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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Wednesday, 14 *February* 2007.

SEANAD ÉIREANN

Dé Céadaoin, 14 *Feabhra* 2007.
Wednesday, 14 *February* 2007.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Business of Seanad.

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

> The need for the Minister for Education and Science to clarify the position regarding an application for funding to provide an outdoor playing area at St. James's national school, Cappagh, Askeaton, County Limerick.

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

> The need for the Minister for Education and Science to provide a progress report for the provision of a new school at the Cahergal national school site, Tuam, County Galway, following a fire at the school, and the health and safety implications.

I have also received notice from Senator John Paul Phelan of the following matter:

> The need for the Minister for Education and Science to outline the reasons the automatic entitlement of 2.5 resource hours per academic week for children diagnosed as having Down's syndrome on entry to national school was withdrawn, on whose recommendation, and if she recognises that children denied that previously automatic right regress in their formative years.

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

> The need for the Minister for the Environment, Heritage and Local Government to review planning guidelines to incorporate traffic control measures in all new housing developments and, furthermore, to establish a funding stream for local authorities to allow for the construction of traffic calming measures in established housing developments and built-up areas.

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

> The need for the Minister for Education and Science to indicate the level of resources targeted at special needs, including autism, attention deficit hyperactivity disorder, Asperger's syndrome, etc. in the north County Dublin area and to confirm whether the needs of the children are being resourced properly.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment. I have selected the matters raised by Senators Brennan, Kitt and John Paul Phelan and they will be taken at the conclusion of business. Senators Dooley and Morrissey may give notice on another day of the matters that they wish to raise.

Order of Business.

Ms O'Rourke: The Order of Business is No. 1, Citizens Information Bill 2006 — Committee Stage, to be taken on the conclusion of the Order of Business, and to conclude no later than 12.45 p.m., with a short sos from 12.45 p.m. to 1 p.m., after which Report and Final Stages will be taken to conclude no later than 1.30 p.m.; No. 2, Consumer Protection Bill 2007 — Committee Stage, to be taken at 2.15 p.m. until 5 p.m., and to resume again at 8.30 p.m. until 10 p.m.; No. 3, Statute Law Revision Bill 2007 — Committee Stage, to be taken on the conclusion of Private Members' business at approximately 7.15 p.m. until 8.30 p.m.; and No. 26, motion 37, to be taken between 5 p.m. and 7 p.m. There will be a sos from 1.30 p.m to 2.15 p.m.

Mr. B. Hayes: On this day 26 years ago one of the worst disasters struck our country. I refer to the Stardust disaster when 48 young people lost their lives and more than 200 people were injured. As the Leader of the House will be aware, the Government has been coming under pressure from the families of the victims for quite some time to bring all of these matters to a conclusion in respect of new evidence that has been brought to public attention in recent years about the unsafe findings of the original tribunal of investigation in 1982 by Mr. Justice Ronan Keane as he was then known. I ask the Leader of the House to provide time for statements on this matter.

The Taoiseach has been very helpful in trying to bring all of these issues to a conclusion and he has stated publicly that he awaits to see the assessment made by independent counsel before he makes a decision on a further inquiry. That is a fair position to take, but it need not be another tribunal of investigation. A commission of investigation which would assess the new forensic information that has come to light in recent years could be very beneficial in trying to bring closure to all of these matters for the families involved.

We owe it to the families involved because the State has dealt with them appallingly over the past 26 years, with cases where three unidentified persons were in one unmarked grave and the

[Mr. B. Hayes.]

wrong people were in another grave. We really have an obligation to get this right. On a co-operative basis we can get this right by working together and agreeing a final inquiry which will bring closure. I would encourage the Leader, if at all possible, to provide time for such a debate.

On a second issue, I heard this morning the comments made by the eminent Mr. Michael O'Higgins SC on the latest raft of measures announced by the Tánaiste and Minister for Justice, Equality and Law Reform, Deputy McDowell. The Tánaiste now wants to do over the next ten weeks what he has singularly failed to do over the past ten years.

In the light of the Tánaiste's remarks yesterday giving us minions beneath him advice about cheap publicity in the run-up to the election, could I advise him that we be given less of the cheap publicity, less of the attempt to rescue his party from the percentage support for which it is on the margin of error at present——

Dr. Mansergh: Often they have made the mistake of writing him off.

Mr. B. Hayes: ——and more substance in terms of proposals that he has failed to bring about over the past ten years? One must be mindful of the pot calling the kettle black when that particular gentleman is lecturing us about cheap publicity.

Mr. O'Toole: I propose a minor amendment to the Order of Business, that No. 16 be taken before No. 1. I ask that we have a debate on the issues raised by the Tánaiste and Minister for Justice, Equality and Law Reform. As the Leader will recall, I have already asked twice in the past two months for a debate on the constitutionality of mandatory sentencing. I have pointed out that the only mandatory sentence which is always applied by the court is the life sentence for murder. Ironically and perhaps cynically, it is also the only life sentence with which we interfere, each time by the involvement of the Minister and the political system, to change it to a term of years so that the life sentence does not mean for life.

There is an interesting case at present where a person is seeking to finish his life sentence abroad. If he stays here, he will probably finish his sentence in approximately ten or 12 years. If he goes abroad to the country of his choice, he must spend 25 years in prison. It gives some idea of how mandatory sentencing is not an easy issue, and there are questions such as bail and practical issues which we need to examine.

I spoke to a member of the Garda last night and asked how he felt about the seven days' detention. His answer was a simple one which would never have occurred to me. He stated that I would want to see where he and his colleagues work, that the idea of keeping people for seven days in the cells in their police stations was out of the question and that one could not do it. I am also informed that such authority has existed since the mid-1990s. I heard the same senior counsel as Senator Brian Hayes make that point.

I do not know whether these points are true. I certainly do not know whether I am listening to political or legal argument. Neither do I know whether there are constitutional and practical issues. I certainly would prefer to have a debate on these issues before we look at the legislation. I am uncomfortable with the idea of rushing the Bill. I do not see that it needs to be done in a month.

I am all in favour of discussing the important issues raised by the Tánaiste. The need to deal with gangland crime is crucial. If more authority and legal leverage needs to be given, then we should be prepared to give it, but we need to be certain about what we are doing as we go along.

Mr. Ryan: The transformation of a dying wasp into a threat to the security of the State is perhaps one of the most remarkable transformations. The Tánaiste told us less than two years ago that the gangland killings were the last sting of a dying wasp. They have now been transformed into a threat to the security of the State and to the Irish way of life that we have all grown to love.

I agree with Senator O'Toole. The idea that profoundly important criminal justice legislation and a major amendment to the Constitution to deal with children will be rushed through in the short time left is an offence to anybody's idea of good democratic parliamentary accountability, but then I begin to suspect the last thing this Government wants is to be too accountable because it has been caught out so often at this stage.

There was an advertisement in yesterday's newspapers from the Health Service Executive stating that it has now commenced on a study to find out how many acute hospital beds the country needed. The Government is in power for ten years and it is approximately eight years since it announced we needed 3,000 more beds. I have a simple suggestion for the Government and the HSE, that is, they telephone either the Labour Party or the Fine Gael Party headquarters which will be able to tell them how many acute hospital beds the country needs. We know and the country knows. The only people who do not know are the members of the Government.

Mr. Moylan: The Opposition parties did not know when they were in power.

Mr. Ryan: When we were in power we finally sorted out the mess they created. We had higher growth and lower inflation on the only occasion there was a Labour Party Minister for Finance.

Dr. Mansergh: What did they do for public services?

Mr. Ryan: The economy grew better, unemployment decreased more quickly and inflation was lower. On all three indices, this Government has made a mess of it.

Ms White: A total of £1.60 for old people.

Mr. B. Hayes: They could afford gas then. That was the difference.

Mr. Ryan: They led the country and they are not happy either. On a specific issue, there is much talk about the consultants' contract and many people have numerous qualms about hospital consultants. Being married to one, I must be measured in what I say.

Ms O'Rourke: He can make it up to her at night.

Mr. Lydon: At night?

Mr. Ryan: There is nothing incompatible between smoked salmon and socialism. It was James Larkin who said that the working class were entitled to bread and roses. I happen to believe strongly in the bread and roses version of socialism that James Larkin articulated, and I stand over it. The Members here who do not know about whom I am married to obviously do not participate because I have said it approximately 100 times.

Ms O'Rourke: I am delighted Senator Ryan is married to a nice lady.

An Cathaoirleach: I point out that many Senators are offering and there is not much time. Interruptions are a source of delay.

Mr. Ryan: As I stated to the Cathaoirleach previously, I am not interrupting myself. In the proposals for the contract is a silencing clause which would require consultants not to criticise the services. That is the most appalling attempt to silence the people who have endeavoured most effectively to tell us what is wrong in accident and emergency departments, with neurological services and with psychiatric services. They want to silence them all. That is a profound wrong and should not be allowed.

Last year the Health and Safety Authority announced that it was starting a campaign on safety at work in public bodies. My understanding is that it has been told to back off. Perhaps the Leader can find out who told it to back off and when it was told to do so.

Mr. Leyden: The Competition Authority should be commended on its recent case relating to the fixing of prices on Ford cars by the Irish Ford Dealers Association and a debate in this House on the work of the authority would be useful.

As a customer of Ford for some 30 years I am disappointed the Irish Ford Dealers Association fixed the price of cars during that time. Consumers have generally felt aggrieved by the price of cars, especially regarding taxes paid on them. I do not think this issue applies to my area as I was very satisfied with the local Ford dealer.

Ms O'Rourke: Did Senator Leyden use the Athlone dealer?

Ms Feeney: Senator Leyden was so satisfied he changed to a Mercedes.

Mr. Leyden: I feel that what applied to the Irish Ford Dealers Association may apply to all of the major dealerships in this country and I believe we should have a debate on car prices and the work of the Competition Authority, which should be commended on this exposé. Other car companies may now be fearful of the existence of a price fixing cartel among their dealerships. This issue should be debated and the Minister should address this House to outline the progress of the investigation into car prices in Ireland, which are prohibitive compared to the rest of Europe.

Mr. Dardis: Is the Cathaoirleach putting the brakes on this discussion?

