, referred to by Senator White, or for the 90% or 95% of people who live in their homes, with their families, in their communities or in community housing.

Much more needs to be done for these people. I hope we do not limit our ambitions for them. Budgetary increases in the old age pension, which I welcome and on which I commend the Minister of State and his colleagues, are not enough. A much greater level of service, provision and assistance is required. There is a huge political responsibility on all of us to have a broader vision of how we look after our ageing and elderly population. We all will aspire to reach that sector of society at some stage. We need to put much more resources and measures in place and we have a huge social, political and moral responsibility to do so.

Dr. Mansergh: I welcome the Minister of State to the House. I also welcome the measures for the

elderly in yesterday's budget, namely, the social welfare increases, the income tax exemptions and the home packages for the elderly. I have seen many instances where caring for the elderly, the very sick or the disabled at home can work very well but we cannot feel as proud of our care of the elderly as we would often like to feel. We have had the Leas Cross Nursing Home scandal and there is probably an uneasy feeling that it may not be an entirely isolated instance. We have had the case of the illegal deductions from welfare payment, which has now been straightened out, but it was embarrassing for the entire political system. Undoubtedly, we need a legislative framework and that is being offered to us.

The core of the legislation is in two parts. The first is the assessment of the degree of dependency of applicants for health care, which seems to be reasonable. What I find more problematic, and it is not only confined to this area, is the exhaustive means testing of people who are old and sick. It is not a very dignified activity for people carrying it out or for those who must undergo it. The cases one encounters most often are people of relatively modest means but who are, nonetheless, above a certain threshold where after a year or two of care — sometimes people are in care for some time — the means become rapidly depleted and family members find themselves having to scramble around to provide funds to fill the gap.

There are major problems of public policy that affect every country. I was struck by what the British Health Secretary, Ms Patricia Hewitt, said when she claimed that increasing life expectancy and medical advances would lead to new pressures which would need to be reconciled with the public's expectations about taxation. She stated that in a frank manner that does not always happen here. It is often said that politics is art of the possible, but I have come to the view that politics is the art of the impossible. It involves reconciling conflicting demands. We have heard from the other side of the House about universal nursing home care, and a good *prima facie* case can be made for that. At the same time, Ministers and former Ministers have suggested that we raise taxation in order to cope with the demands and reforms that are needed in the health service. My general impression is that those arguments do not go down very well with the public, especially when the Government is running a significant surplus.

I would like to put forward a third solution that is not based on either universal provision or means testing down to the last good and chattel. We do not know which of us will reach what Gore Vidal called the hospital stage of our life. Which of us will go into nursing homes and which of us will drop dead one fine day or after an illness of short duration? Even with increased life expectancy, the vast majority of us will probably not go into a nursing home at any stage of our life. If we become infirm, we may be cared for at home or

go into a home for short periods. Given that we are talking about a small minority who go into nursing homes, it might be possible to have a specialised health insurance scheme. The risk would be borne by all of us, as distinct from the current situation whereby due to a turn of fate, some individuals and families are hit infinitely harder than others. If one were to encourage such an insurance scheme, it would avoid the costs of a universal system that need a rise in taxation, while at the same time it would not push families to the pin of their collar.

It is very often the people in difficulty who are subjected to means testing. I do not see such testing as part of a very humane society. While I support the Bill, I hope that we continue to look at alternative, more humane, methods to deal with this. Very few of us will be in a nursing home for four or five years. It might happen to the odd individual, but it will happen to very few. Surely it is something against which we can insure.

Ms O'Rourke: I was following this debate from my office and I was fascinated by some of it. I put a question informally to the Minister of State yesterday, which I want to repeat today in the Seanad. I have been getting a number of letters from people who I would respect very much, such as those who are involved in retired nursing associations. There is a very strong rumour currently doing the rounds that older people will have to sell their homes if they are to receive a subvention. I want the answer from the Minister of State, even though I know it myself. This may be a scourge of a Bill that will impose draconian measures on older people, such as forcing them to sell their homes in order to obtain a subvention.

I never met a person or a family who had to sell their home, so this may be a wicked rumour. However, I want to receive a definitive answer from the Minister of State. People in the community are scared because they have heard some of these stories. Most people want to stay in their own homes and the home care packages announced in the budget yesterday, and by the Minister for Health and Children this morning, will be very good for people. The home care packages enable people to receive care, whether through nursing hours, home help hours and hospice hours at a later stage.

When these measures are codified they will help elderly people in need of care, but we need to put a shape on it. When elderly people apply to the county council for necessary supports, there seems to be no co-ordination between them, the county council and the employee from the HSE who must validate the applications for supports, such as lifts on a stairs, downstairs bathroom, toilet and so on. I thought these should be part of the home care package. Perhaps the Minister of State might consider whether they could be part of the home care package, working with the county councils, because they are very important. I know of a person in Ballymore, a rural area,

who cannot come out of the hospital in Mullingar because the works needed on his house have not been done. He could come out in the morning if the works, for which there is sanction from the county council, could be done. A home care package that does not include that aspect is a waste. Perhaps the Minister of State might deal with that issue in his reply.

I would be obliged, too, if the Minister of State would clarify the position about people having to sell their homes to pay for their stay in nursing homes. I welcome that there is no difference between public and private care because I heard the Minister for Health and Children, Deputy Harney, talking about this when she opened a private nursing home in Athlone. She said that if there were beds available in that nursing home and people needed care, the Health Service Executive would underpin this by funding. This is always a fraught issue. Everyone who watches a television documentary, reads a report in the newspaper or hears about it on the radio is aware that they will probably reach that age at some stage and they wonder whether they will be looked after and properly cared for. Is due regard given to the elderly in society?

We can hark back nostalgically and talk about what the norms were long ago, uair amháin in rural Ireland, where every family had grandparents at the hearth in the family home. They were well looked after and provided an interesting level of societal observation for young people. The children could see that there were stages in family lives, grandparents, their own parents and siblings in the same household. That seemed very natural, and in that way many old people came to die under their own roofs, all of which was entirely admirable. We can look back with nostalgia and sigh for the passing of that era. It is rare enough these days, except perhaps in parts of rural Ireland where one can find such an arrangement.

In the event, it is wonderful to see because the voice of sagacity and age is listened to when advice is needed. It is not that the older people are just condoned. They are loved for their own sake and have a valuable role to play in the family environment. However the complexities of life, combined with the fact that two parents may be out working, etc. does not add up to a quasi-nursing environment for the older person and means that type of arrangement is slipping away, which is a pity.

The Minister of State's speech listed all the changes to various clauses in earlier Acts, new legislation and so on, which are all indicators of change. Leas Cross arrested us all in our tracks when we saw what had happened there and the brutality exercised on older people. We talk about brutality and young people, but it is especially sad in the case of the elderly because they are not able to defend themselves. When the Minister of State does the House the honour of

[Ms O'Rourke.]

replying, I trust he will be able to answer my questions.

Mr. Norris: I have spoken on the issue of nursing homes on a number of occasions, but not on this Bill, of course. I am reluctant to regurgitate what I have said on the subject before. However, this is a very important area and it has been highlighted by the media, in particular the investigations by RTE and others into the tragic situation at Leas Cross.

From the outside, what a lovely place it looked. One would imagine everybody was comfortable and well cared for. Then we learned that the situation was not as it appeared once one was inside. I listened to a woman on radio the other day who told a tragic story about her father. He had been very active, went into Leas Cross, I believe, and had a series of illnesses complicated by minor strokes as well as lung infections.

The woman visited one day and her father was not well. The next day they said he was better. They wheeled him out in a type of pram with a rug around his legs, his spectacles stuck on his face and the newspaper on his lap. The man was dying, but this was all just cosmetic to persuade the relatives that he was improving. The relatives insisted on an ambulance being called and waited a considerable time, but nothing happened. Eventually the daughter said they would take the man to hospital in their own car because the nursing home people had first of all said, "There is no admission from here", which was a very strange phrase to use.

Ms O'Rourke: Where was "here"?

Mr. Norris: It was Leas Cross, I believe, and there was no admission. In other words, they did not want to send patients from Leas Cross. Again, when one considers the phrase, "bed blockers", it precisely fits the description of people such as this old man. People describe them as bed blockers. That has ramifications whereby people do not want them admitted to hospital. It is a dreadful phrase——

Mr. S. Power: It is terrible.

Mr. Norris: ——but in any case, they found that the ambulance did not turn up. A real ambulance had not been called, rather a type of patient care vehicle. It was only when the family said they were taking him into hospital that an ambulance was produced. In the event, that ambulance was there in ten minutes, so sometimes the services exist, but are not properly being called on.

There is a growing problem for a variety of reasons. First of all, Ireland has changed in social terms. We do not have the extended family any longer. This is having major effects. I expressed concern yesterday on the Order of Business about the alleged extraordinary high levels of

what was described as psychiatric illness among children. If it is true that one fifth of children suffer from serious psychiatric illness, then it is not just the children who should be examined but the whole organisation of society. Again it strikes me that the extended family norm no longer exists.

For a variety of reasons an increasing number of people make use of services of this type and in some cases this is not entirely appropriate. I heard a woman speak on this subject who said she had been running a nursing home for the past 30 years and that it had changed significantly because of the increased number of elderly people with severe Alzheimer's disease who needed one-to-one care virtually around the clock. She said nursing homes were not in a position to provide this care. It is wrong to blame nursing homes if there are people in them who are not appropriate candidates for this type of treatment. We must look very closely at the issue of Alzheimer's disease.

I am very concerned about the inspection of nursing homes. It seems to me that particularly since Leas Cross, private nursing homes are subject to inspection. I am much less happy about publicly funded nursing homes because we hear so little about what goes on in them. If, in the regime of nursing homes for which patients pay enormous amounts of money and relatives routinely visit, almost nothing is heard about the situation in State-funded and State-run homes, there is an urgent case for a proper inspection regime for such institutions and I do not believe this is happening.

By coincidence I have just left the restaurant where I spoke to somebody who is not a Member of the Oireachtas but is a crucial part of the parliamentary system, namely, Ms Anne Byrne, a programme manager to Deputy Howlin.

Acting Chairman: The Senator is aware he should not refer to people in that manner.

Mr. Norris: I beg the Acting Chairman's pardon. I did so in the most positive possible manner. However, the name cannot now be withdrawn. In any event, she is representative of——

Mr. S. Power: Members will keep it secret.

Mr. Norris: They will. However, there is a large number——

Ms O'Rourke: She is a very nice woman.

Mr. Norris: She is. She is much better than nice as she is also very effective and capable.

Acting Chairman: This is getting worse.

Mr. Norris: As my good friend, the Leader of the House, is aware from her own ministerial responsibilities, a number of people in Departments never receive the accolades they deserve.

Some years ago, an aunt of mine who had reached her 90s needed to enter a home. She decided on this herself and, while I was abroad, had gone in and out of a particular place, which turned her down. She was extremely upset because she thought it was because she was too old. I wrote to the home to ask whether that was the reason and in any event to let me know whether there was anything I could do for them, because it was such a wonderful place. They did their own baking and at Hallowe'en, the attendants dressed up as witches, which was good fun. Everyone knew one another and had their independence. They had their own little rooms in which they could have their glass of sherry.

Ms O'Rourke: Lovely.

Mr. Norris: It was marvellous. Moreover, there was a smell of cooking from the kitchen. They did not use bought-in television dinners, rather they made their own bread and all the rest of it. It was lovely.

Its managers immediately wrote to me and asked me to visit them at once. It was run by the old girls of Alexandra College, who were charming. It was a real old-style St. Trinian's effort. However, they did not operate in the real world at all. They charged something like €200 a month for the service, which would not even cover the cost of the food. I told them to take the decision to stay open, that everything would flow from that and that I would take responsibility.