Mr. Finucane: Almost ten years ago the Government promised a national cervical screening programme for cancer and the Minister for Health and Children, Deputy Harney, has promised this programme will be rolled out in 2008. Cervical cancer kills around 70 women every year with about 200 cases diagnosed each year and we are all aware of what has been recently highlighted regarding the wonder drug gardasil. If the Minister wishes to leave a hallmark on her ministerial portfolio she should examine this wonder drug, suggest to the Health Service Executive, that it be available on the medical card and ensure it becomes part of the community drug refund scheme. At a cost of €600 it could save innumerable lives.

I listened to the HSE at a meeting this morning that proved how unwieldy the new service structure is and I feel the Minister could do something tangible in this regard and emulate what is happening in many other countries where a vaccine injection programme exists in schools.

Dr. Mansergh: International rankings are often used inside and outside this House to suggest that we are near the bottom of the heap on social policy. It is satisfying, therefore, that a United Nations International Children's Emergency Fund, UNICEF, report on child welfare ranks Ireland ninth out of 21 countries surveyed. This is especially satisfying as it is all over today's British newspapers that they came bottom of the list across the water after ten years of New Labour government. I ask the Leader to convey a com-

[Dr. Mansergh.]

mendation to the Minister for Health and Children, Deputy Harney, and to all of those who work in child agencies on a very creditable result. I recognise, of course, that much work still needs to be done on child poverty and other matters relating to children.

We must be critical of some of the suggestions made by international agencies and I dismiss out of hand the suggestion that the recognition in the tax system of the work done by women in their homes be eliminated.

Mr. B. Hayes: It is called individualisation and it was introduced by Dr. Mansergh's Government.

Dr. Mansergh: I travel to this House on Dublin Bus and the DART and I appreciate public transport and do not wish to see it dismantled in the name of competition.

Finally, to move from public service transport to public service broadcasting, I warmly commend RTE on its fine programme on Charles Haughey and the arts yesterday.

Ms O'Rourke: Hear, hear.

Mr. Finucane: Does that commendation come despite the bad language?

Mr. Quinn: I wish to speak on the same UNICEF report as Dr. Mansergh and am surprised he seems rather proud that Ireland came ninth of 21 developed nations. Would such statistics not cause him to call on the Government for action in this regard?

Dr. Mansergh: I said there is more to be done.

Mr. Quinn: Another measurement used in that report, referred to on British television, saw Ireland come last of 21 countries.

Ms O'Rourke: Did that measurement refer to children?

Mr. Quinn: Yes, it referred to standards of life for children in 21 developed nations. By one measurement we came ninth of 21, which is very disappointing.

Dr. Mansergh: That was our overall position.

Mr. Quinn: We came 21st out of 21 by another measurement. I mention this because addressing the matter is not necessarily in the Government's hands and a large amount of responsibility rests with parents and depends upon the jobs they do. We should not automatically say everything should be in the Government's hands.

I have a knowledge of the food business and interesting research in the United States shows that families that have a family meal at home have far lower levels of smoking and drug and alcohol abuse among children while there is a positive link to school attendance and results. This is something we can mirror in Ireland. When this information came to light in the United states a campaign started, promoted by President Bush and others, encouraging families to have a family meal at home at least once a week. In regard to the rosary, it was said that the family that prays together stays together and it seems the family that eats together also stays together.

Mr. Lydon: I am sure we all welcome the decision by North Korea to take steps towards ceasing its nuclear programme and we would welcome a similar measure in Iran. For this reason I ask, once again, for a debate on the Middle East at the earliest possible juncture.

Ms Terry: I support Senator Finucane's comments on making the gardasil drug available to every woman in the country. I also strongly support the comments of the cancer specialist who yesterday described the decision not to make the new vaccine against cervical cancer available to women on the medical card scheme as "ethically dubious and nonsensical on financial grounds". These are strong words from a top cancer specialist that must be taken seriously. He went on to say the decision seemed to be based on cost. What cost do we put on women's lives, particularly those with a history of cervical cancer in the family. If they were given this vaccine it would ensure they would not develop cancer.

There is inequality in our health system when certain women get a particular drug because they can afford it and others are barred from getting it because of cost. The Well Woman Centre yesterday said, shockingly, that women in this bracket, who may have a family history or early signs of cervical cancer, are borrowing money to enable them to get this drug. Where is the equality in that? When we have wonderful medicines that will tackle cancer, or any illness, we should reach out and give them to those in need. We should at least ensure equality, that we are all treated the same with no woman barred from receiving treatment due to cost. I am sure the Leader will not agree that women should be barred from treatment on the basis of its cost. Every one of us, both men and women, should ensure we have full equality across the board, particularly in cancer treatment services.

11 o'clock

Ms White: On foot of my document "A New Approach to Ageing and Ageism", I have been approached by American visitors to Ireland who, at 70 years of age, cannot hire a car of their choice. When they approach the car hire desk at the airport and request a particular brand of a particular size, they are told they are not eligible. Individuals over 75 cannot hire a car and therefore state they will not return to Ireland.

Will the Government and Seanad take a leaf from US regulations to address this matter? Section 391 of Article 26 of the New York General Business Law states it shall be unlawful for any firm to refuse rental to anyone on the basis of age provided he or she has adequate insurance. Older Americans are now deciding they will not come to Ireland for their holidays because they cannot hire the car of their choice at 70 and cannot hire a car at 75. This is a very serious issue for people of Irish origin who want to continue to visit Ireland.

Dr. Mansergh: The Senator is right.

Dr. Henry: I second Senator O'Toole's proposal that No. 16 be taken before No. 1.

I support Senator White's remarks on the problems those aged 70 and over are experiencing hiring cars. This is occurring in other European countries also and it therefore may be necessary to take it up at European level.

Ms White: Can I make another comment?

An Cathaoirleach: No, the Senator cannot contribute again.

Ms Feeney: I seek a debate on the new vaccine for cervical cancer, on which there are two schools of thought. One is that we should await the results of further tests and that a national screening programme should be pursued and the other is that the vaccine should be made available nationwide to every woman of a certain age.

I support Senators Terry and Finucane in saying it is very unfair at present that a woman in the higher income tax bracket can buy the vaccine for €600 and recoup 41% thereof while a woman with a medical card, who is generally in the lower income bracket, could not possibly afford such an outlay to buy the vaccine.

Mr. Ryan: Hear, hear.

Ms Feeney: I agree with Senator Finucane that there may be ways around this. Perhaps the Minister has not even thought about it. Perhaps the women in the lower income bracket could be included in the drugs refund scheme and thus be given something back.

An official from the HSE on "Morning Ireland" this morning stated that, after further investigations, the vaccine would be available nationally to all women. In the meantime, it is wrong to say to women on medical cards who are in the lower income bracket they cannot have it. We must consider allowing such women recoup the costs, either through income tax reliefs or the drugs refund scheme.

Mr. Coonan: I always knew Senator Mansergh was a very privileged person.

Dr. Mansergh: Dublin Bus——

An Cathaoirleach: Senator Coonan should speak on the Order of Business.

Mr. Coonan: I did not realise one could get the DART from west Tipperary to the House.

Dr. Mansergh: I happened to be in Dublin yesterday and am today.

Mr. Coonan: I wonder whether he will use his influence to extend the DART to north Tipperary.

An Cathaoirleach: That is not relevant. The Senator should speak on the Order of Business.

Dr. Mansergh: I attend the Seanad on Tuesday, Wednesday and Thursday and I hope Senator Coonan does also.

Mr. Coonan: I ask the Leader for a debate on the sports capital grant, which is availed of by many communities providing facilities throughout the country, particularly swimming pools. I understand the grant, which amounts to approximately €3.8 million, is being reviewed but, given the increase in construction costs and the price of building materials, in addition to the ample funds available, it should be increased. Deputy Deenihan proposes to raise it to between €5.5 million and €6 million. The grant is providing an essential service to communities and I ask that it be increased to a minimum of €5 million.

Ms O'Rourke: That will not be done — we are not going to buy election victory.

Mr. Coonan: I am not worried about the Senator buying election victory but the Government should provide the necessary facilities.

Mr. B. Hayes: The Government did a good job the last time.

Mr. Ryan: Some 200,000 medical cards.

Mr. Daly: Last year we had a number of debates on the necessity to deal with the needs of people with disabilities and passed legislation concerning children with special needs. Will the Leader arrange for the Minister for Health and Children to give us an overview of the progress of the legislation passed and indicate what steps have been taken to meet the needs of people with disabilities, especially children with special needs?

The Leader will be aware that a decision to strike has been taken by Aer Lingus staff. This would have devastating effects on and very serious consequences for the tourism industry, especially now as we face the start of the tourism season. Will the Leader arrange for the Minister for Enterprise, Trade and Employment to indicate in the House the initiatives at Government level to deal with this matter?

Mr. McHugh: I echo the remarks of my colleague Senator Finucane. We had a meeting with HSE officials for one and a half hours this morning and, to say the least, we noted a lot of anger and frustration on the part of politicians across the political divide. One official acknowledged that the parliamentary questions facility for Deputies in the Dáil has collapsed. This is very serious in terms of accountability and democracy.

We need to think seriously about how we deal with accountability structures, not just within the HSE but right across the board, be it at local authority level or, for example, in the Department of Communications, Marine and Natural Resources. For the whole month of January, 23 of the finest pelagic boats in the world were tied up in Killybegs while Scottish boats were entering our waters. The fishermen could not get their point of view across to the Department of Communications, Marine and Natural Resources.

We need to start governing in this country and control who makes decisions for the people. When I arrived at the meeting with the HSE officials this morning, I was accompanied by Senator Finucane from Limerick. I represent constituents right up to Malin Head. At the meeting we spoke about important issues concerning Ballaghaderreen, Roscommon and Galway and it is right that these were discussed. However, a structure that covers an area from Malin Head down to Nenagh and includes people from Limerick does not, cannot and will not work. We must start taking charge and review completely the dogmatic, dictatorial, unaccountable and unrepresentative system of the HSE. We must take charge and start governing, irrespective of who is in power after the next general election.

Mr. B. Hayes: Hear, hear.

Mr. Dooley: I reiterate the call for a debate on the State Airports Act, which related to the separation of responsibility for Dublin, Cork and Shannon airports. The House will be aware of the difficulties encountered recently at Shannon Airport, where staff have effectively rejected the proposed business plan, as set out in the legislation as a requirement for separation. This is creating particular disquiet, not just among workers and management within the airport environs but in the wider tourism community. It is important the Minister should be brought before the House to discuss this with us as his predecessor did so in respect of the enactment of the legislation. We need to know what provisions the Government will put in place to ensure that this stand-off, in effect, will not affect the travelling public in the west and the potential for tourism.

On a related matter, I support what Senator White has said, particularly as regards Americans and tourists from around the world who visit Ireland, and especially the west. I attended the opening of the Cliffs of Moher visitor centre last week. When one sees the type of funding now being put in place by the Government, with assistance from Europe, in developing the tourism product and infrastructure, it would be particularly sad for Ireland, which was renowned for its céad míle fáilte reputation as a country of welcomes, that if, through some type of unfair insurance practice, people who for many years had saved their money to come here, perhaps in their later years, were precluded from doing so. It is a case of commercialism gone mad. The insurance sector is making a great deal of money at the moment and thankfully insurance charges are decreasing. However, we cannot allow this type of practice to continue or get out of control. I should welcome any debate that might seek to end this practice.

Mr. Browne: Last week in the Dáil the Minister for Agriculture and Food indicated that the beet growers, through no fault of their own, will not now be compensated in June because of the pending court case with Greencore. This is disgraceful. Anyone who submits a claim for social welfare is entitled to get some help from the community welfare office while his or her case is pending. I do not see why farmers should be treated differently. Some form of interim payment should be made. I understand a court case is pending, but this matter has been ongoing for two years and the farmers have been treated with contempt from the start. The Minister negotiated a deal that has been fundamentally wrong. Beet was meant to be grown for two years after the deal was concluded. Instead, it was only grown for one year.

I call on the Minister to come into the House and urge her to undertake a complete review of the EU beet restructuring scheme. Only 2 million out of 5 million tonnes has been handed up by the other EU countries. Ireland is one of just three of the remaining member states to have complied. It is a very worrying situation, the beet growers do not deserve this and they are owed money. It is unfair that they should be caught between the Government's incompetence and Greencore's greed.

Mr. Coonan: Hear, hear.

Mr. Browne: I agree with previous speakers on the cervical cancer issue. Without getting involved in the vaccine issue, I was amazed to learn from a reply I received this week from the HSE that some hospitals can obtain the results of cervical cancer screening within 48 hours, while others take up to 25 weeks. The HSE has outsourced the service to America and the UK in order to speed up the backlog. Nevertheless, it is very unsatisfactory. I was appalled to learn, last week, that a woman specialist in Kerry, who on her own initiative charged only €40 per time for cervical smear tests in order to get a quick result, was precluded from doing this by the HSE even though patients were quite happy to pay for the

service. Although she showed some initiative in the face of the massive backlog she was prevented by the HSE from doing the work.

Mr. Coghlan: I appeal to the Leader to use her good offices with her colleague, the Minister for the Environment, Heritage and Local Government, to ensure the removal of whatever remaining road blocks and obstacles exist as regards the Dingle area. The people of Dingle recently met the Minister and he is fully *au fait* with the situation, following the plebiscite. I believe and hope there is good will there. Nonetheless, they are still up against it as the tourism season approaches with all those signs that are incorrect. I appeal to the Leader to ensure, with the Minister, that there is a speedy resolution at this stage. It has gone on for far too long.

Ms O'Rourke: Senator Brian Hayes, the Leader of the Opposition, recalled that the Stardust disaster occurred 26 years ago today, and asked whether there could be statements. He believes a full statement from this House is owed to the families of the Stardust victims. The Taoiseach answered matters relating to the Stardust tragedy yesterday and I hope that the exhumation, along with other steps that have been taken, will bring comfort to some of the families. I will ask whether we can have a debate on this matter as soon as possible. We are still embroiled in legislation but as soon as this has been cleared we shall seek a debate. One cannot imagine the effect the Stardust disaster has had on the families concerned, and I take the Senator's point.

Senator Hayes also referred to the Tánaiste, and Minister for Justice, Equality and Law Reform, Deputy McDowell, and cheap publicity. Every day we are being asked about new measures. Yet when the Minister produces them but there appears to be a reluctance in this House to accept they will be helpful and could work.

Senator O'Toole proposed an amendment to the Order of Business, which was later seconded by Senator Henry. This concerns No. 16 on the Order Paper, the Credit Union Savings Protection Bill 2007, and as I understand it, leave to print the First Stage. We shall be pleased to obtain that leave to print and I look forward to the Bill.

Senator O'Toole also referred to the Tánaiste, the question of mandatory sentences, and what we have said here in that regard. The Senator made a fair point in his comment that, in general, rushing legislation was not a good idea. However, it is worse not to have anything for dealing with gangland crime. The legislation will be available in the afternoon, so we shall see what it contains.

Senator Ryan, too, spoke about rushed legislation and the rushed idea of a referendum to amend the Constitution, of which he is not in favour. He talked about his dear wife and the——

Mr. Ryan: It is St. Valentine's Day, after all.

Ms O'Rourke: It is St. Valentine's Day, so we shall refer to her as his dear wife. He talked about the silencing clause and I guess she will not be silenced, after many years of living with the Senator, but will have her say. However, I do not understand the silencing clause to which he refers. It appears that medical delivery cannot be criticised and the same applies as regards safety at work. I will look into this.

I wish the Cathaoirleach a happy St. Valentine's Day, and through him, the Members of the House and all who are eligible for all those things.

(Interruptions).

Mr. B. Hayes: I wonder whether Senator White will send us some chocolates.

Ms Terry: She does very well, sending us chocolates.

Ms O'Rourke: Senator Leyden spoke of the Competition Authority and praised it for the case it took against the Cork car cartel. He wanted a debate on the price of cars.

Senator Finucane referred to the national cervical cancer programme and Gardicil vaccination. I understand from a debate I heard on the radio there are proposals for a national vaccination scheme involving Gardicil, which has proved to be helpful in cervical screening and this should be followed through. I shall deal later with what Senator Terry said.

Senator Mansergh spoke about the UNICEF report. I thought it was very good, too, to have achieved ninth place out of 21, with the US, the UK and other big countries coming after us. I will pass on the Senator's commendation to the Minister of State with responsibility for children,

Senator Mansergh also expressed his appreciation of public service transport. He is here every day the House is sitting. When he said he came by DART and bus this morning, this was true because he came from his home in Dublin. He has two lives, Dublin and Tipperary.

Mr. Browne: He is like P. Flynn.

Ms O'Rourke: Senator Mansergh also praised the arts programme on Charlie Haughey, broadcast last night on RTE. It was a wonderful programme. There is a whole other side to the man and ——

Mr. B. Hayes: So we are discovering.

Ms O'Rourke: Senator Ryan referred, I understand, to bread and roses. We had the roses last night.

Senator Quinn said the best outcome for a child in a family setting is for the child to eat at home with his or her siblings and parents. That sounds good if it could be done.

[Ms O'Rourke.]

Senator Lydon welcomed the decision by North Korea and called for a debate on the Middle East. We will have such a debate when we have followed through on legislation here. I cannot touch on such matters until we have done that. In saying that, I have the good of the House at heart. We are trying not to allow the build up of a backlog of legislation. I do not care how long it takes to deal with legislation in the Dáil but we will not allow a backlog here.

I agree with Senator Terry's point that the gardasil drug used in protection against cervical cancer should be available not as an act of patronage but equally to everybody. That the vaccine is not available to medical card holders is another breach of equality rights. I strongly take on board the Senator's point. However, I am satisfied that gardasil, whether in vaccine or some other form, will be available nationwide soon, as that appears to be the outcome of discussions on it.

Senator White raised an interesting point, namely, that American citizens aged 70 years of age who visit here cannot hire a particular make of car and those aged 75 years of age cannot hire a car. Senator Mary Henry thought that is a matter to be raised at European level. Senator White might raise this by way of an Adjournment matter.

Ms White: Car companies are not subject to——

An Cathaoirleach: Order, please.

Ms O'Rourke: Senator Feeney said there were two schools of thought on a national screening programme. She spoke about the drug refund scheme and said the gardasil vaccine should be available free to all who need it. While many so-called cures are advanced for cancer, it is inexorable the way it marches on.

Senator Coonan raised the matter of the sports capital grant, which apparently Deputy Deenihan will dramatically increase when he gets into office. However, the Senator wants us to raise it and for Deputy Deenihan to carry it through. That is seemingly what the Senator said.

Mr. B. Hayes: We will see what happens.

Ms O'Rourke: Senator Daly called for a review of the progress made in regard to disability legislation, which is a very good idea. He also spoke about the pending strike in Aer Lingus.

Senator McHugh raised the matter of the system of parliamentary questions and answers through the HSE, which he said is not working. There is undue delay in dealing with them and the system appears to have collapsed.

The Senator also raised the issue of fishermen whose vessels were tied up in port while other fishermen were marauding the waters. He also referred to the morning session of a meeting at which fine questions were raised about Roscommon and Galway and dealt with. However, he said at this soiree that the area from Malin Head to Nenagh is too large to be dealt with by the structure in place.

Senator Dooley raised the matter of the State Airports Act. No one listened to me when I spoke on that. It has not been implemented yet. The new Minister on taking office was handed the box of cards, and now there is a stand off. The Senator also supported Senator White's point, particularly in regard to the insurance industry which is making vast amounts of money.

I wish Senator Browne a happy Valentine's Day.

Mr. Browne: Happy Valentine's Day to the Leader.

Ms O'Rourke: He raised the matter of the pending court case with Greencore and case of the beet farmers. A court case has been taken and it cannot be obviated or put to one side but must be followed through. I have been contacted by a group of sugar beet farmers and I have sympathy with their dilemma.

Mr. Browne: Sympathy is no use to them, they are looking for money.

Mr. Coghlan: Senator Coghlan raised the matter of the debate on the placename of Dingle. Will this Dingle-Daingean debate continue forever?

Mr. Coghlan: I wish the Minister responsible would move forward and stop it.

Ms O'Rourke: The Senator wants the Minister for Community, Rural and Gaeltacht Affairs——

Mr. Coghlan: No, the Minister for the Environment, Heritage and Local Government.

Ms O'Rourke: Yes, the legislation is under his aegis now and the Senator wants to know it can be satisfactorily sorted out.

An Cathaoirleach: Senator O'Toole moved an amendment to the Order of Business.

Ms O'Rourke: I accepted that.