I contacted the unnamed person whose name I put on the record earlier and she secured a subvention for them. It was the kind of subvention that is being addressed by this Bill because for some reason, they had not been in receipt of it. Consequently, any old dear who did not have the money was topped up. I then contacted the grand nephew of one of our greatest writers, namely, James Joyce. I will not name the grand nephew because Members are not allowed to do so. However, we are at least allowed to name one of our great writers. He was a financial expert.

Acting Chairman: The Senator may name anyone who is dead.

Mr. Norris: Great. I thank the Acting Chairman. I refer to the grand nephew of James Joyce, who is a financial wizard and does not have an artistic bone in his body. However, he put together a scheme whereby if relatives paid in money — I forget the name of the mechanism — they could get the income tax back.

Ms O'Rourke: Did the Senator's aunt pass away?

Mr. Norris: Eventually, yes. However, she lasted for ten years and lived to be 103.

Ms O'Rourke: Baking every day.

Mr. Norris: The term is covenanting. Between the document we drew up on covenanting and the assistance of the Government, I am pleased to say the establishment has its doors open to this day, which is terrific.

Ms O'Rourke: That is great. Where is it?

Mr. Norris: It is in Harold's Cross. It is also extremely disturbing for elderly people, who are used to a regime, to be moved somewhere else. This is a problem, regardless of whether it is as good.

Mr. Glynn: It confuses them.

Mr. Norris: I accept the Government must regularise the position, particularly after it was discovered that there was an illegality in taking money from people. However, one of my concerns regarding the Bill is that it states that older people with an income of more than €9,000 per year, or savings worth more than €36,000, may be refused subvention. The sum of €9,000 per year is very small. I am unsure whether this is before or after tax. This comes to approximately €800 per month.

Ms O'Rourke: What about their pension? I forgot to ask that.

Mr. Norris: This is not a large sum. Moreover, a subvention is merely a top-up and if these figures are accurate, it seems to be extremely mean-minded.

The question of the home also arises. In a small number of cases, there is a possibility that people might be able to return home after some restorative care. It seems to be unnecessary in every case to sell a modest suburban home. It seems that under some of the Bill's conditions — Age Concern has expressed reservations in this regard — there could be pressure on older people to sell their homes, which would be a pity. In cases in which people who had a house were in a nursing home and died, perhaps there could be some mechanism for making up part of the money subsequently. However, I would leave them with the opportunity to return to the home, if that is at all possible.

Mr. Glynn: That is the Bill's objective.

Mr. Norris: If that is the case, I am all in favour of it.

Ms O'Rourke: Perhaps the Minister of State will respond to this point.

Mr. S. Power: I will.

Mr. Norris: However, the reports——

Mr. Glynn: Just to say that——

Acting Chairman: Members are not engaged in a Committee Stage debate.

Mr. Glynn: Yes. However, it is the objective of every hospital to return people to the community.

Mr. Norris: I am delighted by that. However, it does not appear to be the Bill's objective. Perhaps this can be examined.

Acting Chairman: Senator Norris has exceeded his time considerably.

Mr. Norris: Have I?

Ms O'Rourke: He is well worth listening to.

Mr. Norris: Not really.

Acting Chairman: I do not have that discretion.

Mr. Norris: However, the interruptions certainly were most helpful. In fact I would scarcely describe them as interruptions. They were well intentioned additions to my comments from my friends on the Government side of the House, with whom I disagreed only yesterday regarding the Defamation Bill. I am glad that in the spirit of reconciliation and Christmas, all Members are again at one in attempting to protect elderly people among whom, if they are lucky, they will be numbered eventually. As the American gentleman noted, the alternative is considerably less comfortable.

Acting Chairman: I am relieved Senator Norris has not reached that point just yet.

Minister of State at the Department of Health and Children (Mr. S. Power): I thank all Members for their contributions. In Senator Norris's words, the vast majority of the contributions were well intended and highly appreciated.

However, I take grave offence to the contribution from Senator Finucane, who made some outrageous allegations regarding the illegal charges and the manner in which they are being repaid. The repayment scheme was launched by the Health Service Executive on 14 August last. The Government had provided in the Estimates sufficient moneys for this year and will do so again for next year. Apart from issuing the instruction that it wished and would insist that people who are still living should be a priority, the Government has had no hand, act or part in the disbursement of the moneys. The Government will be quite happy to see the moneys paid over as quickly as possible. I mentioned that approximately 15,000 people who are still alive are entitled to be repaid and this money will be paid back. For the Senator to make such allegations was an abuse of his position in the House and was most regrettable. However, I thank the other Members for their contributions. While I

might disagree with some aspects of them, in the main they were very helpful.

As Members have noted, the Bill is designed to ensure the existing subvention scheme for private nursing home care is firmly grounded in primary legislation. Once enacted, this Bill will replace the 1993 regulations. Significant changes are projected regarding older people, particularly in the medium to long term. It is estimated that this year, there are approximately 463,000 people aged 65 years or more in Ireland. The latest population projections suggest the figure will increase to more than 1.1 million by 2036 and consequently, the old age dependency ratio will rise from 18% to 39%. The number of people aged 85 or more is projected to increase from 46,700 to 155,000 in the same period. This trend is expected to continue until 2056, when the old age dependency ratio is projected to reach 60%.

The funding allocated in this year's budget will be used to further complement the provision of community-based services that began last year. The full annual cost of the package comes to €170 million and will go towards providing an additional 2,000 home care packages, 780,000 additional home help hours and 1,100 day care places.

There will always be those who will require residential care and the budget announcement has also made provision in this regard. It provides for approximately 2,300 long-stay places, both public and private, between 2006 and 2008. A total of 1,050 such places were provided during 2006 and an additional 1,250 places will be provided during 2007 and 2008.

The issue of standardising enhanced subventions nationwide was raised by a number of Members. The HSE continues to have discretion in this regard. When a person cannot meet the costs of care without undue hardship, the HSE can pay enhanced subvention—

Mr. Ryan: What constitutes due hardship for an older person?

Mr. S. Power: —and is given discretion in order that its granting may be flexible. Amounts of enhanced subvention vary from case to case and obviously depend on the particulars of the case in question, the cost of nursing home care in the locality and the amount of resources available to the HSE. An additional €20 million has been allocated to nursing home subvention for this year, bringing the total spend this year to €160 million, and the aim is to standardise means tests and bring greater consistency to the different levels of enhanced subvention support. Following on from the budget announcement yesterday, work is being completed within the Department on refining the subvention scheme and this will be announced in due course.

I will deal specifically with a number of questions and issues raised by Members, starting with the last one which was from Senator Norris. The

Bill provides the HSE with discretion to refuse to pay a subvention if the value of the applicant's assets exceeds a certain threshold or the value of the applicant's principal residence exceeds a certain threshold and his or her income is above a certain level, but the €9,000 income threshold only applies in conjunction with a property valued over the above levels and, therefore, it is incorrect to state that a person with an income of €9,000 would be refused subvention solely on the basis of this income.

Senator Glynn mentioned his experience of the lack of visits. Unfortunately, that is true. It is something that I have come across. A number of people in long-term care do not receive the type of visits required. Senator Henry referred to the visits, and even the importance of the visit of a postman. The meals on wheels scheme provides enormous benefit to people. Apart from the nourishment in the meal, there is the social contact as well in that older people often suffer from loneliness.

Senator Ryan's contribution was an interesting one, which perhaps we will take up on a different day. Senator Leyden also referred to the illegal charges and I hope that I have dealt with the issues raised.

Senator O'Rourke——

Ms O'Rourke: I asked the Minister of State if he would clarify the position about people having to sell their homes.

Mr. S. Power: I want to be quite clear about that because this has been raised. As far as I can gather, while we have heard of people talking

about selling homes, I have had no evidence to suggest that anyone has been asked to sell his or her home. Certainly, it is not our intention to do that, but where an applicant's principal residence is not continuously occupied by a relative as prescribed in the subsection, such as a relative whose sole income is the old age pension or a spouse, the HSE will exclude 95% of the estimated market value of the principal residence from the financial assessment of the applicant, and this means that an imputed income of 5% of the market value of the principal residence will be taken into account.

Ms O'Rourke: The Minister of State referred to the principal residence. They would only have one home.

Mr. S. Power: I will finish on this. The subsection further provides that the principal residence of the applicant will not be taken into account if that could give rise to destitution or homelessness of a person with a close connection to the applicant. This provision is to allow for exceptional circumstances and will generally apply in the case of a relative who does not fall into the categories prescribed in the subsection.

Mr. Ryan: Big deal.

Mr. S. Power: I mentioned in my introduction that I will bring forward a number of amendments on Committee Stage in the House.

Mr. Browne: Can I ask about the VHI and nursing homes?

Question put.

The Seanad divided: Tá, 22; Níl, 16.

Tá

Brennan, Michael.
Daly, Brendan.
Dardis, John.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.

MacSharry, Marc.
Mansergh, Martin.
Morrissey, Tom.
Moylan, Pat.
O'Rourke, Mary.
O'Toole, Joe.
Ormonde, Ann.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.

Níl

Bradford, Paul.
Browne, Fergal.
Burke, Ulick.
Coghlan, Paul.
Cummins, Maurice.
Finucane, Michael.
Hayes, Brian.
Henry, Mary.

McDowell, Derek.
Norris, David.
Phelan, John.
Quinn, Feargal.
Ross, Shane.
Ryan, Brendan.
Terry, Sheila.
Tuffy, Joanna.

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

Question declared carried.

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

Ms O'Rourke: After the Christmas recess.

Mr. Finucane: We should have it next week in case anyone has to sell a house.

Committee Stage ordered for Wednesday, 31 January 2007.

Sitting suspended at 3.45 p.m. and resumed at 4 p.m.

European Communities Bill 2006: Order for Second Stage.

Bill entitled an Act to amend the European Communities Act 1972 for the purpose of allowing offences under regulations under that Act to be prosecuted on indictment; to make provision in relation to the transposition of provisions of the Treaties governing, and Acts of, the Institutions of the European Communities under Acts of the Oireachtas other than that Act; and to provide for matters connected therewith.

Mr. Dardis: I move: "That Second Stage be taken today."

Question put and agreed to.

European Communities Bill 2006: Second Stage.

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

Minister of State at the Department of the Taoiseach (Mr. Treacy): Is cúis áthais é dom a bheith ar ais anseo arís chun Bille na gComhphobal Eorpach 2006 a chuir faoi bhráid an tSeanaid. Tá mé ag súil go mbeidh spéis mhór sa díospóireacht an-tábhachtach seo. Le comh-oibriú na Seanadóirí, beimid in ann an Bille seo a chuir i dlí na tíre.

I am pleased to bring the European Communities Bill 2006 before the Seanad. The Bill is short and technical but has an important national purpose. It is designed to enable us to discharge our European Union obligations in a proper manner. This is a necessity to which I am confident all Senators will subscribe.

The Bill contains just five sections which I will detail after I have provided the background to the Bill and its rationale. It has been drafted with a view to addressing the consequences of the Supreme Court judgments in two cases, known as *Browne and Kennedy*, heard in 2003 and 2005. The effect of the judgments has been to cast

doubt on the mechanism used to give effect to European Community law where supporting domestic provisions are also required. As a result, doubt has been also cast on the validity of a range of statutory instruments adopted by successive Governments for the purpose of implementing EC law.

In light of the *Browne and Kennedy* judgments the prime purpose of the present Bill is to ensure an effective mechanism is available to transpose European Community measures which require domestic supporting provisions. The Bill will also validate a quantity of statutory instruments introduced since we became members of the European Communities in 1973. As part of its purpose in ensuring the effective implementation of EC law in Ireland, the Bill allows for the creation of indictable offences. Given the nature of the European Union, it is essential to be in a position to enforce Community law by introducing, where necessary, dissuasive penalties available only for indictable offences.