An Cathaoirleach: It must be agreed by the House. Is the amendment agreed? Agreed. Is the Order of Business, as amended, agreed? Agreed.

Order of Business agreed to.

Credit Union Savings Protection Bill 2007: First Stage.

Mr. O'Toole: I move:

> That leave be granted to introduce a Bill entitled Credit Union Savings Protection Bill 2007.

An Cathaoirleach: Is the Bill opposed?

Ms O'Rourke: No.

An Leas-Cheann Comhairle: As this is a Private Members' Bill, Second Stage must, under Standing Orders, be taken in Private Members' Time.

Mr. O'Toole: I move: "That the Bill be taken in Private Members' Time".

Question put and agreed to.

Citizens Information Bill 2006: Committee Stage.

Sections 1 to 4 agreed.

SECTION 5.

Ms Terry: I move amendment No. 1:

In page 6, between lines 10 and 11, to insert the following:

"(*b*) A personal advocate shall have such qualifications, expertise and experience as are appropriate to perform the functions conferred on him or her by this Act.".

The Minister for Social and Family Affairs is welcome to the House. This Bill is of major importance to people with disabilities. The provision of advocacy services for people with disabilities has been long awaited. This service will be worthwhile and will give major support and a voice to people with disabilities. I am sure the Minister will agree that it is vital the quality and standards we set for advocates should be of the highest level.

My colleague in the Dáil tabled a similar amendment and it is also similar to an amendment tabled by the Minister, which I presume was accepted in the Dáil. However, this amendment goes further in that it provides that we would ensure through this Act that we would set certain standards. Much work needs to be done in this regard. Many advocates will be needed. The training for those advocates will be of major importance. I understand that currently training for advocates is available in only one institute of education, the institute in Sligo. How does the Minister intend to ensure the required number of advocates will be available and that the standards will be of the highest level? How will we set those standards, if they are not provided for in the legislation? This amendment is even stronger than the Minister's good amendment. I would like the Minister to assure us that the proper standards will be set to ensure the best quality service is delivered to people with disabilities. The Minister may have had time to reconsider this matter in the intervening period between consideration of the Bill in the Dáil and this debate and may see his way to accepting this amendment.

Minister for Social and Family Affairs (Mr. Brennan): I thank the Senator for proposing this amendment to section 5. She seeks to provide in the legislation that personal advocates should have particular qualifications. I do not have a difficulty with that. There is no need and it could be counterproductive to lay down the qualifications in legislation because the necessity for qualifications of a certain type changes from time to time. I have provided in the Bill that the qualifications of personal advocates will be determined by the board. In fact, the first draft suggested it would be determined by the director, but I broadened it to make the sure the whole board was satisfied with the qualifications.

Section 5, paragraph 7A(2) provides that personal advocates shall have such qualifications, experience and expertise as the board considers necessary. The intention here is that the new service should have highly trained people with specialist skills, so that they can carry out the responsibilities of a personal advocate when speaking up for a person with disability and helping that person to access services. I took on board on board what was said on Second Stage.

The guidelines are published by Comhairle, the citizens information board, in preparation for the introduction of this service. These suggest that personal advocates would be expected to have a third level standard of education and experience in dealing with clients in a relevant area. The overall intention is to ensure a professional service of the highest quality. Section 5, paragraph 7A(2) is intended to empower the board to achieve this objective. The guidelines were published in September 2005 and they provide that a personal advocate shall empower the person with disability where possible, respect the person's wishes. act in the best interests of the person, act independently and maintain confidentiality. The objective is to keep the disabled person at the centre of the service and the guidelines suggest that potential personal advocates are likely to come from a variety of professions, where they will have experience dealing with people as clients. A minimum of three years' experience in a relevant area is probably desirable, but good judgement is needed overall.

In preparation for the introduction of the service on a statutory basis, the board has produced a resource pack for the community sector and has held training and networking days for the new advocacy project. The board also supports a higher certificate course in advocacy studies, which is accredited through Sligo Institute of Technology. In 2006, 26 students graduated from the two-year diploma course. There are currently 30 students in their second year of the course and 40 students in their first year. We will start off with four advocates, but I have stated that we are committed to meeting the demand so the number of advocates will increase.

I do not have a problem with what the Senator is trying to achieve in her amendment. We want

[Mr. Brennan.]

to make sure that personal advocates are well qualified with plenty of experience, and are the right people for the job. I take the view that the Bill requires the board to be satisfied about those things. It is better that the chairperson, the director and members of the board use their combined wisdom. From time to time, qualifications will change. New courses might be available or new post-graduate studies might be developed. One might need a BA in psychology today or a PhD in Philosophy tomorrow. It depends on society as it develops.

It is better to leave flexibility in the Bill, but it contains a requirement that the board be satisfied that people have suitable qualifications, expertise and experience. I have laid out what the guidelines state and I have no doubt that they will be followed in detail.

Ms Terry: I thank the Minister for his response. I understand from where he is coming and that we should get the best people available for issued. I was trying to copperfasten that in the Bill. With a highly educated population we will have well qualified people to carry out this important work. Has the Minister a figure in mind? He stated that he would start with four workers initially, but how many advocates will be employed when the programme is fully resourced and working to its capacity?

Mr. S. Brennan: I have not put a number on that. The initial phase states that the director of the personal advocacy service, four advocates and support staff of about four to six would be recruited. It is difficult to estimate the likely demand for the service, but I want to give the commitment that new personal advocates will be recruited as required to meet the needs of people with disabilities and to meet that demand. The director will be initially based in Dublin, but will move to Drogheda following decentralisation of the Citizens' Information Board headquarters. As the service develops, trained advocates will be located in different parts of the country. The objective is to build a good regional spread. I could not put a number on it, but we will take it from the start and develop it as demand grows.

Ms Cox: The last time I spoke with the Minister about this, I outlined my philosophical difficulty in allowing the system to continue in a situation where we needed advocates to make it work for people. Can the Minister consider ensuring that a review be done within a certain period, such as every year or two years? Instead of continuing to provide advocates as required, the Department should have a quality assurance in its delivery of services. Our emphasis should be on making the system work, rather than having to put things in place to get over the barriers produced by the system.

Mr. S. Brennan: Senator Cox made an enlightened speech on Second Stage. When one puts something like this in place, it is an admission that the system is not working. However, it is possible to make that allegation when any support system is put in place. This is in place because the sad reality is that people with disabilities find it difficult to access services. The fact that they should not find it difficult is a philosophical debate and let us hope we are in the position someday where people with disabilities do not need that kind of support. From all the research we have obtained, the reality is that they do need it.

The definition of disability is a sensitive one. We sometimes tend to think of it as an especially physical disability, but there are also sensory disabilities and so on where people need support in approaching any Department. We could put all those skills into the Department to deal with all those problems, but we would then probably have to replicate them across the board.

This board belongs to all Departments and not just mine. It is there to help people access their services across to all Departments. The disadvantaged and vulnerable members of our society may not need this additional support some day, but it is essential for the foreseeable future.

I take the general point made that whenever a support system is put in, it means that the system itself has not been able to respond. In another way, focusing on an issue allows us to reach a stage in the future where we can ease up on special support. The special support is needed at this time. I take the philosophical point that Senator Cox has made.

Amendment, by leave, withdrawn.

Ms Terry: I move amendment No. 2:

In page 7, between lines 30 and 31, to insert the following:

"(5) Each application for a personal advocate shall be considered within 2 months of the date of application.".

This amendment follows quite neatly from the last amendment. I read with interest the Minister's response to Deputy Stanton on this matter in the Dáil. The Minister did not agree with the proposal that applications for personal advocates should "be considered within 2 months of the date of application". He pointed out that An Bord Pleanála is supposed to give a response within four months but does not do so, which often causes the deadline to be extended. The Minister has said the imposition of a deadline could work against an individual. I am concerned about what will happen if we do not provide for a clear timeframe, or if we do not have enough advocates. The Minister has said there initially will be four advocates and six support staff. We do not know how much demand there will be for the service. If demand is high, there will be prob-

lems if not enough advocates are in place. There can be many problems with staff, often for understandable reasons — it can take time to employ people, for example. If somebody with a disability needs a particular service or services, he or she should be able to get them promptly. Many people who need services at present have to wait for a long time to get those services.

The open-ended nature of this provision, as it stands, will not work in the best interests of people with disabilities. Such people are entitled to know when it is likely that advocates will be appointed to deal with their cases. The two-month timeframe for dealing with applications, which I am proposing in this amendment, is reasonable. If we do not include this provision, the relevant period of time could be easily extended to six months. If there is no timeframe within which directors have to respond, they might take six or 12 months to consider applications. That is not good enough. If the Minister thinks the two-month timeframe is too short, I will be prepared to consider as reasonable a suggestion that it be extended to three months, for example. If we leave it open-ended, we will hinder the delivery under this legislation of the services to which we all aspire.

Mr. Brennan: The 2007 budget — the opening budget — of the advocacy and interpretative service is €4.3 million. Data compiled for a Comhairle report, Developing an Advocacy Service for People with Disabilities, indicate that approximately 26,000 people, including 9,200 children, are registered on the national intellectual disability database. Approximately 14,800 people with mental or intellectual disabilities are in hospitals, including full-time residential and community facilities, at any given time. Although the figures I have given date from July 2004, they give an indication of the likely demand.

I do not want to be awkward about Senator Terry's proposal to provide for a two-month timeframe. I have examined the amendment, which seems to be reasonable, since the Dáil debate on this matter. I am anxious not to include in the legislation a provision that might have an effect contrary to what is intended. When organisations are under pressure because they are facing deadlines, they sometimes make bad decisions. It is not good to be under pressure to make a decision by 5 p.m. on Tuesday in order that one does not breach the legislation, for example, because one might not make the right decision. An alternative strategy that is often pursued in such circumstances is to issue a letter looking for more information, thereby causing the clock to start ticking all over again. The officials in An Bord Pleanála are masters of such tactics.

When one imposes a timeframe on the provision of services of this nature, it can become a target. If one makes an application today, one is less likely to get an answer this week if some genius somewhere realises one does not have to be given that answer for two months. It can became the norm to choose not to take further action for six or seven weeks. An amendment like this may be necessary in the future, if delays and backlogs start to arise. If, in the initial stage, I were to include a provision whereby two or three months could be taken to respond to an application, it would almost certainly lead to circumstances in which the full two or three months would be taken. That has been the experience when we have provided for such targets in the past. People take the time available to them. If we have a certain number of weeks to an election, we will use that time to do what needs to be done. If we have a shorter length of time, we will squeeze the same amount of work into the shorter timeframe. We all tend to work to deadlines. Those of us who have sat examinations will remember that we did not tend to get down to the serious business until the target date we had set started to loom. I am a little nervous about setting a deadline in this instance.

I have been advised by the Office of the Chief Parliamentary Counsel that the text of the Bill as it stands would be interpreted as requiring the determination of entitlement to the service within "a reasonable timeframe". The board will set targets in its various documents, such as its business plans. It will be required to deliver the service within "a reasonable timeframe". Medical advice and judgment is a central feature of any debate on disability matters. A timeframe of a month or two might be perfectly reasonable in the case of a person with a particular type of disability, but a longer timeframe might be more appropriate in the case of a person with a different type of disability who is trying to access a more complicated service.

It is better to leave this section of the Bill as it stands, although I would not rule out a change in the future. I presume Social Welfare Bills in the years to come will offer us plenty of opportunities to include a provision of this nature in this legislation. I am worried that if we make such an amendment now, it will have a counter-productive effect. We need the professionals to get to work on this new service, which is very sensitive, to see how it develops. That is the most practical way forward, to be honest. I am satisfied with the Office of the Chief Parliamentary Counsel's assurance that, legally, the board will be required to make a decision within "a reasonable timeframe". That is probably the most reasonable thing to do.

Ms Terry: I am not happy with the Minister's response. He might think his approach is reasonable. I am not sure what is meant by "a reasonable timeframe" — such a phrase is too vague. This is a question of management and of how people do their work. One of the problems with the health service is that we do not demand that certain standards are delivered on. As legislators,

[Ms Terry.]

we should demand high standards. This open-ended provision, which will allow decisions to be made within "a reasonable timeframe", means nothing. I wish I could share the Minister's opinion that it might be counter-productive to provide for a two-month timeframe in some cases, as officials would take the full two months to do what needs to be done. I would like to think they could respond much faster than that. I want to ensure it will not take them more than two months to make decisions. People in the private sector work to better standards because timeframes are in place. It costs them money if they run over but when it comes to social services it is somehow down to poor management in certain areas. This is not the case across the board but we all know that many of our problems are down to management.

We need to set standards and to be more demanding to ensure proper delivery of services within proper timeframes. It is up to us to set those timeframes and ensure they are met. I am disappointed the Minister cannot see his way to be of like mind and accept this reasonable amendment.

Mr. S. Brennan: I am not disputing the reasonable nature of the case made by the Senator but I am advised that it might be counter-productive to do this in a brand new service at this stage. Not all individuals will be in need of a personal advocate. Many will have family members and carers and it is probable that only the most vulnerable will come forward initially. They will be prioritised and this has been clarified by the board. They will be dealt with immediately. I reiterate that many people will not require the service as they will be well able to speak up for themselves and to pursue an action or case on their own behalf. The Citizens Information Board has a strategic plan for 2006-09 which contains performance indicators which state that decisions will be taken promptly, without delay and within reasonable timeframes. This is the commitment in the strategic plan.

This is a point for which a strong argument can be made either way. However, I am satisfied that the assurance of the Parliamentary Counsel that the word "reasonable" when used in legislation is fairly well used and defined. A reasonable timeframe in this case could be a week, depending on the case. The timeframe for a very simple inquiry could be a week but a complicated issue could take a year. This is unknown territory and it is better to allow the board some flexibility.

The board and the director are required by legislation to deal promptly with applications. If we were to impose a time limit it should be done in future legislation. Two social welfare Bills come through this House every year and there would be little difficulty in putting an amendment to one of those Bills if a backlog occurred by inserting a timeframe of two or three months. There would be no need to draft a new piece of legislation as it could be incorporated into a social welfare Bill. This would be the most sensible way. The social welfare Bills must be enacted and they would provide for such an opportunity.

If the Senator forgives my pun, I advocate that we leave it to the board's requirement to act promptly. I would not be opposed to making an amendment similar to this amendment in future legislation if it is warranted at that time. I know the Senator would share my wish that it would not be needed at all and that the board would deal expeditiously with cases.

Ms Terry: I will not press the amendment. I will take on board what the Minister has said and I ask that he take on board what I have said. The Minister has stated this could be changed in the future if it is found to be unsatisfactory and not working to the desired standard and this is to be welcomed.

Amendment, by leave, withdrawn.

Ms Terry: I move amendment No. 3:

In page 12, between lines 42 and 43, to insert the following:

"(*d*) A person, or a person acting on his or her behalf, who is unhappy with the performance of a personal advocate, may submit a complaint to the Director of the Personal Advocacy Service.".

This amendment is an attempt by Fine Gael to strengthen this very good legislation to ensure that people with disabilities receive the best level of service possible. Unfortunately, not everything works out the way we would hope. In any walk of life there will always be complaints or people will be unhappy with the level of service. This Bill does not provide for a mechanism to make a complaint by an individual who is unhappy with the level of service. This is a failure in the Bill.

Everybody should be entitled to bring a complaint to another body. People with disabilities are the most vulnerable people in the community. When legislation is enacted and significant sums of money are provided to ensure that services and qualified people are available, it makes sense to go that one step further to provide a complaints resolution service. This service is available in other areas and the ombudsmen do excellent work. It would strengthen the Bill if such a mechanism were to be provided and this amendment would do so. I ask the Minister to consider it favourably.

Mr. Brennan: I do not have any quibble with the intention of this and the other amendments. The intention is good and the principle behind the amendments makes sense. However, in the stark print of legislation, an amendment may not achieve the desired objective. The Senator is attempting to ensure there is a strong complaints

procedure and that complaints about personal advocate performance may be made to the director. The personal advocate will be a staff member of the board. There is no reason to stop anyone bringing a complaint to the director. It is normal procedure to make a complaint to a person's boss. It is not necessary to put into legislation that a person can complain to someone's boss or to the board.

A complaints system is already in place in the Citizens Information Board in Comhairle. Anybody with a difficulty with any staff member such as a personal advocate may complain to the board or the chairman or the chief executive. The director of advocacy services reports to the chief executive. If the Bill were to state that complaints should be made to the director it should also be stated that complaints can go to the chief executive because the director may well have been the person who selected the advocate for a particular assignment.

I confirm that complaints can be made to the board, to the director, to the chief executive and to the Ombudsman or even the Department in the case of a complaint about policy. The Bill provides that appeals can be made through the ordinary social welfare appeals system. If a person is not satisfied with a decision it can be appealed through the independent social welfare appeals office. This is a safety valve if someone wishes to appeal a decision.

Advocates are employees of the board and anyone can make a complaint to the board. If we attempt to include this in legislation it may result in narrowing the range of people to whom a complaint can be made. As a consequence, individuals could argue that specific persons are not entitled to make a complaint to them because they are not named in the legislation. The common sense approach provided for in the Bill is preferable. As matters stand, the complaints procedure in the board is open to anyone who wishes to make a complaint about any person employed by the board. This is the practical way forward.

12 o'clock

Ms Terry: I accept the Minister's explanation. As the legislation is new, it must be given time to work. If, however, we find that certain procedures are not working properly, we will rectify them by way of amendment at a later date.

Amendment, by leave, withdrawn.

Ms Terry: I move amendment No. 4:

In page 12, after line 52, to insert the following:

"(6) The following persons may notify the Minister that an offence has occurred under subsection (5):

(*a*) a personal advocate;

(*b*) a qualifying person;

(*c*) members of a qualifying person's family;

(*d*) a carer; or

(*e*) any combination of the persons mentioned in paragraphs (*a*) to (*d*).".

The amendment is similar to amendment No. 3. I ask the Minister to comment.

Mr. S. Brennan: Senator Terry will be aware of my arguments. I appreciate she is trying to be helpful in this case. I also appreciate the general welcome given to the legislation on all sides. The amendment proposes that a series of persons may notify the Minister that an offence has occurred. These persons are listed as a personal advocate; a qualifying person; members of a qualifying person's family; a carer; or any combination of the persons mentioned. The proposal is too restrictive because under the current provisions, anyone may make a complaint or notify the Minister of an offence. It will be the obligation of a personal advocate or qualifying person to notify the Minister of any issues arising in the normal course of their duties.

I am nervous about prescribing a list of people because it omits many others and, as such, would not meet the intended objective. I encourage anybody to notify the Minister or board in the event that difficulties arise at any stage. For this reason, it is better to leave open the question of which persons may notify the Minister.

Amendment, by leave, withdrawn.

Section 5 agreed to.

Sections 6 to 10, inclusive, agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

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

Minister for Social and Family Affairs (Mr. Brennan): I thank Senators for their thoughtful consideration of the legislation and enlightening and useful contributions. I am also grateful to my colleagues in the Dáil who examined the Bill in a rigorous but fair manner. As always, I must say a special word of thanks to my over-worked officials who have spent many years bringing this legislation to the Statute Book. They have been engaged in the process under various Ministers since 2001. I thank the Office of the Parliamentary Counsel for the extensive work it did on the Bill.

I thank the Department's disability consultative forum and the disability legislation consultative group, DLCP, which did Trojan work. The DLCP includes the Disability Federation of

[Mr. Brennan.]

Ireland, Mental Health Ireland, Inclusion Ireland, the National Federation of Voluntary Bodies, the Not-for-Profit Business Association, People with Disabilities in Ireland, the National Disability Authority and others.

I thank the chairperson, board and managers of Comhairle, which will shortly become the Citizens Information Board if or when the President signs the legislation. Throughout the legislative process Comhairle has worked closely with the Department and continues to provide a fine service. With its new title, mandate, legislation and responsibilities for advocacy, it will have a heavy workload in ensuring citizens and immigrants alike who seek assistance, advice and information from the Citizens Information Board are guided in the right direction on how to access a range of State services, not exclusively in the area of social welfare. Information reduces the pressure people feel, particularly vulnerable people who need information at traumatic times in their lives. I hope the new Citizens Information Board can be a beacon of hope for such people and guide them towards full access to their entitlements. I thank Senators and the Acting Chairman, Senator Brady.