The effect of the Bill will be to improve the effectiveness and efficiency of the procedures we use to implement EC law. If Ireland is to retain its proud place at the heart of the European Union and avail of the full benefits of membership, it is imperative we fulfil our side of the bargain and implement EC laws to which we have committed ourselves on foot of decisions taken by the Council of Ministers and the European Parliament. These unique decision-making arrangements are provided for in the EU treaties to which we have subscribed and our people have approved by referendum on a number of occasions since 1972. It is only by all member states living up to their commitments that the wide-ranging and complex work of the European Union can continue to evolve and serve the interests of the Irish people and the people of Europe as a whole.

Let us take this opportunity to reflect on the advantages which EU membership has conferred on Ireland over a period of more than three decades. Senators will agree that membership of the European Union has been pivotal to our contemporary success. Looking back, the decision we took in 1972 to join the then European Economic Community can be regarded as a turning point in our modern history. It was unquestionably the right decision.

By acceding to the EEC, we expressed a vote of confidence in ourselves and our capacity to stand tall among the great nations of Europe. This decision has paid rich dividends. Not only have we shown ourselves capable of competing economically with our European neighbours but we have become genuine Europeans, contributing to the shaping of our continent and no longer typecast by others as history's perennial victims.

Ireland is now widely viewed as a conspicuous European success story.

European involvement set this country firmly on the road to economic progress, unprecedented prosperity and full employment. It has helped banish the scourge of mass emigration and dispersed the clouds of under economic achievement that had been our lot for much of our independent history.

In 1973, we joined a community that was driven by the noble ideal of uniting Europe so as to prevent war and bring the people of our long-fractured continent closer together. In throwing in our lot with our European neighbours we also aspired to create better lives for our people by opening new markets for businesses, attracting foreign investment and securing improved living standards for farmers and workers alike. As we look around the Ireland of 2006, we can see that our European journey has been a highly productive and rewarding one. Europe has worked for Ireland by providing us with an economic and political framework within which we could thrive and prosper.

Ireland has been also good for Europe because nowhere else have the objectives of EU integration been so handsomely realised. On six separate occasions, Ireland has occupied the EU Presidency and thus given distinguished leadership to the Union. This has enhanced our international profile and enabled us to play an active role in world affairs in keeping with Ireland's national values and traditions.

In May 1972, the people of Ireland approved the third amendment to the Constitution, which stated, "No provision of this Constitution invalidates laws enacted, acts done, or measures adopted by the State necessitated by the obligations of membership of the Communities, or prevents laws enacted, acts done or measures adopted by the Communities or institutions thereof, from having the force of law in the State". The subsequent European Communities Act 1972 confirmed:

[T]he treaties governing the European Communities and the existing and future acts adopted by the institutions of those Communities shall be binding on the State and shall be part of the domestic law thereof under the conditions laid down in those treaties.

The clear intention of the constitutional amendment and the 1972 Act was that the State must fulfil those obligations necessitated by our EC membership.

From my perspective as Minister of State with responsibility for European Affairs, I can clearly see that there are two sides to the coin of EU membership. There are both opportunities and responsibilities. The opportunities of EU membership are manifold. Our key EU responsibility

is to live up to our treaty obligations, notably by giving proper domestic effect to European Community law. Over the years, Ireland's success in Europe has gone hand in hand with a diligent and faithful approach to implementing our EU obligations and this is as it should be. Those statutory instruments whose validity has been called into question by the Supreme Court judgments were made under powers given to Ministers by the Oireachtas but which did not specify that those powers could be used for the purposes of giving effect to EC law. It was a simple omission. Those ministerial regulations were all drawn up and applied in good faith on the basis that they allowed us to give full effect to EC law.

The legal basis on which these statutory instruments were applied has, however, now been called into question. It is imperative that this situation be rectified by the Oireachtas so that any doubt surrounding the mechanisms for giving effect to EC law is removed. The present Bill will ensure this is done.

Successive Governments have given appropriate priority to the crucial task of implementing European Community law in Ireland. They have appreciated the imperative of meeting our obligations under the EU treaties. Not only is this a legal requirement, it is also highly desirable in its own right so that Ireland can reap the full benefits of the many positive legislative developments that have taken place within the European Union since 1973.

This Bill also provides for the creation of indictable offences. There may be those who will question the need for this. They may ask why it is necessary to give Ministers powers in 2006 to create such offences if indictable offences were not provided for in the 1972 Act. Much of the explanation stems from the extraordinary evolution of the European Union since 1972, a process from which Ireland has benefited enormously.

The European Union's development since Ireland joined in 1973 has had many landmarks. In terms of the evolution of EC law, perhaps the single most important milestone was the creation of the Single Market in 1992. This removed most of the remaining internal non-tariff barriers to trade within the European Union. The Single Market extended trade liberalisation from goods to services and capital, bringing sizeable and lasting benefits for Irish traders. Irish firms gained significant cost reductions through cheaper inputs, transport, insurance and packaging. The increased competition generated from improved market access across borders also brought about price reductions. In turn, this led to an increase in demand and output and boosted trade between EU member states.

The smooth operation of the Single Market has necessitated a significant amount of EC legis-

[Mr. Treacy.]

lation which needs to be transposed domestically. It is worth noting that Ireland has implemented more than 2,700 internal market directives in our years of membership. Ireland has benefited directly from agricultural support, and social and regional development and cohesion funding since we joined the EEC, all of which derive from measures which we have shaped and agreed with our EU partners. The resulting financial transfers have been wisely invested by successive Governments in projects and programmes to tackle the problems of under-development, regional imbalances and peripherality which had held this country back for generations.

Within Ireland, cross-Border trade has also increased dramatically. The Single Market laid the basis for the elimination of the technical, administrative and indirect taxation barriers between North and South. These developments provided considerable stimulus for the expansion of North-South trade in addition to offering opportunities for increased economic co-operation across a wide range of areas. They also enhanced the work of the economic development agencies, the International Fund for Ireland and the various other bodies and groups that work together to improve the competitiveness of the economy of the island of Ireland.

Senators will recall that this House recently debated the Bill to give effect to the Special EU Programmes Body, which is the managing and paying authority for certain EU programmes in Northern Ireland and the Border counties. It is responsible for a budget of more than €1.2 billion encompassing almost 6,500 different projects. All this activity is ultimately dependent on EC law that we need to be able to implement properly.

The creation of the Single Market accelerated the internationalisation of our economy. A large number of Irish service firms in the banking, aviation and technology industries benefited from the opportunities that opened up to us in 1992. It is no coincidence that our economic revival can be dated from around the time when the Single Market came into being. Most of the increase in Irish employment during the 1990s was in this key services sector. The subsequent introduction of a single currency on 1 January 1999, further strengthened the cohesion of the Single Market to Ireland's great benefit as the only English-speaking eurozone economy. As a result, Ireland's economy is now firmly anchored in the skills and talents of our people and the unhindered access we enjoy to the world's most lucrative marketplace.

The creation of the Single Market has been one of the main factors behind the surge of foreign direct investment into Ireland during the 1990s. In 1972, a mere €16 million came into the economy from foreign investors. Thirty years later,

with full access to European markets, we now measure foreign investment in billions of euro. Total investment has exceeded €30 billion and our economy has been transformed, with in excess of 128,000 people employed in more than 1,000 companies in the foreign-owned sector.

Irish consumers have also seen great benefits from EU membership. These changes have made travel abroad for thousands of Irish people simple, safe and relatively inexpensive. Not long ago, air travel was the preserve of the fortunate few. Today, popping over to London, Lisbon or Ljubljana is a widely accessible option. If we are unfortunate enough to fall ill when abroad, we can access free emergency care thanks to the European health insurance card. If our airline cancels our flight, we are entitled to compensation. The euro now means that we can buy breakfast in Ballinasloe, lunch in Lyon and dinner in Dusseldorf without ever having to change currency. These examples underline the extraordinary benefits that membership of the EU has brought to all the people of Ireland. These advantages did not come from thin air but are the product of EC law.

Irish people have endorsed major treaty changes at every stage of the Union's evolution and the Houses of the Oireachtas have been to the forefront of the legislative effort to align our national laws with EC requirements. European Union membership has involved almost every Minister of the Government bringing forward measures to give effect to European law with the many benefits it brings. Irish officials are deeply involved in the complex process which gives rise to EC law. It represents a unique pooling of sovereignty in which our interests are combined in a manner that benefits all.

European Community law is not something that is imposed on us from the outside. We are full and active participants in the elaboration of this unique body of law. It arises out of treaty provisions which the Irish people have endorsed at every step. Everything that is done in Brussels is treaty-based and we are at the heart of the decision-making process at all levels. The European Union itself has been on a journey of historic change over the past 33 years. It has been transformed from a small group of continental western European states into today's Union of peoples stretching from Galway to Nicosia, and from Stockholm to Seville. From an agricultural free trade bloc, the EU has evolved into an economic and monetary union with a Single Market and a Parliament elected by voters in 25 countries which will soon total 27 countries. The development of the Union's role is to be seen in its comprehensive legislative action across the range of its economic and social policies.

As Europe has changed, so too has Ireland's engagement with Europe. Thirty years on, our

EU involvement has deepened, matured and, inevitably, become more complex. The process by which the Community enacts legislation is necessarily elaborate and complicated. Legislation in the Union's first pillar, which deals with economic and social matters, affects the work of most Departments. It has legislative implications for the work of those Departments who participate fully in the shaping of EC legislation in Brussels. It is worth noting that over recent years the number of new directives adopted has averaged around 55 per year.

The Union has been able to evolve and benefit Ireland because it is a rules-based environment. Small countries like ours have much to gain from such an environment, which provides protection for our interests. These are rules that must be implemented equally across all member states. Article 249 of the EC Treaty sets out the three different ways in which the Community makes its laws, namely, regulations, directives and decisions. Community regulations are binding on all member states and are directly applicable. Decisions are binding on the member states to which they are addressed. Directives on the other hand are binding as to the ends to be achieved but they leave member states some choice as to how those ends are to be achieved.

Members of the Oireachtas Sub-Committee on European Scrutiny, which was created in recent years in response to the EU's evolution, will be very familiar with these different instruments of EU law-making. I applaud the work of that sub-committee which has been in operation for nearly five years. The sub-committee scrutinises draft legislative proposals across the full range of the Union's activities as provided for in the Oireachtas Scrutiny Act 2002. Officials in all Departments are required to prepare scrutiny notes on draft legislative proposals within four weeks of their formal circulation. Ministers and officials are also required to be available to provide additional material and to brief committees of the Houses. Reports are produced every six months by Departments on developments within their policy areas in the European Union. My Government colleague, the Minister for Foreign Affairs, Deputy Dermot Ahern, and I brief the Joint Committee on European Union Affairs in advance of almost every General Affairs and External Relations Council meeting. This provides an invaluable opportunity for engagement with the Oireachtas on broad aspects of EU policy.

One of my responsibilities as Minister with responsibility for European affairs involves chairing the Government interdepartmental co-ordinating committee on European Union affairs. At our regular meetings, we review how Ireland is doing in transposing EC law and meeting our membership obligations. We are making satisfac-

tory progress but it is undoubtedly the case that the increasing volume of European Community measures requires us to look in a strategic way at our procedures and at our capacity to meet our obligations fully and in a timely fashion.

The net point I want to make is that European Union affairs are very much a part of the day-to-day work of the Oireachtas and we have devised effective procedures for ensuring full Oireachtas involvement. The draft constitutional treaty will, when it is implemented, provide for a further enhancement of the role of national parliaments in European Union business. The Bill will significantly help to speed up the rate of Ireland's transposition of EU directives. This is an important national objective. Speedy and effective implementation will serve to enhance Ireland's standing within the Union.

When Ireland joined the European Communities, these Houses passed the European Communities Act 1972 as the principal legal instrument for implementing EC law. The Act provides that the treaties governing the European Community and the existing and future Acts adopted by the institutions of the Community shall be binding on this State and be part of domestic law. At the time of the passage of the 1972 Act, the scope of European Community law was relatively limited. Senators will be aware that section 3 of that Act provides that a Minister may make regulations enabling EC law to have full effect in domestic law. Such ministerial regulations may not, however, create an indictable offence.

The absence of such provisions in the 1972 Act has led to the practice of Ministers of successive Governments using regulation-making powers in purely domestic legislation, breach of which is an indictable offence, to ensure full effect was given to the EC instrument being transposed. In this Bill, the Minister will have only a limited power to make provision for indictable offences where necessary to meet our treaty obligations and the Minister, where it is necessary, will do so within the parameters set down by the Oireachtas in the terms of section 2 of this Bill.

In the cases of Browne and Kennedy, the Supreme Court found that regulations made under a domestic regulation-making power, which did not specify as one of its purposes that of giving effect to EC law, could not be used for the purpose of transposing EC measures. Accordingly, a statutory instrument to give effect to European Community law can validly be made only where the Oireachtas has specifically provided for this in relevant primary legislation. The Attorney General has advised that statutory instruments made under these types of procedures by Ministers of successive Governments since 1973 are susceptible to legal challenge. The Bill before us will confirm the validity of all such measures and will enable statutory instrument

[Mr. Treacy.]

making powers under any Act of the Oireachtas to be used to implement European Community law.

No doubt some Members may be wondering why it is necessary for the Bill to give Ministers the power to create indictable offences under the 1972 Act. As is clear from my earlier remarks, European Community law has evolved greatly in the past 33 years. It now encompasses a much wider array of issues. As the Union evolves, there is a greater need for more stringent penalties in domestic measures to meet our obligations under the treaties. European Community instruments, which are implemented through domestic regulations, require the sanction for breaches to match the importance of the obligations being created. In many cases, the sanction available for summary offences does not meet the requirements of European Community law that sanctions be effective, proportionate and dissuasive.

I am convinced there is a need to be able to provide for enforcement by means of more rigorous penalties in regulations without having to resort in every such case to the introduction of primary legislation in the Houses of the Oireachtas. If the Government needs to resort to primary legislation on each occasion, this will inevitably slow the implementation of European Community law and potentially leave us in breach of our treaty obligations.

I will now take Senators through the main provisions of the Bill. They will have received the explanatory and financial memorandum attached to it. Section 2 will give Ministers the power to create indictable offences in regulations made pursuant to the 1972 Act where the Minister deems such a sanction necessary for more serious breaches of European Community law. The Bill provides for a maximum fine of €500,000 and a maximum term of imprisonment of three years. In some cases, it may be necessary to provide for stronger penalties than those available in this Bill. Ministers in these cases will have to provide for such penalties in other legislation, either existing legislation which already provides for such penalties or, if no such legislation exists, Ministers will have to propose new legislation which will be fully debated by the Oireachtas.

Section 3(1) will permit statutory instrument-making powers contained in existing primary legislation to be used to give effect to an EC law provided the European obligations imposed upon the State relate, in whole, to matters to which the statutory instrument making power relates. It will allow the regulation making power in any Act of the Oireachtas to be used for the purpose of implementing EC law as long as the domestic Act deals, in whole, with the policy area that the European Community measure covers. It is entirely appropriate that legislation intended for

domestic purposes can be used for the additional purpose of giving effect to EC law also.

Section 3(2) takes account of the primacy of European Community law. It replicates the existing provision in the 1972 Act which allows regulations made for the purpose of giving effect to EC law to amend primary legislation. This provision must be replicated to allow statutory instruments made under the new dual purpose power under section 3(1) to amend primary legislation where this is necessary for the purposes of giving effect to European Community law. Without this section, statutory instruments made by Ministers and validated under section 4 of this Bill could not be subsequently amended or revoked except by primary legislation or regulations made under the Act of 1972.

Section 3(3) is intended to enhance transparency of the implementation of Community legislation into Irish law by requiring a statutory instrument that gives effect to an EC law to refer to that law. Put simply, the statutory instrument being used to give effect to a particular European Union measure must refer specifically to that EU measure.

Section 3(4) confines the exercise of the power to make statutory instruments to Ministers. Section 4 will confirm the validity of all regulations giving effect to European Community law made under a domestic regulations-making power. This confirmation shall not affect the constitutional rights of any individual.

My officials have consulted widely with Departments and, in particular, with the Office of the Attorney General in the preparation of the European Communities Bill 2006. I look forward to a positive and supportive debate on this important and much-needed change to the manner in which we implement European Community law in Ireland. This Bill represents an important updating of the 1972 Act for the purposes of responding to the relevant Supreme Court judgments and ensuring we are in a position to give proper and timely effect to European Community law. I, therefore, commend this Bill to the House.

Mr. Bradford: I welcome the Minister of State and the legislation. I agree with him on its necessity and urgency in some respects. It stems from the Supreme Court judgments of 2003 and 2005. I could ask why we have been waiting almost three years since the 2003 judgment. However, the legislation is now before us.

The language in the Bill, the Minister of State's speech and the general language used when debating EU legislation and directives are very much a jungle of jargon as far as most citizens are concerned. It is important that we ensure we use user-friendly language when debating and implementing EU decisions and directives. The

benefits of European Union membership for Ireland are significant. The Minister of State referred to the fact that our economic revival stemmed very much from the Single Market introduced in the late 1980s. Our economic survival as a country and society stemmed from our earlier decision to enter the European Economic Community in 1973.

We all acknowledge the benefits of what has been achieved here from our membership of the European Union and the benefits of the Acts, directives and decisions which have come through that. Sometimes, however, citizens of the broader European Union feel removed from the bureaucracy and decision making that takes place in Brussels. It is important therefore that when we present such Bills and proposals in the Oireachtas we try to be as clear as possible on their meaning and expected impact.

Fine Gael supports fully the transposition of EU directives into national law. This is not simply a matter of good legislative housekeeping. It is through EU directives that European legislation is enacted in the member states, including Ireland. In view of the significant and positive impact of EU legislation on our citizens, we must support this Bill. Directives on the environment, working conditions, equality and many other areas have brought significant benefits to everybody living and working in the European Union. When their implementation is delayed or any doubt is cast on implementation, the benefits to citizens are delayed. It is important therefore to progress the directives as quickly as possible.

I have been advised that currently, some 128 EU directives await transposition into Irish law. Also, at 31 October 2006, five weeks ago, some 22 directives were overdue for transposition. Will the Minister of State indicate what progress can be made in resolving these legislative blockages? Currently, eight directives, three of which are overdue, await transposition into Irish law in the Department of Communications, Marine and Natural Resources. One of those overdue relates to the energy efficiency of buildings. When we use normal EU language to talk about this type of directive, the issue can seem remote. However, when we explain that directives relate to matters such as the energy efficiency of buildings, we make them more aware of the importance of progressing the directives.

In April of this year the European Commission announced it would instigate legal proceedings against Ireland for failing to transpose EU directives into Irish law with regard to the opening of electricity and gas markets to competition. This is a substantive issue from the point of view of competition, price and choice. Notwithstanding the modest good news we had recently on fuel prices, the overall trend in fuel prices over the past two years demonstrates the need for compe-

tion. We have a directive awaiting action, but no action has been taken to date on it. The Minister of State and the Department must do the required work in that regard.

I have been advised of a report in a document of which I had not heard previously, the Internal Market Scoreboard. This document rates the speed at which EU members implement Internal Market directives. Ireland lies in 19th place out of 25 on that scoreboard. If there was a relegation prospect in that league, we would be in the danger zone. In the debate on European issues here politicians and the Government are often criticised because it is felt that Ireland is often first to the fray with regard to introducing EU directives and regulations. We hear from our constituents that we over regulate and hear stories that the French, Italians and others are far more relaxed about the implementation of EU decisions. It is felt that we are somehow overbearing in this regard.

Mr. Dardis: They just adopt them, but do not implement them. There is a difference.

Mr. Bradford: We are in 19th place out of 25 and perhaps the Minister of State would indicate the thinking in that regard. The Internal Market Scoreboard listed Ireland as one of the eight EU member states that had not met the target set for the implementation of Internal Market directives and stated that it faced 51 legal cases relating to its failure to adopt legislation in this important area. While the broader political body is almost unanimous in pointing out how committed we are to our membership of the European Union, our response to the implementation of many EU directives casts doubt on the validity of this claim.

Fine Gael believes strongly in the benefits of EU membership for Ireland. Therefore, we hope we progress the adoption and transposition of EU directives into law at a faster pace. We consider that our national failure to progress some directives results in our people losing out on some of the benefits due to flow from the directives. We hope this legislation will help expedite matters in this regard.

I, Senator Dardis and some other Senators are members of the Sub-Committee on EU Scrutiny. The committee does much excellent work and meets at 9.30 a.m. every second Thursday, far removed from the glare of the media. While the committee is quite effective, it possibly needs further resources to cater for these and further directives which will come before it. We will need assistance to get the work done. Over the course of 2005, for example, some 75% of the work of the sub-committee was spent on examining directives, regulations and decisions of the European Union. It is important the committee is beefed up. The decision to set up the sub-commit-

[Mr. Bradford.]

tee stemmed from the referendum on the Nice Treaty. It is working well but probably needs more assistance.

My attention has been drawn to section 3, which allows Ministers to implement EU law by way of statutory instrument. Will the Minister of State advise us further with regard to this section? The power to amend Irish domestic legislation is a new element. Does the Minister of State believe this provision will amount to the authority of the Oireachtas being usurped by individual Ministers? If the Oireachtas sees fit to pass legislation, can a Minister unilaterally undo that action even if it provides for the transposition of necessary European law? Will the Minister of State also give us his opinion on safeguards to be written into the proposal? Currently, a statutory instrument that transposes EU law can be challenged on the basis that the statutory instrument does not do its job. In light of section 3, would the Minister of State, the Department or the Government be averse to an additional proposal to delay the implementation of such an order for 21 Oireachtas sitting days, during which time a Member could raise an objection to it if it were warranted? The Minister of State might respond on this issue, which was brought to my notice.

I accept the necessity for the Bill, difficult as its language may appear. The Supreme Court judgements needed to be responded to and I hope this is a full response. At the end of the day, the more progress we can make in responding quickly and efficiently to EU directives and decisions, the better for the Irish people, as has proved to be the case in the past 30 years or so.

Ms Ormonde: I welcome the Minister of State to the House. As I understand the Bill from listening to the Minister of State's presentation, its purpose is to amend the European Communities Act 1972 to align our national laws with European Community law. I had to grasp that fundamental point before I could go any further. I had to ask what it really meant. It means that up to now we did not have the power to apply sanctions for breaches of EU law. The Minister of State might come back to me in this regard as I am not clear as to the real strength of the Bill when it comes into law or how much it will improve effectiveness and procedures with regard to the implementation of EU law.

I echo the Minister of State's point that Ireland has changed much since we became members of the EU, as has the quality of life for hundreds of thousands of people. I read some old reports in taking a journey from 1972. We have introduced equal treatment for men and women, maternity leave, parental leave, child care, better conditions of employment, better health and safety regulations, better working conditions and the protec-

tion of young people. This is what membership has given us. It has created the conditions whereby these issues can be addressed. There has been powerful change since we became members of the European Community.

There has been dramatic change since the Single European Act came into being. Mr. Jacques Delors, who was President of the Commission when that Act came into force, stated it would mean: "the commitment of implementing simultaneously the great market without frontiers, more economic and social cohesion, an European research and technology policy, the strengthening of the European Monetary System, the beginning of an European social area and significant actions in environment". When we consider those words, we realise what a journey we as Europeans have undertaken since then. All the objectives of the late 1980s have been achieved and exceeded. We have the Single Market of 470 million people and a very successful single currency, the euro, now used in at least 12 member states and recognised as the second most important international currency.