Ms Terry: I, too, thank all those whom the Minister thanked and praised, particularly his staff who have worked on the Bill for many years. This is excellent legislation which will be of great benefit to many people. With such large numbers of people accessing the Comhairle service, the provisions of the Bill will improve the level of service delivered, particularly to those with disabilities. My party will allow time to determine if the Bill has any flaws and address any areas in need of improvement in due course. I thank the Minister and his officials for the fine work we have completed today.

Ms Cox: I thank the Minister for his forbearance and patience in listening to arguments made by Senators from both sides in their efforts to improve the legislation. Time and again, when the House deals with legislation from the Department of Social and Family Affairs, it is wonderful, as legislators, to be in a position to discuss the bigger picture and philosophical questions as well as the opportunities available to us. For many years, the problem we faced was having too little and not being able to provide for people.

I appreciate the Minister's acceptance of my philosophical reflections on the legislation. I still firmly believe that all State enterprises, including Departments, have a responsibility to ensure that the services they provide are accessible. It is not for us to create systems to make up for failures in such situations. In the short term we may have to deal with such issues, but in the longer term the responsibility must remain with particular Departments. That, however, is a philosophical debate that will continue for many years.

I wish to thank the Minister's officials and all those who work in this area. The legislation will make a huge difference to the lives of many people throughout the country. If we do nothing other than make life better for the people we serve, then we can be justifiably proud of doing so. I thank the Minister again.

Question put and agreed to.

Sitting suspended at 12.10 p.m. until 2.15 p.m.

Consumer Protection Bill 2007: Committee Stage.

Section 1 agreed to.

SECTION 2.

Government amendment No. 1:

In page 10, lines 27 and 28, to delete all words from and including "any" in line 27 down to and including "profession" in line 28 and substitute the following:

"any service or facility provided for gain or reward or otherwise than free of charge".

Minister for Enterprise, Trade and Employment (Mr. Martin): The amendment seeks to close off a possible loophole in the Bill as it applies to pyramid schemes. The original wording, "any service or facility provided in the course of a trade, business or profession", might have proved problematic in the context of schemes. As pyramid schemes are unlawful, there can be no legitimate trade, business or professional pyramid scheme promoter or operator. Most of those involved in recent schemes appear to have been involved in a capacity incidental to their normal trade, business or profession.

I am mindful of the difficulties the restrictive definition of pyramid selling in the Pyramid Selling Act 1980 has caused for the enforcement of the Act and I am anxious to forestall any similar problems with the pyramid selling provisions of the present Bill. It is a technical amendment to cover any potential loophole.

Mr. Coghlan: We are all aware of the frightening consequences of pyramid selling. We accept the amendment.

Amendment agreed to.

Government amendment No. 2:

In page 11, to delete lines 3 to 6 and substitute the following:

"(*a*) sell, lease, take by way of mortgage or other security, assign, award by chance or otherwise effect a disposition of,

(*b*) offer or agree to supply or expose or display for supply;".

Mr. Martin: This is a technical amendment. It substitutes the verb for the noun form in the elaboration of the definition of supply in paragraphs (*a*) and (*b*). First, this is more appropriate and more consistent with the approach taken to comparable definitions in the section. Second, it deletes the words "or inviting an offer to purchase" in paragraph (*b*). These had the potential to cause confusion with the concept of invitation to purchase, which is defined in this section and features in section 45 and other parts of the Bill. The words proposed for deletion are not essential to what is a comprehensive definition of supply. I am satisfied their removal will not create any gaps in the definition.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 3, 10 and 38 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 3:

In page 11, after line 43, to insert the following subsection:

"(5) Notwithstanding Article 3(10) of the Directive but subject to sections 5 to 6A (inserted by *section 95*) of the Hallmarking Act 1981, *Part 3* applies to commercial practices relating to indications of the standard of fineness of articles of precious metal.".

Mr. Martin: The background to the amendment to section 2(5) is intended to clarify that the provisions of Part 3 of the Bill on unfair, misleading, aggressive and prohibited commercial practices apply to commercial practices relating to the hallmarking of articles of precious metal.

Article 3.10 of the unfair commercial practices directive states, "This Directive shall not apply to the application of the laws, regulations and administrative provisions of Member States relating to the certification and indication of the standard of fineness of articles of precious metal." We have supported this provision in the directive as there were concerns that due to the maximum harmonisation of the directive, its application to national hallmarking laws might mean we could no longer require articles of precious metal imported from member states to bear a mark providing information equivalent to that provided by hallmarks approved under domestic legislation. While we had concerns about the possible implications of the directive for hallmarking controls, we had no wish to exclude unfair, misleading or aggressive practices relating to the hallmarking of precious metals from its provisions and those of this Bill.

The purchase of gold, silver or platinum items are among the most significant purchases consumers make and it is important that the protections of Part 3 of the Bill apply to them. I propose this amendment to remove any doubt arising from Article 3.10 of the directive that the Bill's provisions on unfair, misleading and aggressive practices might not apply to the standard of fineness of articles of precious metal.

The amendment proposed to section 41(2) qualifies the application of that subsection to take account of the new section inserted at section 95. The amendment at section 2(5) is also subject to this new section.

Section 95 deals with amendments required to sections 5 and 6 and the Hallmarking Act 1981 as a consequence of the repeal of the Merchandise Marks Act 1887 by this Bill. Section 5 of the Hallmarking Act provides that specified misdescriptions of articles of precious metal are offences under the Merchandise Marks Act 1887. Section 6 lists a number of permissible descriptions of these articles to which section 5 does not apply. In view of the repeals of the Merchandise Marks Act 1887, it is necessary to re-enact these provisions within the framework of the Consumer Protection Bill, which is what section 95 does. Apart from changes required by the differences in terminology between the Merchandise Marks Act and this Bill, it does not make any substantive changes to sections 5 and 6 of the Hallmarking Act. The amendments are consequential on the repeal of the Act of 1887.

Amendment agreed to.

Section 2, as amended, agreed to.

Section 3 agreed to.

SECTION 4.

An Cathaoirleach: Amendments Nos. 4 and 43 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 4:

In page 12, between lines 19 and 20, to insert the following subsection:

"(2) Section 20(5)(*b*) of the National Standards Authority of Ireland Act 1996 is amended by deleting "the Merchandise Marks Acts 1887 to 1978, and".".

Mr. Martin: Section 20(5)(*b*) of the National Standards Authority of Ireland Act 1996 states that the standard mark issued by the National Standards Authority of Ireland is a trade mark for the purposes of the Merchandise Marks Acts 1887 to 1978 and the Trade Marks Act 1996. The provisions of the Merchandise Marks Acts relating to the protection of trade marks have long since been superseded by the Trade Marks Acts and the Bill makes no provision for their retention. The reference to the Merchandise Marks Acts in this subsection of the National Standards Authority of Ireland Act is consequently redundant.

[Mr. Martin.]

Section 52(1)(*k*) of the Bill provides that it is a prohibited commercial practice for a trader to display a standard mark without having obtained necessary authorisation to do so. This would cover standard marks issued by the National Standards Authority of Ireland.

The new Schedule (2) submitted by this amendment also relates to amendments consequential on the repeal of the Merchandise Marks Act. It adds the repeal of a further four Acts to the Acts repealed in full by the Bill. These are the Anglo-Portuguese Commercial Treaty Acts of 1914 and 1916, which concerned wine importation, the Portuguese Treaty Act 1930 and the Spanish Trade Agreement Act 1936. All four Acts provide that the applications of certain descriptions to Portuguese and Spanish wines, such as port, madeira, sherry, rioja and so on — I know Members are familiar with them — are false trade descriptions within the meaning of the Merchandise Marks Act 1887 unless certain specified conditions are met. These provisions are now obsolete and have been superseded by the European Union wine designation regime. As all four Acts have effectively no provisions other than those relating to the applications of the Merchandise Marks Act 1887 to the wines within their scope, it is appropriate to take the opportunity to repeal them along with that Act. My Department consulted with the Portuguese and Spanish embassies with regard to their repeal, and they agreed the Acts had no contemporary applicability and expressed no objections to their repeal.

The amendments proposed to the Schedule provide for the repeal of specified subsections of a number of other Acts. The relevant provisions in the agricultural produce Acts, the seed production Act and the Road Traffic Acts essentially provide that where marks are prescribed by regulations made under the Acts for the marketing of the goods in question, the application of such marks contrary to the regulations is a false trade description within the meaning of the Merchandise Marks Acts. Regulations giving effect to these provisions were either never made or are no longer applicable. As the provisions of these Acts will fall with the repeal of the Merchandise Marks Acts by this Bill, it is appropriate to provide for their repeal also.

Section 19 of the National Standards Authority of Ireland Act deals with false representations in connection with the specification of standards and section 19(3) provides that nothing in the section will be construed as limiting the operation of section 2 of the Merchandise Marks Act 1887 dealing with the application of false trade descriptions to goods. In my Department's view, there is no need for an equivalent provision in the context of the present Bill. Section 21(7) of the National Standards Authority of Ireland Act provides that the use of licensed standard marks in certain circumstances is deemed not to be a false trade description for the purposes of the Merchandise Marks Acts. In view of the maximum harmonisation nature of the unfair commercial practices directive, we cannot make provisions for exemptions other than those provided for in the directive. I am advised the provision is of little or no practical significance.

Section 12(1) of the Packaged Goods (Quality Control) Act 1980 provides that a statement of quantity on a package in pursuance of section 10(*a*) of the Act, which deals with the duties of packers and importers as regards the marking of packages, shall not be regarded as a trade description within the meaning of the Merchandise Marks Acts. Again, it is not within the discretion of member states to introduce national exemptions from the scope of those provisions of the unfair commercial practices directive that correspond to the false trade descriptions of the Merchandise Marks Acts.

The Bill represents the consolidation of many older Acts pertaining to consumer issues. There is a lot of tidying up to do.

Mr. Coghlan: I will accept the Minister's word on that. There is no opposition to the amendments.

Amendment agreed to.

Question proposed: "That section 4, as amended, stand part of the Bill."

Mr. Leyden: The Bill provides for the revocation of the Prices (Stabilisation of Profit Margins of Retailers of Motor Cars) Order and the Consumer Information (Diesel and Petrol) (Reduction in Retail Price) Order. In light of the Competition Authority's case regarding the sale of Ford motor cars, did the existing provision encourage the retailers to form some sort of cartel to retain their margin?