Ireland has benefited greatly from the Union's policy to achieve economic and social cohesion. We look forward to helping new member states as they embark on a similar mission. Therefore, the Bill is of great importance to us. As the Minister of State outlined, because of its technical nature, it has enabled us to meet our EU obligations and we can now transpose EU legislation. However, I am not fully clear on this area of the Bill so perhaps the Minister of State will explain further.

It is my understanding that if there are breaches of EU law, we in Ireland can introduce sanctions. It is important that we all sing the one tune and that all member states have updated their legislation to deal with this issue. There have been treaties and referenda in recent years. If the requirements are necessary, we must update our legislation to allow for the application of sanctions in domestic law when EU law is breached with regard to policy matters.

On that basis, the Bill is welcome. I am still giving it thought, and do not have a total grasp of it. I will give it more thought before Committee Stage.

Mr. Quinn: I welcome the Minister of State, Deputy Treacy, to the House and welcome his enthusiasm for the European Union. The Minister of State will be aware that I also have enthusiasm for the European Union. On the day I finished my university exams way back in the 1950s, I travelled to Cork, boarded a boat, travelled from Cork to Le Havre and spent that winter in Europe. The Minister of State may not remember the Europe of the 1950s but my memory is of leaving Ireland as a strong Nationalist

and coming back as a European. I was still a strong Nationalist but discovered that winter the dimensions of a new Europe through meeting Belgians, Dutch, Luxembourgers and French, who regarded themselves as having their own nationalities but also as committed Europeans.

Next year we will commemorate the 35th anniversary of the air crash on 18 June 1972 at Staines, Middlesex. Eleven leading Irish business people and industrialists were on that aeroplane and were killed. The accident happened on a Sunday afternoon six months before we joined the European Economic Community. Those business people had recognised our future was in Europe. I later met a person from Belfast who said he had not detected or identified the threats and opportunities that arose in Europe. Those 11 Irish businessmen who lost their lives were travelling because they recognised the importance of Europe. Six months later we joined the EEC. The Minister of State correctly drew our attention to the benefits of that involvement.

I know the Minister of State's enthusiasm for Europe and to make our link with Europe stronger. As a committed European, I should be expected to give almost knee-jerk approval to any legislation involving the European Union. In this case, however, I am afraid I cannot give approval to this measure which I regard as a retrograde step.

It is commonly accepted that a fundamental problem within the EU is its perceived distance from the people of the individual member states. This is not just an image problem or, if it is, it is an image problem with very real, practical consequences. With an increasing part of our lives dominated by what happens at European level, it is important the people feel personally involved with what is going on and that they are interested enough to monitor the day-to-day decision-making processes of the Union.

There are many obstacles to making this a reality in practice. One, which is relevant in the context of the Bill, is the relative influence of the EU decision-making process which is exercised by officials rather than by politicians who have an electoral mandate. I am not just talking about the Brussels bureaucracy, which is probably the most malign civil service in the history of humanity. I am talking just as much about the role of officials in the day-to-day interface between the individual member states and the European Commission in Brussels. Since last June, I have been the chairman of Eurocommerce, which is a Brussels-based organisation that acts as a voice for 5.5 million enterprises. Given that Eurocommerce represents 27 million employees of every shop of every kind in Europe, it is clear it is a strong voice. I can understand the frustration I hear from Europe about negotiating, dealing and being listened to in Brussels.

A vast amount of decision-making on European affairs is taken by officials and between officials. Quite often, political people do not get involved until the last minute, when their role may be to apply a rubber-stamp or to add a tiny bit of finesse to what has been decided. I refer to the day-to-day decisions which are the bread and butter of European decision-making, rather than to the issues which get aired at European summit meetings. When one considers that the European Commission has the sole right of initiating EU legislation, it could be argued that the system is heavily over-balanced in favour of officials to the detriment of those who have been politically elected.

We should resist the dilution of one or two highly valuable safeguards, the most important of which involves national parliaments, which tend to be closer to the people of their countries than a bureaucracy that is based in another country. Members will remember that after the Oireachtas engaged in some soul-searching following the rejection of the first referendum on the Nice treaty, it adopted a raft of measures that were designed to increase its scrutiny of European legislation, which had been passing into Irish law almost totally unnoticed. Members will also remember that in the discussions which led to the development of the proposed EU constitution, which is in limbo for the moment, a prime consideration was the need to increase and deepen the role of national parliaments in the overall European process.

The Bill before the House today flies in the face of the facts and trends I have mentioned. It is possible to argue for the Bill's provisions on the grounds that it will be more efficient to replace the process of passing primary legislation with a simpler process of providing for a statutory instrument in the form of a ministerial order. Equally, it is possible to argue against the Bill's provisions on the grounds of openness and transparency, as well as the need to increase rather than dilute the amount of EU business that is dealt with in the full light of day.

Ministerial orders are, in practice, invisible. They represent a form of stealth legislation that is not subject to any scrutiny. Such orders rarely raise themselves above of the parapet of public visibility. There is a place for them in the overall scheme of things, but we should be careful about what matters we choose to deal with in such a manner. When ministerial orders are used, we give up accountability and consign the matter in question to the outer darkness of invisibility. Officials love ministerial orders, as opposed to primary legislation, because they involve having to convince a constituency of just one person — the Minister. Such orders need just one ministerial signature rather than the formal approval of both Houses of the Oireachtas. In my experience,

[Mr. Quinn.]

many officials have a horror of getting involved in the legislative process — some of them are happy to avoid it, if possible.

The net effect of this Bill will be to make it possible for a European legislative proposal to pass through the entire process, from conception until promulgation into law, without the benefit of any political input. Despite all the respect I have for officials, I think it is a step too far. I ask the Minister to correct me if I am wrong, but that seems to be my reading of the effect of this legislation. We can increase the efficiency of the parliamentary scrutiny of European measures in many ways. I urge us to consider alternative routes before we confess defeat and follow the course outlined in this Bill. I ask the Minister of State to rethink the steps he is taking in this Bill.

Mr. Dardis: I welcome the Minister of State, Deputy Treacy, and his officials to the House. I readily accept the need for this Bill. I do not have a problem with that, as the matter needs to be regularised. Some important court judgments are relevant in this regard. I would like to ask some questions which are similar to those which were posed by Senator Quinn, although I will not go as far as he did in his final remarks.

I agree with the sentiments the Minister of State articulated about the benefits of Ireland's membership of the European Union. I will not repeat those remarks, other than to say some of the other benefits we have enjoyed as a result may be even more significant than the economic benefits. I refer to the improvements in our national self-confidence and our development as an outward-looking society, for example. Ireland has started to look beyond its nearest neighbour for alternative ways of doing things. Consensus is a significant feature of the European parliamentary system, which is quite different from the system we are used to, which we inherited from Westminster. Another notable benefit of EU membership is that it has helped to erode the ultra-nationalist thinking in some sections of society. I do not refer to nationalism in the sense of one's pride in one's nation but in the narrower sense of the sort of feeling which led to the world wars. The EU's enduring monument is that it has kept the peace on this Continent since the Second World War.

I attended the funeral of one of the people who was killed in the 1972 air crash that was referred to by Senator Quinn. The late Michael Rigby Jones of Irish Ropes, who had created a substantial business, was killed in that accident. It is interesting to think such a business would find it difficult to survive in the modern European Union, which sees intellectual property as more important than physical labour. The process used by Irish Ropes at the time to make ropes involved

heavy labour. That such industries would no longer survive here is a measure of how this country has changed.

I am always somewhat suspicious of simple Bills which come to the House late in the session. The Minister of State, Deputy Treacy, will recall one such Bill which related to licences for fishermen. It caused considerable difficulties, not least in his part of the country. It is possible to step on some landmines late in the session and late in the day. While I do not think this Bill is such a landmine, we should bear in mind that difficulties can arise. We need to regularise, from a legal point of view, the manner in which we confirm the standing of various EU transpositions.

I agree with Senator Bradford's comments about EU jargon, which is the crucifixion of a great deal of EU legislation, including directives. One of the most popular phrases of recent times has been "the information deficit". I think I am given credit for having introduced a similar piece of jargon — "the comprehension deficit". There was no problem with information because we were deluged with it. The problem was that we could not understand it.

Ms Ormonde: That is right.

Mr. Dardis: There is a message in that for the people who draw up EU regulations.

I thank the Minister of State for his remarks about the Sub-Committee on European Scrutiny. It is noticeable that many of the documents which are referred to the sub-committee are extremely difficult to understand. I do not refer to the complexity of the issues, but to the nature of the language that is used. Given that the EU works with a multiplicity of languages, one would have thought its officials would try to ensure all matters are clear. That does not seem to happen very often, however. Perhaps that is outside the scope of what we are talking about today.

There is a need for checks and balances in respect of all these matters. The most appropriate way of doing that is by means of Oireachtas scrutiny. While we have put in place a structure in the form of the Sub-Committee on European Scrutiny, a broader form of analysis is needed. Some issues are of such fundamental importance they need to be debated on the floors of the Houses, even if they are of a technical nature. We should consider the length of time it took to transpose the nitrates directive. That was because it was so controversial it impacted heavily on farming. That was a politically important issue.

Are we giving somebody the power to introduce the nitrates directive by order without the Houses being involved in that process? The Minister of State is shaking his head, and I am interested to hear his reply. From a practical political point of view I do not believe that could

5 o'clock

happen. There would be such an outcry the matter would have to come before the Houses. Moving back from that extreme position, however, there are grey areas about which I have some concerns. Will it be transposed by *fiat*? Something can be done which appears sensible but in which Parliament would not have much of an involvement. We are getting into areas such as the Petersberg Tasks and so on. They are not regulations. It is a more fundamental process.

Another point that is reasonable, and Senator Quinn referred to it, is the degree to which Europe legislates through the Commission. It was raised recently by the press in Belgium, whose members believe they are being controlled increasingly by what happens in Brussels rather than by their domestic law. Perhaps some issues may not be strictly within the scope of the Bill but they are important and ones to which we must pay some attention.

There is also the issue of subsidiarity. The sub-committee on European scrutiny must have regard to that aspect. The new constitutional treaty will have systems in place, and we had the so-called yellow card and so on — more jargon — with regard to subsidiarity but will adequate regard be had if we transpose European legislation under the Bill to matters such as subsidiarity? Parliamentary scrutiny is of fundamental importance and must be protected.

The Minister of State stated that those statutory instruments whose validity has been called into question by a Supreme Court judgement were made under powers given to Ministers by the Oireachtas but which did not specify that those powers could be used for the purpose of giving effect to EU law. I understand that and it confirms for me the need to pass the legislation before us. It stated: "... conferred the power by the Oireachtas". The Oireachtas is conferring powers here again. The Oireachtas must always be careful about vesting too much power in the Executive, something I have spoken about many times in the past on both sides of the House. The primacy of Parliament is something of which we must be protective.

There have been long delays, some of which were referred to by Senator Bradford, in the transposition into Irish law of regulations and directives but some of those delays were understandable. As I remarked when the Minister of State was speaking, just because our adoption rate is low does not mean our implementation rate is low. I understand we have a good record with regard to ensuring that when we introduce these measures they are taken into account.

Incidentally, I might be keen about breakfast in Ballinasloe. I might be less keen about lunch in Lyon and I would not like dinner in Dusseldorf. I might like it in Paris, and I might even settle for Berlin, but Dusseldorf would not be one of the

choices. I take the point that the new currency has been hugely beneficial.

The fundamental question is whether it will be possible, as a result of this measure, to bypass the Sub-Committee on European Scrutiny and the Houses and allow people who are less enlightened than the Minister to behave in a manner we might not regard as appropriate at some future date? There is reference in the Bill to the legislation under the first pillar. We will come back to the issue of the dominance of the Commission within the entire system. I accept that, ultimately, the Council, under the various pillars, is the legislative body but the Commission has substantial powers. The Minister also stated: "We have devised effective procedures for ensuring full Oireachtas involvement". That is an important statement but is one that might need some back-up.

I am not sure where the fines apply. The sum of €500,000 is a very large fine on an indictment. I appreciate circumstances may arise where that might need to be the case where industries are at variance with the particular directive but it is a very large sum. Does that mean that if a farmer in the west is in breach of the nitrates directive, he is leaving himself open to a €500,000 fine? I cannot imagine the court would impose that but it appears it is technically possible that could happen. I welcome the overall thrust of the legislation. I accept the need for it and will support it.

Mr. McDowell: Along with other Members who spoke, I am an enthusiastic supporter of the European project. I am willing to go one step further than Senator Dardis in embracing German cooking as part of the project. The Minister of State spoke about it at great length. I am not sure why he did so because it did not appear to be entirely apposite to what we are discussing. I will let that pass, however.

I share some of Senator Quinn's scepticism about the Bill. We are looking to remedy a fairly shoddy administrative practice that has developed over the years but it is having the effect of shining the light into one of those dusty corners where one finds things one did not think were there. It is no harm that it is allowing us the opportunity to debate the practices that have developed in terms of the transposition of European legislation into Irish law.

Essentially, the Bill has two or three measures. It allows Ministers to create indictable offences up to certain limits provided they are of the opinion that they are necessitated by the requirements of membership of the European Union. It confirms the power, which I gather already exists in the 1972 Act, to amend primary legislation by statutory instruments. It confirms the validity of all instruments implemented over the course of the past 35 years since we became members of

[Mr. McDowell.]

the European Union and it also allows statutory instruments which were not specifically created for the purpose to be used to create indictable offences, even though they were created for an entirely different purpose.

The primary action we seek to take here is to amend the 1972 Act to allow Ministers create indictable offences. The Minister asked the rhetorical question in his contribution as to the reason we need to do that now when we did not have to do it in 1972. It is important to remember that the 1972 provision did not come about by accident. There was a view at the time that the Dáil and the Seanad should not allow the creation of serious criminal offences directly by Brussels. The view was that if we were to deprive somebody of their liberty on foot of a criminal offence, that offence should have been created specifically in primary legislation or at least by discussion in this House and in the other House.

That is an important principle. If somebody is being deprived of their liberty, it is an important principle that Parliament, in our case the Oireachtas, in the first place creates the offence set to deprive somebody of their liberty. If we take the view that in some circumstances that is not so, there is an onus on the Government to state explicitly the reason that should be the case. The wording of the section we are inserting in the 1972 Act states that the regulations may make provision for offences to be prosecuted on indictment where the Minister of the Government making the regulations considers it necessary. It does not specify that the Government has to take that view, although I suppose it is implied. It simply states that the Minister must be of the view that it is necessary. I am not sure it is a good practice to allow a Minister to create a serious criminal offence, simply because he or she believes it is necessary, without reference to this and the other House. There is an onus on the Government and the Minister to explain the reason that should be the case.

Notwithstanding his enthusiasm, the Minister nonetheless believes it is necessary to confine this power in some way and that it will be available only if the maximum fine is to be €500,000 or less and the maximum imprisonment is three years or less. Is that provided for somewhere else or is that simply a decision the Department or the Minister made in considering how we should transpose this measure or amend the 1972 Act. If it is a case that the Minister was using his discretion, why did he settle on a term of imprisonment of three years and a maximum fine of €500,000?

The second measure the Bill provides for is that it allows statutory instruments to amend primary legislation. Perhaps it is the lawyer in me but this seems to offend the natural hierarchy of law.

Mr. Quinn: Hear, hear.

Mr. McDowell: If this and the other House have passed a Bill, why should a Minister acting on his or her own be entitled to amend it? If we have had a full debate and this House has taken a view, if the other House has taken the Bill and the President has signed it in the normal course, why should a Minister, simply because he or she considers it is necessary to fulfil our obligations to the European Union, be entitled in five or ten years' times to amend the primary legislation without any serious reference to this House? That is an important principle. I appreciate we have been doing this for many years now and that the power is contained in the 1972 Act, but nonetheless it is an extraordinary important principle and one that perhaps deserves further discussion. All the issues about subsidiarity and hierarchy of law and so on come into play here.

When I saw that this Bill was ordered for today, my first inclination was to say, "this is horribly technical, maybe I will just go home early". Having decided not to do that, I read the comments of the Tánaiste when he went to the House of Lords in June of this year and debated what he considered to be an important issue, some of the issues that arise out a European Court of Justice Case No. 173/03. I appreciate this is technical in nature but nonetheless the Tánaiste thought it was sufficiently important to justify him going to the House of Lords, and perhaps we should tease it out. Essentially, what he sought to do reflects on what Senator Dardis said. He sought to resist the power, which the Commission is seeking to take unto itself, to require individual parliaments to transpose criminal law into national law. The European Court of Justice decided a requirement — which came under environmental law but involved the imposition of serious fines — which did not come within the third pillar but rather fell within the community jurisdiction, fell to the Commission to do. To put it in simple terms, the Commission considers it has power to require parliaments to impose serious crimes for serious criminal offences. I mention that case in the context of this debate because the Minister for Justice, Equality and Law Reform considers the Commission should not be entitled to take this power in areas of criminal law. He waxed lyrically and persuasively to the effect that because we have a different system of criminal law based on common law here and in Cyprus, Malta and the UK, we are entitled to set our own procedures and to deal with matters in our own way and that the Commission should not be allowed to take this power onto itself.

It seems the Minister's views, expressed strongly in the House of Lords, run contrary to what we seek to do in this Bill in so far as we

seek to give the power to a Minister to simply transpose criminal law into Irish law by regulation. That is something which, implicitly at least, the Tánaiste and the Minister for Justice, Equality and Law Reform, who is an important player at Cabinet when dealing with these issues, has opposed publicly. I would like the Minister of State to deal further with that issue.

We had a debate recently in the Joint Committee on European Affairs about the *passerelle* provision, where the Finnish Presidency was making a proposal to move certain issues related to criminal law from the third pillar into the first pillar. Again, the Minister for Justice, Equality and Law Reform is strong about not wanting this done. That would have the effect of moving some issues dealing with criminal law from the third pillar, which is intergovernmental and which requires unanimity, into Community competence, which generally speaking does not.

I am struck by the determination of the Tánaiste to avoid any interference, as he would see it, by the Commission in our integral criminal law, yet we seek to do what is provided in this legislation. We seek to ensure that if the Commission provides in a directive that our criminal law should impose serious fines or even potential imprisonment, a Minister should be entitled to simply translate that into law without even reference to this House. There is contradiction there which I find difficult to reconcile.

Having read the Bill carefully, I consider this is important legislation. I appreciate it is simply, as the Minister would see it, regularising the position that has obtained heretofore. That particularly applies in the case of statutory instruments which are introduced under other Acts. However, viewing it dispassionately, one could only view that procedure that we have been using as simply a way of getting around the 1972 Act. It provides that we could not create indictable offences. Therefore we have been using other Acts to make statutory instruments which allow for the creation of indictable offences. That was a way of subverting the intention of the Oireachtas when it passed the 1972 Act, including that prohibition.

With the benefit of hindsight, perhaps it was just as well I took the trouble to read this Bill this afternoon because it shines a light on a sloppy administrative process and one to which I am reluctant to in any way give approval at this stage.

Mr. Lydon: I will be brief in my contribution. This is one of those short Bills introduced from time to time that slips through, as it were. It has been said it is a short, technical and important Bill and that we should pass it. While this is a short Bill, it is a deadly one in many ways.

The Minister of State said, "No doubt some of you are wondering why it is necessary for the Bill to give Ministers the power to create indictable

offences under the 1972 Act". I have the same reservations about the Bill as those expressed by Senator Dardis and others. I am considering it from the perspective of a fisherman from the place from where I come, Killybegs. If a fisherman sails his boat from one box to the other and does not record that journey, this becomes an indictable offence and huge penalties can be imposed willy-nilly by a Minister giving effect to EU law in such an instance without any reference back to the House. Is that true or false? That is not good law and it is a bad way of doing business.

The Minister of State said that if we have to return to the House every time to introduce a measure, we would slow down the implementation of European Community law, which would leave us potentially in breach of our treaty obligations. What of it if such a process would slow down the implementation of European Community law? We are in charge of our own affairs. The principle of subsidiarity must apply here. This Bill seems to provide that a Minister can bring forth an indictable offence incurring a maximum fine of €500,000 or three years imprisonment. That is a great deal of money and constitutes a major fine, particularly where it is not referenced to a specific crime. That amount is the maximum fine if the Minister wishes to create an indictable offence. I have grave reservations about such offences when they are not connected to a particular act. If the Minister of State were to say that if a person does A, B, C, or D, that is an indictable offence punishable by a fine of €500,000, then we would know what we are talking about. However, it appears he is saying a fine of €500,000 will apply and there will be an indictable offence if the Minister decides with reference to A or B. If the Minister of State could explain the position to me, I would like hear it because I am uncomfortable with the provision as it stands.

I am sure the Bill is necessary. I have read it a number of times. It is a short Bill and not that technical or difficult to understand, but the implications of it are wide-ranging. I do not doubt the *bona fides* of the Minister of State in this matter. I know what he intends and I am sure the Bill might be necessary. At the moment, Ministers can only create summary offences and regulations pursuant to the 1972 Act, but if the Bill is enacted, it will provide for indictable offences. The penalties for those offences are very severe. I am not sure about the way the Bill deals with them. Why cap the fine at €500,000? Why not make it €1 million or €300,000? Where does the figure come from? Surely the punishment must fit the crime and if we do not know what the crime is, how can the punishment fit it?

I could talk about the Bill and say different things about it, but all has been said in the Mini-

[Mr. Lydon.]

ster of State's very fine speech and opening remarks. Other Senators have referred to aspects of the Bill, which is very short. I do not want to go on talking about it, but I would like the Minister of State to address the questions I have raised. Too often, legislation slips through the Oireachtas on the nod and we are sorry afterwards. I am sure the Minister of State has answers to these questions, but if he has not, I hope he can come back another day and explain them.

Mr. Mooney: It is interesting that a technical Bill to correct retrospectively an anomaly in the European Communities Act 1972 should generate such heat. It is another indication of the importance of this House in analysing the minutiae of technical Bills. When the Minister of State's fine speech is stripped away, the core of the debate only takes up a page and a half. However, he was right to explore in detail the evolution of the European Union and Ireland's participation in it since 1972, because it is one of the major issues of our time. Senator Ormonde has often referred to the lack of clarity that allows the eyes of the electorate glaze over whenever we talk about European affairs. That is true, as successive referenda seem to suggest. However, it is right to acknowledge the outstanding work done by the Forum on Europe under the chairmanship of Senator Maurice Hayes. The forum has gone a long way in comparison with our EU neighbours towards clarifying and informing the public about European issues. I also compliment the Minister of State for making a valuable contribution to the forum, as Senator Dardis can testify as a distinguished member of that body.

I am interested in the historical background to this. I am sure Senator Lydon was aware, when he referred to fishermen in Killybegs, that it was two fishermen who originally brought this case to the Supreme Court. They felt that the indictable offences imposed on them for breach of EU law were invalid and the court found in their favour. It raises an interesting question. Who blinked in 1972 and did not realise that the European Communities Act 1972 needed only one extra line? That might have solved the problem that we are addressing 34 years later. I understand that the indictable offences under which the two fishermen related to a 1927 marine Bill, so this may be another reason for the new Bill. There is also reference to statutes from Saorstát Éireann in the Bill. In looking at Bills of this nature, we find little historical nuggets which cover all the bases. It is not often that one sees references to Saorstát Éireann in Irish legislation today.