Mr. Martin: These were anti-competitive measures that could facilitate the fixing of prices. Therefore, their removal is important.

Mr. Leyden: I am surprised the retailers in question did not quote those provisions in defence of their cartel type operation. It is interesting they are being revoked now, probably as a result of the case taken by the Competition Authority.

Mr. Martin: In general, anything that endeavoured to control prices is being removed. The Bill repeals the type of price controls we had in the 1970s and 1980s because price control does not work, but gives rise to certain unacceptable practices.

Question put and agreed to.

Sections 5 to 7, inclusive, agreed to.

SECTION 8.

Government amendment No. 5:

In page 14, between lines 45 and 46, to insert the following subsection:

"(5) Nothing in this section or any other provision of this Act imposes a duty on the Agency to consider whether to investigate a matter relating to Part 3 that is referred to it by a trader but the Agency may, in the case of a matter so referred to it, consider whether to do so (and, accordingly, may proceed to investigate the matter) where it is satisfied the matter may affect the interests and welfare of consumers.".

Mr. Martin: The scope of the unfair commercial practices directive, on which Part 3 is based, is restricted to business to consumer commercial practices. It differs in this respect from older domestic legislation, such as the Merchandise Marks Act 1887, which applies to all commercial transactions, business to business as well as business to consumer. This reflects the fact that consumer protection was not a distinct area of policy concern when such legislation was being drafted in the past. It is now a priority area for policy and the National Consumer Agency is being set up with a clear mandate to advance consumer welfare and interests.

The aim of this amendment is to clarify that the agency is required to investigate a matter referred to it by a trader only where it is satisfied that the matter concerned may affect the interests and welfare of consumers. While the agency will welcome information provided by traders and will act on it where appropriate, it should not have to devote resources earmarked for consumer protection to matters with no consumer dimension and which involve only commercial differences, rivalry or disputes between traders. The amendment aims to retain the focus of the agency on consumer interests.

Amendment agreed to.

Section 8, as amended, agreed to.

Sections 9 to 34, inclusive, agreed to.

SECTION 35.

An Cathaoirleach: Amendments Nos. 6 and 7 are related and may be discussed together by agreement.

Government amendment No. 6:

In page 34, subsection (5), line 33, after "Acts" to insert "of the Oireachtas".

Mr. Martin: These are technical amendments to clarify that the reference to "Acts" in section 35(5) is to Acts of the Oireachtas and the reference to "Act" in section 37(3) is to an Act as defined in the Interpretation Act 2005. Both amendments are proposed on the advice of the Office of the Parliamentary Counsel.

Amendment agreed to.

Section 35, as amended, agreed to.

Section 36 agreed to.

SECTION 37.

Government amendment No. 7:

In page 36, subsection (3), line 18, after "Act" to insert the following:

"(within the meaning of the Interpretation Act 2005)".

Amendment agreed to.

Section 37, as amended, agreed to.

Sections 38 and 39 agreed to.

NEW SECTION.

An Cathaoirleach: Amendments Nos. 8 and 44 are related and may be discussed together by agreement.

Government amendment No. 8:

In page 37, before section 40, but in Part 2, to insert the following new section:

"40.—(1) The Acts of the Oireachtas specified in *Part 1* of *Schedule 3* are amended as indicated in that Schedule.

(2) The instruments specified in Part 2 of *Schedule 3* are amended as indicated in that Schedule.".

Mr. Martin: There are references in a number of other Acts and statutory instruments to the Director of Consumer Affairs or the Office of the Director of Consumer Affairs which would require amendment to take account of the fact that the director and the office are to be replaced by the National Consumer Agency. These amendments are set out in the proposed new Schedule 3 while the new section 40 proposed by this amendment provides the necessary underpinning in the main part of the Bill. The amendments set out in Schedule 3 to the various enactments specified there provide only for the substitution of the National Consumer Agency for the Director of Consumer Affairs or the Office of the Director of Consumer Affairs and have no other effect on the provisions concerned. It is a technical amendment.

Amendment agreed to.

SECTION 40.

An Cathaoirleach: Amendments Nos. 9 and 13 are related and may be discussed together by agreement.

Government amendment No. 9:

In page 38, subsection (2)(*b)*(i), line 7, to delete "trader's product" and substitute "product concerned".

Mr. Martin: The provisions of the unfair commercial practices directive, to which sections 40(2)(b)(i) and 50(1)(*a*) give effect, do not include the word "trader's" before "product". These amendments propose the deletion of the word from each of the subsections. Therefore, we intend to delete "trader's product" and substitute "product concerned". The product in a consumer transaction is not always the trader's product. In the case of an estate agent conducting the sale of a house, for example, the product is not his, but his actions can impair a consumer's ability to make an informed choice as to whether to purchase the property or on what terms to do so. These amendments are necessary in order to ensure the provisions of the Bill will apply in such cases.

Amendment agreed to.

Section 40, as amended, agreed to.

SECTION 41.

Government amendment No. 10:

In page 38, subsection (2), line 19, to delete "*Sections 42* to *45*" and substitute the following:

"Without prejudice to the amendments of the Hallmarking Act 1981 made by *section 95*, *sections 42* to *45*".

Amendment agreed to.

Section 41, as amended, agreed to.

Sections 42 to 44, inclusive, agreed to.

SECTION 45.

An Cathaoirleach: Amendment No. 10*a* is a Government amendment which is on the supplementary list circulated today. Amendments Nos. 10*a*, 11 and 12 are related and may be discussed together by agreement.

Government amendment No. 10*a*:

In page 41, subsection (3), line 33, to delete "Subject to *subsection (5),* if" and substitute "If".

Mr. Martin: The amendments to section 45(3)(*a*) and section 45(5) are proposed in order to align these provisions more closely with the corresponding provisions of the unfair commercial practices directive. Article 7(4)(*a*) of the directive places the words "to an extent appropriate to the medium and the product" directly after the words "the main characteristics of the product". This is what is proposed in the amendment to section 45(3)(*a*) here. This makes the elaboration of the directive provision at section 45(5) unnecessary and its deletion is consequently proposed. The deletion of section 45(5) requires in turn the deletion of the words "subject to *subsection* (5)" from section 45(3), as provided for in amendment 10*a.* These are technical amendments to ensure we conform with the directive.

Amendment agreed to.

Government amendment No. 11:

In page 41, subsection (3)(*a*), line 37, after "product" to insert the following:

", to an extent appropriate to the medium and the product".

Amendment agreed to.

Government amendment No. 12:

In page 42, lines 22 to 27, to delete subsection (5).

Amendment agreed to.

Section 45, as amended, agreed to.

Sections 46 to 49, inclusive, agreed to.

SECTION 50.

Government amendment No. 13:

In page 44, subsection (1)(*a*), lines 26 and 27, to delete "trader's product" and substitute "product concerned".

Amendment agreed to.

Section 50, as amended, agreed to.

Section 51 agreed to.

SECTION 52.

Ms Cox: I move amendment No. 14:

In page 49, subsection (3), between lines 3 and 4, to insert the following:

"(*h*) in relation to the method of payment, charging the consumer—

(i) any extra amount of money, commonly referred to as a credit card surcharge, if a consumer chooses to pay for

goods of any description or any services or accommodation by credit or debit card, or

(ii) a different price to supply goods of any description, or provide any services or accommodation depending on the payment being made in cash or by credit card or debit card, or

(iii) a handling fee for purchases made on the Internet depending on the method of payment chosen by the consumer.".

On Second Stage I raised the thoroughly inequitable set-up imposed by many organisations that seek additional profits from people forced to pay for or buy services on the Internet or over the telephone. We are seeing an increasing trend on the part of organisations such as Ticketmaster, Ryanair, and Aer Lingus of forcing consumers to pay them to do business with them. Everyone accepts that in a consumer society one must pay for a product or service, but to be forced to pay for doing business with an organisation is not at all fair. It is up to the Government to ensure that we pass the necessary legislation to stop such unfair profiteering, and I would like the Minister to examine it.

For instance, if the Minister goes to his local shop, which might be somewhere in Cork, to buy a suit or shirt and the assistant says it will cost €40, €80 or €100, that is what he will charge, whether paid in cash or with a credit card. He does not say that it will cost another €5 if one pays with a credit card. In that transaction he accepts that the cost of doing business and receiving the payment — the credit card charges of the company affording him credit on the customer's behalf — is part of his overheads. We all know the exorbitant sums charged to cardholders for outstanding balances. It is not as if people are not making money from credit cards at all stages.

Another point that must be taken on board is supported by the Irish Banking Federation in particular. We are encouraging a move towards a cashless society, something ever more important, especially given the fact that in recent months bank officials have been held to ransom until they handed over money. We must encourage people at all levels of society to pay for things using credit or Laser cards. In that move towards a cashless society, there is a disincentive to use credit cards if people are forced by the service provider to pay €2.50 or €6 per transaction or a percentage of the cost of goods.

I would like us to consider the society in which we operate. I will talk of western County Galway in particular, which has the Aran Islands and places separated from centres such as Galway city by distances of 50 or 60 miles. People in such areas are being discriminated against through not enjoying fair access to a service. If they wish to book a theatre ticket on the Internet because they are unable or unwilling to get the bus into town, they are charged extra for the privilege of paying for it in their own home. Some people might say it is a service for which people are happy to pay. However, I suggest it is discriminatory and should not be allowed.

Recently a report was published on the lack of Internet take-up among older people, another group who I believe could benefit. If one told an older person to book or pay for something on the Internet with a credit card, he or she might well be discouraged by the increased expense. If we can reduce the unfair tax or surcharge imposed by suppliers, we will achieve a more equitable system.

I will give another example of people jumping on the bandwagon. At Christmas I attended a concert at the Helix in Dublin. We paid for the tickets over the Internet, and there was no booking fee. However, we read in the programme that from February the Helix too would introduce a booking fee for theatre tickets. The owners did not have to charge before, and I do not blame them for emulating such companies as Ticketmaster. Why should one not make money if everyone else is doing so? However, it makes fools of consumers, since it allows unacceptable profit taking.