Are we unique in this respect? Must we bring forward this Bill owing to our particular form of common law and law making in this country? Does it apply across the European Union? Will

the Minister of State have to inform our EU neighbours that they might have to take a look at their own domestic law? Their superior courts might find that some of the regulations used by Ministers are legally invalid in their jurisdictions.

We need clarification on the issue of the maximum fine. The core of this Bill is about the indictable offences, apart from the fact that it regularises an anomaly that arose unexpectedly as a result of the Supreme Court judgment of two years ago.

In the wider debate on statutory instruments, directives and information, I feel that this House should be the vehicle through which such regulations and directives should come into the Irish parliamentary system. We are ready, willing and able to do that. This House could be used as a second stage Chamber for directives and other regulations. The Minister could come before the House to explain and clarify regulations and directives to the wider public, which will allow all of us to make a valuable input. This idea is not a reflection on the Committee on European Affairs or the Committee on Foreign Affairs but the Seanad is a primary Chamber of legislation. Much of what we discuss is primary legislation or addendums to primary legislation, as well as giving powers of regulation to Ministers.

The Minister has the power to make regulations following on from European directives. Is it not convention to lay those regulations before both Houses of the Oireachtas? This would afford Members of both Houses the opportunity to debate the regulations once they are on the Order Paper. I join in the concerns and plaudits that have been expressed to the Minister of State. He has eloquently taken the opportunity to maintain the message that membership of the EU has been good for Ireland and continues to be so.

Dr. Mansergh: I welcome the Minister of State and his officials, and I support this Bill. I pay a warm tribute to the work done by the Minister of State and his officials from the Taoiseach's office, the Department of Foreign Affairs and many other Departments, as well as the permanent representation in Brussels. They make a great contribution in keeping Ireland's end high in the European Union. We should also mention senior Irish officials who work in the European Commission. In recent times, Irish officials have occupied very senior posts, which is a great credit to them and the country.

I am glad the Minister of State placed an emphasis in his speech on the benefits to Ireland of European Union membership. At times, people take it for granted. When we have a dispute or a difficulty, particular groups think we can kick over the traces. The European Union has been the making of Ireland in every sense, be it political, economic or anything else. In the

1840s, Thomas Davis said that Ireland was needful of foreign alliances. By that he meant countries such as France and Germany, although the latter was not united at that stage. We now have such a situation and the European Union transcends the differences and conflicts of the past. We can be friends with Britain as we can with France, Germany and Spain, whereas in the past it was strictly an either-or situation.

When we joined the European Economic Community, our living standards were approximately 63% of the Community average. Our early years of membership were chequered. We did very well for a while on the agricultural front, but then there was some shake-out with regard to industrial employment. However, in combination with the right domestic policies we have had over the last 20 years, Ireland has flourished as never before in its history. As was pointed out yesterday, not least by myself on the Order of Business, the 1987 Budget Statement by the former Minister for Finance, Mr. Ray MacSharry, played on RTE radio yesterday, who also had a distinguished European career, was in many ways the start of this transformation. I say this not to give all the credit to him, because his successors, continuing on the same path, have contributed to the result as well.

There is a constant challenge to uphold our position and our interests, which in some way is perhaps more difficult now that there are 25 member states in the EU, and in another month's time, 27. It is necessary for us to move ahead and I hope the political conditions will be right within the next 12 months or so with regard to the constitutional treaty. I do not accept that because it was rejected in particular circumstances, two or three years ago, by a couple of member states, the question cannot be revisited. We have revisited such questions in the past.

In a sense democracy is about looking at questions. If the notion that a referendum is the final answer were true, we should never have had divorce in this country, given the outcome of the 1986 referendum in that regard. Given that some 18 member states have not ratified the notion of a constitution, we need, for the sake of coherence and cohesion, to resolve this question. I accept that not too much damage seems to have been done in the short-term and the Union has done reasonably well. However, the *status quo* is not a long-term solution and we should be adding our voice to the need for a completion of ratification.

The Minister of State referred in his speech to the convenience of the euro. It still gives me pleasure to be able to travel all over Europe without having to change currency except, unfortunately, when we go North or visit our nearest neighbour. On the Order of Business the deputy Chief Whip, I believe, spoke about the euro not

being acceptable in a large number of outlets across the water.

An Leas-Chathaoirleach: It was Senator Glynn.

Dr. Mansergh: That is correct. As was pointed out, if one presents a Northern Ireland-denominated Bank of Ireland note in London, one will get very queer looks, too. That and the adoption of kilometres, Celsius, etc., have all helped to contribute towards a healthy and non-claustrophobic climate. Probably for the first time in our history we do not feel particularly overshadowed by our neighbour. We have communications that go directly to America and to other European countries. The European Union is part of that. Without the fact that Ireland is firmly placed in the European Union, the country would not enjoy positive investment decisions.

I recall reading Thomas Addis Emmet, who was a brother of the patriot, Robert. He was hauled before a parliamentary committee in 1798, which was looking into the rebellion. The Church of Ireland Archbishop of Cashel, Charles Agar, put it to him: "You surely do not believe that Ireland could be independent either of Britain or France". He replied: "America is the best market in the world, and Ireland is the best situated country in Europe to trade with that market". That pretty much sums up where we are today. I recall mentioning it to a US Secretary of Commerce, who replied: "A far-sighted man, your Mr. Emmet". He was not just our Mr. Emmet, but also America's, because he was Attorney General in New York State in the period 1812-13. A magnificent monument to him, which needs to be somewhat refurbished, stands outside St. Paul's Church, Lower Manhattan, just beside the 9/11 site.

I am very supportive, though not in an uncritical way, of Ireland's membership of the European Union. Various ministerial and official teams as well as our MEPs do a magnificent job in representing Ireland's interests, and also in making a positive contribution to the common European good. We do not just look for what is in it for ourselves, and it is very important to keep getting this message out to the general public. Many of us here are privileged to be members of the National Forum on Europe, whose distinguished chairman is Senator Maurice Hayes. On that tone of support I shall conclude.

Minister of State at the Department of Foreign Affairs (Mr. Treacy): I thank all of the Senators for their outstanding contributions and positive support and for the searching questions they have raised. I shall do my utmost to respond in a general way to those. I will return to the specifics on Committee Stage.

[Mr. Treacy.]

I would again emphasise that the effect of the Bill will be to improve the effectiveness and efficiency of the procedures used to implement European Community law. As I demonstrated earlier, EU membership has brought great benefits to Ireland. No one doubts that. However, these benefits bring responsibilities. One of those obligations is to transpose European Community measures in an effective and timely manner that is legislatively correct. The Supreme Court judgments in the Browne and Kennedy cases cast doubt on the mechanism successive Governments have been using over the last three decades to transpose EC measures. The Bill seeks to remove this doubt and put in place a more effective approach for the transposition of European Community regulations and directives. The Bill seeks to address the issues raised in the Supreme Court judgments in an effective and appropriate manner. We are being honest, open and forthright with the Oireachtas in this debate. The Bill makes important changes to the 1972 Act and the way in which we give effect to European Community law. It has an important national purpose.

I fully accept that the Bill is technical and complex. The issues involved do not, unfortunately, lend themselves to simple explanation. If I may paraphrase no less a man than Albert Einstein, everything should be made as simple as possible, if not simpler. Of course we want to ensure that we have absolute transparency. I am happy to go into further detail in any or all of the provisions to ensure the Oireachtas is fully satisfied in endorsing this approach. This Bill did not come about by accident and it could be stated that it has been created as a result of time differences. Two people, namely, Mr. Browne and Mr. Kennedy, both fishermen, were granted licences by the State under the Common Fisheries Policy of the European Union. The Union mandated the State to ensure the rules pertaining to the Common Fisheries Policy were adopted, endorsed and implemented on the island of Ireland and its territorial waters. The fishermen were prosecuted for breaches of the Sea Fisheries (Driftnets) Order 1998, that is, under SI 267 of 1998. This order was made under the Fisheries (Consolidation) Act 1959 to provide for the creation of an indictable offence regarding breaches of the relevant Council regulation.

Members should note the timings. The 1959 Act was passed before Ireland joined the then European Economic Community in 1972. The statutory instrument was created in 1998 on the presumption that the European Communities Act 1972 included the power to make the statutory instrument absolute, linking into all previous legislation. However, the Supreme Court ruled this was not the case. The Government has introduced this Bill to validate, clarify and rectify the

position and to ensure absolute sustainability in the force of law in respect of the decisions taken.

While taking into account the evolution of the European Union, the Government is also taking the opportunity to bring forward indictable offences. Members who study the legislation and my earlier speech carefully will note it is proposed to introduce maximum fines of €500,000, as well as maximum penalties of three years in jail. These are the maximum penalties and discretion will rest with the courts whether to apply a fine of less than €500,000 or a jail term of less than three years. This is the Government's intention and it asks Members to legislate for it. It has taken into account the manner in which the Union has evolved, the way our responsibilities have evolved and the manner in which the Union, now after its fifth enlargement, has enlarged and grown. Having taken into account the enormous amount of legislation that Ireland has enacted as a result of European directives, the Government wishes to ensure uniformity and commonality pertaining to the laws it enacts and to statutory instruments in particular.

The Government does not ask the House to give absolute power to any Minister to make statutory instruments that do not conform to this State's laws or to the directives and laws of the European Union. It asks for a refinement of the position to achieve uniformity and commonality. The courts may then decide to impose penalties of less than or up to three years or fines of €500,000.

In the past, this House has already passed legislation to enable the courts to fine those who break the law. For example, the Financial Transfers Act 1992 allowed the courts to impose fines of up to £10 million. In the present case, the proposed fines, at €500,000, are much lower, along with a maximum term of imprisonment of three years. The Government asks Members to bring uniformity and commonality to statutory instruments that may be created in the future.

The legislation also provides that in future, no Minister can make statutory instruments for the courts with fines greater than €500,000 or terms of imprisonment greater than three years. Ministers must introduce specific individual primary legislation asking the Oireachtas to empower the courts to so do. The Government's intentions are clear. It wishes to validate that which its predecessors should have validated or included in the 1972 Act in order that no laws are out of sequence or out of sync with legislation that has been passed subsequently. This Bill is to validate the position. The issue only arises because the Supreme Court has taken the aforementioned decisions. Legislators are obliged to ensure conformity and adherence to the law as decided by the Supreme Court. It must be made uniform, solid and enforceable as it pertains to Irish citi-

zens, or others who come to Ireland, who transgress the laws of either Ireland or the European Union.

At the outset, Senator Bradford raised a number of points regarding Ireland's present ranking of 19th on the Internal Market scoreboard. It was noted during the debate that this should be taken in the context of the nitrates directive. It had been thought the nitrates directive had been completed and cleared in the past year. Fifteen years have passed since it was first proposed by the European Union. As a result of pressures in the political system and the farming organisations, it was not dealt with until last year. One problem associated with its resolution has been the European Commission's dissatisfaction with the level of penalties this Legislature has imposed for transgressions of the nitrates directive. Negotiations to conclude this issue are under way at present and the directive is being implemented by the Departments of Agriculture and Food and the Environment, Heritage and Local Government. This is causing some difficulty at present. Given that the directive has existed for 15 years without being completed by Ireland, Members can imagine how inefficient we have become and how far behind we are. They can imagine how out-dated the monetary penalties that would have existed 15 years ago would be at present monetary values. This issue demonstrates how Ireland might happen to rank 19th on the Internal Market scoreboard.

Members may reflect on this for a moment before considering the position in 2004. In April 2004, Ireland was doing very well and stood joint first on the Internal Market scoreboard. Since then however, ten new countries have joined the European Union. On accession to the European Union, new member states must accept automatically those directives that have already been passed and agreed by the existing members. They must be accepted automatically into the domestic law of such countries. When Ireland decided to become a member of the then European Economic Community, it passed the European Communities Act 1972. In the domestic legislation that enabled the new member states to join the Union in 2004, they were obliged to accept all European Union laws, directives and otherwise, passed by the existing member states prior to the 2004 enlargement.

To bring this point a stage further, the ten new member states have only a small number of directives to deal with compared with the number we have inherited and accumulated, including the nitrates directive, and with which we may not have dealt. This puts them in a better position than Ireland at present and puts us back. However, this can vary and we have set targets. As I noted previously, I chair the inter-

departmental co-ordinating committee. It is representative of all Departments, as well as the Office of the Attorney General, which advises the Departments and me on these directives on a continual monthly basis. The committee sets targets to meet the target dates established by the European Union in order that Ireland can adhere to the Internal Market scoreboard and can transpose European directives into domestic law. This may be done through either primary legislation or secondary legislation and statutory instruments, where necessary.

The Government now asks Members, through the passage of this Bill, to do that which should have been done in 1972. This legislation will validate what has been done from 1972 to the present. Moreover, it will bring commonality and uniformity to indictable offences and the penalties commensurate with such offences and we will know where we are going henceforth. The legislation will place the State on solid ground in order that the force of law, pertaining to both domestic and European law, is equal, enforceable and acceptable to the Supreme Court. This is the reason for the Bill's introduction. I will be happy to go into further detail on Committee Stage next Tuesday. I want to ensure Members are satisfied to endorse this important legislation. I look forward to debating the next Stages of the Bill on Tuesday. I am sure it will be an interesting and positive discussion that will eventually lead this distinguished and august body, Seanad Éireann, to ensure that this legislation is implemented *quan celerimme*.

Question put and declared carried.

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

Mr. Dardis: Next Tuesday.

Committee Stage ordered for Tuesday, 12 December 2006.

Acting Chairman: When is it proposed to sit again?

Mr. Dardis: At 2.30 p.m. on Tuesday next.

Adjournment Matter.

Security of the Elderly.

Mr. Mooney: I thank the Minister of State, Deputy Treacy, for taking this adjournment matter. As it was submitted only within the past 24 hours, I convey my appreciation to the Department of Community, Rural and Gaeltacht Affairs for the alacrity with which it has replied. It affords me an opportunity to raise an issue of fun-

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damental importance to those in rural areas and to those organisations, almost all of which are voluntary, who care for the aged in various disparate parts of this country and, indeed, within the urban areas, but I am focusing mainly on rural areas.

As a result of representations made to me on a continuous basis, it is timely to request the Minister to review the operation of the community supports programme. I record my appreciation to my friend and colleague, Councillor Francis Kilmartin of Leitrim County Council, who, as a representative of the Kilturbet Care of the Aged, raised the difficulties that his association was encountering in accessing sufficient funds from the section in the Department for a number of applicants in the immediate area of Drumcong and Kilturbet. This led me to make some investigations and I came to the conclusion, based on discussions with those who are involved in the system and the stakeholders at the receiving end, that there is an urgent need for a review of this scheme.

I also wish to record my enthusiastic support for the scheme. It is a humane scheme which has helped address the fears and concerns of the elderly living in rural areas. They now have a support service, backed up by financial resources from the Government, to assist in the provision of security in their homes.

Two of the applicants in the area to which I refer were turned down because they were not of the required age of 65. There is a need to revisit this arbitrary age criterion because one of the applicants is a stroke victim living alone in a rural area and the other is a non-national living in a remote part of County Leitrim. In normal circumstances both of these applicants would be eligible for an initiative of this sort, but they were immediately and arbitrarily ruled out because they are one year and two years, respectively, short of 65.

The second element of the request for a review relates to the €300 available for the installation of a panic alarm. Technology has progressed and now there are different forms of panic alarm. A number of agencies who help the elderly in the respective areas are now using a wide variety of different systems. In Kilturbet, they have established that a device which costs between €450 and €500 is much more acceptable to their client base than those being suggested by the Department. From my investigations, there is widespread support for the view that the €300 figure, which it appears was set arbitrarily because there seems to be no history of its origin, should be increased or at least that there should be flexibility built into the system to grant a larger sum where those making the application to the section have a justifiable reason for doing so.

There is another reason for an urgent review of the system. I understand that the history of this concept of community support originated in the then Department of Social, Community and Family Affairs and that it has been inherited by the Department of Community, Rural and Gaeltacht Affairs only in the past two years. It is now operating out of Tubbercurry in County Sligo. This is yet another example of the Government's commitment to ensuring decentralisation in that the Department of the Minister, Deputy Ó Cuív, will ultimately permanently reside near Knock, but in the short term, to the great credit of the Minister and of the staff involved in the Department, it is now operating out of temporary accommodation in Tubbercurry in County Sligo. Notwithstanding that, the main thrust of my request to the Minister is that there is a need for a review and he might take account of the two specific areas of review I mentioned.

Minister of State at the Department of the Taoiseach (Mr. Treacy): I sincerely thank Senator Mooney for raising this matter. The scheme of community support for older people, CSOP, has been a valuable one since it was established ten years ago. In that time, funding in the region of €35 million has been awarded to community and voluntary organisations to provide socially monitored alarms and other security items to older people in their communities. The scheme has benefited as many as 100,000 older people as a result.

The scheme continues to be based on the concept of contact with people at local level. For this reason, funding is provided to locally-based voluntary and community organisations rather than grant-aiding individuals. This is to assist and stimulate broader community support for vulnerable older people. Currently, funding can be provided under the scheme as follows: As Senator Mooney alluded, €300 in respect of the once-off cost of installing a socially monitored alarm system, €200 in respect of window locks, door locks and door chains designed to strengthen points of entry to the dwelling, €200 in respect of security lighting, €50 in respect smoke alarms and €150 for interior emergency lighting for qualifying older people living on our offshore islands.

On Senator Mooney's question on the initiation of a review of the scheme, I can confirm that a review was carried out by the Department of Community, Rural and Gaeltacht Affairs earlier this year, ahead of the launch of the 2006 scheme. Officials of the Department met in February last with a range of representatives of voluntary groups who participate in the administration of the scheme. This consultation covered a number of issues concerning the scheme that had previously been raised by groups and by Oireachtas Members, as well as a review of the

scheme by Comhairle, which also made a number of recommendations.

This consultation proved valuable and, as a result, a number of important changes were introduced for the 2006 scheme. These changes included certain increases in funding such as the maximum individual grant in respect of physical security equipment was increased to €200 and the maximum individual grant in respect of security lighting was also increased to €200. Also from 2006, the grant of €150 for interior emergency lighting for qualifying older people living on our offshore islands was introduced. I should also point out that the grant for smoke alarms was introduced from 2004, in response to suggestions from many community groups.

In addition, the 2006 scheme was launched in May by the Minister of State at the Department of Community, Rural and Gaeltacht Affairs, Deputy Noel Ahern, for whom I am taking this debate, and saw the introduction for the first time of an administration subvention to participating groups. The amount of this subvention is based on the size of a group's 2005 grant, with a maximum amount of €600 and a minimum amount of €100. This subvention recognises the leading role such community groups play in the administration of this scheme, in partnership with the Department of Community, Rural and Gaeltacht Affairs. The Minister of State, Deputy Noel Ahern, has gone on record to express his admiration for those who give their time to deliver the benefits of this scheme to their communities and has commended them for their hard work and dedication.

Another very significant recent change was to have the 2006 scheme open for applications throughout the year. Up until 2005, the scheme was advertised on an annual basis with a specified closing date. This change had been strongly supported in the review process the Department had conducted and since its introduction, it has been extremely well received by the community groups operating the scheme. It reduces the time pressures under which such groups previously had to respond to the call for applications. It also allows participating groups to make supplementary applications throughout the year so as to assist vulnerable older people in their communities where a need has arisen at any given time. So far under the 2006 scheme, funding has been provided to voluntary groups to assist 4,753 older people in their communities, which has included the provision of some 4,109 socially-monitored alarms and a range of security equipment.

As regards the age threshold issue, which was raised by Senator Mooney, the scheme of community support for older people is a community-based scheme directed at older people. The question of providing socially-monitored alarms or other security-related equipment to people with

illnesses or disabilities, for example, is a health-related issue and would be more appropriately addressed to the Minister for Health and Children or the Health Service Executive.

Management of the scheme of community support for older people has been marked in recent times by flexibility and by consultation with community interests. As with any funding scheme, it is prudent continually to monitor relevant developments. In this regard, it is clear there has been some reduction in the demand for the CSOP scheme in recent years. The number of individuals being assisted under the scheme has been also dropping. In 2003, up to 9,000 older people were assisted, whereas this year's number will be closer to 5,000. The Department attributes this reduced demand to several factors. The scheme is demand driven and it may be a measure of its success that a gradual fall-off in demand has been experienced as more people have their security needs met.

Another factor in the changing requirements of older people in our communities vis-à-vis security is the increasing use of mobile telephones. As the House will be aware, the Minister changed this provision in yesterday's budget whereby people will now have the option of claiming free telephone rental assistance for either mobile or land-line telephones. That presents a new opportunity for older people. Older people, along with their families, may see mobile telephones as their preferred response to any security concerns. Whereas mobile telephones and other new technologies present opportunities, the socially-monitored alarms provided under the CSOP have an ease of operation that will continue to appeal to many older people and provide a good level of reassurance in this regard. The CSOP also provides for a range of other physical security measures which will continue to be of interest to many older members of our society. Personal security depends on a range of factors and the Minister of State, Deputy Noel Ahern, believes this scheme continues to make a valuable contribution to the security requirements of older people. The Minister of State will continue to monitor developments that affect the scheme and, in consultation with stakeholders, will continue to make adjustments where appropriate.

I thank Senator Mooney for raising this issue on the Adjournment. It bodes well for our democracy that a local councillor can articulate a problem to his or her area thus ensuring the matter can be debated in the Oireachtas where the Government of the day can be asked to account for any aspect of any situation concerning issues that are so raised. In view of the interest shown in this issue by Senator Mooney and Councillor Gilmartin, I assure them I will take up the matter directly with the Minister of State, Deputy Noel Ahern. Consequently, we will

[Mr. Treacy.]

see if it is possible to have a greater linkage between his Department and the Department of Health and Children to ensure requirements for people with disabilities or other illnesses will be provided either on a unilateral or inter-departmental basis.

Mr. Mooney: As always, I am grateful to the Minister of State, Deputy Treacy. I am also grateful to the Minister of State, Deputy Noel Ahern, for outlining the benefits of this wonderful scheme. I will take the opportunity of conveying its provisions to the wider public arena. I referred to two specific areas but it is not acceptable to deal with them solely as health issues. I am talking about building flexibility into the scheme for those who are within a year or two of the 65-year limit, which is an arbitrary cut-off point. As the Minister of State has pointed out, demand for the CSOP scheme is declining and there should not be a greater burden on the Exchequer. There was

no suggestion that there should be an increase or any flexibility built into the €300 figure, although it is welcome. The developing and evolving technology, and the experience of Councillor Gilmar-tin's group, suggest there is a need for some flexibility in this regard. The Minister of State has promised to convey these concerns to the Minister of State, Deputy Noel Ahern. In that context, I would be grateful if he would also raise those two specific issues. I am extremely grateful to the Minister of State, Deputy Treacy, for his kind comments.

Mr. Treacy: On behalf of Senator Mooney and Councillor Gilmartin, I will certainly take up those issues up with the Minister of State, Deputy Noel Ahern. I am grateful to the House for affording me an opportunity to debate this matter.

The Seanad adjourned at 6.05 p.m. until 2.30 p.m. on Tuesday, 12 December 2006.