Another argument often put forward, especially by merchants themselves, is that if one removed the surcharge, the transaction would become less transparent so that, instead of their charging a booking fee on top of the price, they would charge one included in it. That is probably not fair, since it would then be a matter for the consumer to decide if €70 for a ticket to the Point was too expensive. They might choose to buy the €65 or €50 tickets instead of the €70 one, and the market would decide. Ultimately it is the consumer who must decide how much is too much. However, if one wishes to buy €50 tickets for oneself and four or five friends who wish to attend a play, GAA match or whatever, and is told in the middle of the transaction that a credit card processing fee of €2.50 or €5 per ticket will be charged, it is very hard to stop. That means that consumers are being led up the garden path by such surcharging, and our acceptance of that is not good enough.

This has always been my understanding, and I have checked with the National Consumer Agency, the Consumers' Association of Ireland, and the Irish Banking Federation. MasterCard and Visa used to impose a no-discrimination rule whereby merchants might not distinguish between customers paying in cash or by credit card. A recent alarming move was MasterCard's change to that rule. While it is already being ignored, if Visa follows suit, we will have no route other than national legislation to override the excessive profiteering of organisations selling over the Internet.

A report in *The Sunday Business Post* on 22 October 2006 quoted a Ticketmaster representative as saying that the service charge paid for things other than the Ticketmaster distribution network, such as the installation and maintenance

[Ms Cox.]

of computer hardware and software, telephone lines and labour. The Minister is responsible for the Department of Enterprise, Trade and Employment and will know that many people run businesses. What else do they do except cover their overheads? One cannot simply accept their getting away with levying an additional fixed or percentage charge per ticket. One must build it into one's costs and, if one manages one's business appropriately, ensure that one covers them in a fair and reasonable way rather than exploiting the individual consumer.

This is my plea to the Minister. I may not have tabled the amendment to the correct section or have used the correct technical terms. We inserted it into section 4, since that dealt with prohibited commercial practices. We should send a clear message to consumers that the Government wishes to offer as much protection as possible and that it believes in equitable profit taking for all organisations. To have a non-negotiable credit surcharge if one chooses to do business with an organisation is neither appropriate nor fair. We do not pass legislation for the sake of being popular, but since we started talking about this, I have received overwhelming support from people throughout the country who hate paying this money and do not think it fair. If consumers cannot refuse payment because they require the Internet service, they need us to act to protect them.

I ask that the Minister consider the amendment and accept it if appropriate. We must send out the clear message that we want people to do business in the very lucrative Irish market, but that can happen only if no one is exploited.

Mr. Leyden: I commend Senator Cox for tabling this amendment, which she has also suggested as a Private Members' Bill through the Fianna Fáil Senators' group, from which she received great support. I know that the Minister will give this very careful consideration. It is a very worthy amendment, and the consumer should be protected when using credit cards, which are being exploited to a great extent. They are a very expensive method of payment and, while people should be encouraged to use them, that is true only if there is no extra cost.

Senator Cox has chosen this route, which would be speedier than a Private Members' Bill and which would ensure that her idea would get through the legislative system. I request the Minister and his Department to give this every possible consideration for inclusion in this Bill.

Mr. Coghlan: I, too, compliment Senator Cox for the elegant way in which she has advanced her arguments and for the research she put into it. It is a worthy amendment. I fully support it.

We are concerned here with consumer protection and promoting consumers' interests. The consumer simply should not be forced into anything. The measure Senator Cox proposes to counter is an anti-consumer one. I totally agree with her. It is discriminatory. Consumers need choice. They must never be straight-jacketed. There are also ripped-off charges, particularly in the case of credit card interest. Without labouring the point, I am fully supportive of this worthy amendment.

Mr. Martin: I thank Senator Cox for tabling this amendment. I pay tribute to her for her perseverance and pursuance of the issue. She has pursued me around the House and at parliamentary party meetings for about six months on this issue.

Mr. Coghlan: I never knew about that until today.

Ms Cox: On St. Valentine's Day there was a different reason.

Mr. Coghlan: I had forgotten that as well.

Mr. Martin: There is always a good chance of success on St. Valentine's Day.

We have examined this within the Department as well. We have had some animated discussions internally on the merits of the amendment. Of course the intention and motivation behind the amendment has significant merit. It is designed to prohibit a trader discriminating between consumers on the basis of the consumer's chosen method of payment for the product in question. Some traders charge an additional amount to consumers if they choose to pay by credit card. In other cases traders will charge additional amounts if a consumer opts to pay by cash or cheque instead of by direct debit.

In introducing a regulation of this kind we need to be satisfied that the rules we are establishing will have the desired effect and will not inadvertently produce some other unintended consequence which might not be in the best interest of consumers.

I do not like the imposition of additional charges based on the payment method. However, in so far as such charges might have any saving grace, they are at least transparent and the consumer knows that he or she is paying the charge. Most consumers will then have the choice as to whether they pay the charge or not. I accept that this is not always the case and, in particular, problems can arise in the case of vulnerable consumers or those with special needs. The question also arises of whether we should be leaving it to the marketplace in any event to determine price levels.

By prohibiting these charges, we could be open to the charge that we may well caused them to become hidden. If the trader were, as a consequence of the prohibition, to build the charge into a higher price which he or she then would charge to everyone regardless of how he or she

pays, then no consumer interest would have been served.

The corollary of a surcharge is that some traders might like to characterise the practice as one of providing a discount for a particular payment method. For example, one trader might display a charge of €50 for a product but stipulate that it would be available at a discount price of €47.50 if the consumer pays cash. That is no different from a trader stating that the price is €47.50 but there will be a surcharge of €2.50 for paying by credit card. The first of these practices would not be captured by Senator Cox's amendment — neither do we necessarily want to capture it — and the second practice probably would be prohibited by it.

The other issue that would need to be examined is whether or not the prohibition would prevent the trader from recovering a legitimate cost to him of doing business. For example, it would be absurd to prohibit a trader from building the cost of heating and lighting his premises into the price he charged for his products, nor would we seek to prevent a charge for delivery of a product.

In the same way, if a trader incurs an additional cost for processing credit card charges — I am not certain that he or she does in all cases — then that is a legitimate business cost and the trader should be entitled to recovery of that cost. Senator Cox made a compelling point, with which I have sympathy, that a range of costs which go into the production and delivery of a product determine the ultimate price and market forces should apply.

I am also taken by the revelation by Senator Cox that the rules of Mastercard have changed. On a voluntary basis the rules of certain payment card schemes prevented discrimination on grounds of method of payment, but now one of the card companies has removed them.

The other technical point is that we could not insert the amendment into section 52 as it would have the effect of extending the list of commercial practices prohibited by the Unfair Commercial Practice Directive. The maximum harmonisation nature of the directive would not permit us to do that and we might well face sanctions from the Commission for seeking to do so.

Nevertheless, I support the intent behind Senator Cox's suggestion and will carefully consider the legal and policy issues associated with an amendment of this sort over the coming days. With Senator Cox's agreement, I intend to reflect on the amendment with a view, if we can get over the technical nature of the difficulties I highlighted, to introduce a suitable amendment to the Bill before it completes its passage through the Oireachtas. The time involved would mean we would have to introduce the amendment in the Dáil and bring it back here to the Seanad for subsequent agreement.

I take on board what Senators Leyden and Coghlan have stated. I ask Senator Cox to accept our good faith in crafting an amendment, which is legally and technically correct and which achieves the objective set out in her amendment. I accept her point that she is speaking on behalf of many consumers and that this is a consumer protection Bill. This would be received well by consumers generally.

Ms Cox: I thank the Minister, first, for spending a great deal of time looking at the Private Members' Bill when I presented it to him. There were initial discussions between the Department of Finance and Department of Enterprise, Trade and Employment. It will send a strong message to the consumers if we state that we want to protect them and we will do this. I am more than happy to accept the Minister's good faith in this regard. I look forward to the amendment being made in the Dáil and then being in a position to discuss it when the Bill returns to this House. I thank the Minister for taking it on board.

Mr. Coghlan: I am not doubting the Minister's acceptance of the intention, but I am slightly worried that he is not necessarily guaranteeing that the amendment will be made on Report Stage in this House.

Mr. Martin: There will be an amendment, which will have to be brought to the Dáil first and brought back here then because anything that is changed in the Dáil must be vetted subsequently by the Seanad.

Mr. Coghlan: We have the Minister's guarantee that there will be an amendment.

Mr. Martin: Yes, subject to us getting over the technical issues and being able to insert it in the relevant part of the Bill. It will not be inserted into section 52, but we will look at other sections where we can insert an amendment of this kind. We must draft an amendment now. We know the intention. We know what is required and what people want.

Amendment, by leave, withdrawn.

Section 52 agreed to.

Sections 53 to 60, inclusive, agreed to.

NEW SECTION.

Mr. Coghlan: I move amendment No. 15:

In page 51, before section 61, but in Part 3, to insert the following new section:

"CHAPTER 5

Price Surveys

"61.—The Central Bank and Financial Services Authority of Ireland Act 2003 is amended in Article 3 of Part 21 of Schedule 1 by the insertion of the following after section 7:

[Mr. Coghlan.]

"7A.—(1) The Director may, in the interests of better informing consumers, conduct price surveys in order to—

(*a*) make consumers aware of price discrepancies,

(*b*) assess competitiveness or other practices under sections 4 and 5 of the Competition Act 2002, or

(*c*) for such other reason as the Director may, from time to time, deem necessary.

(2) The Director shall not be limited by national or currency boundaries in carrying out a price survey referred to in subsection (1).

(3) The Director shall be empowered to—

(*a*) (i) publish or part-publish all or any part of information,

(ii) create an electronic database containing data, gathered by him or her under this section, and

(*b*) make any electronic database created under paragraph (*a*)(ii) publicly available on-line.

7B.—The Director may compile and publish codes of conduct for service providers and retailers on such issues as he or she may, from time to time, deem appropriate, including the passing on of costs such as exchange rate movements.

7C.—(1) The Director may establish the 'Good Practice Provider Quality Mark'.

(2) The Good Practice Provider Quality Mark shall be awarded to suppliers of goods and services who agree to be bound by a code of practice compiled and published under section 7B.".".

This is basic to what we are about in the Bill, that the director would have power to conduct price surveys. I would see this measure as a *sine qua non* for legislation of this kind. I look forwarding to hearing the Minister's views on the matter, but it is spelt out there and we believe in it.

Mr. Martin: It is not quite clear what is intended by the first part of the proposed amendment, which seeks to amend the Central Bank and Financial Services Authority of Ireland Act 2003. I am not sure to what director Senator Coghlan is referring in that context, but I will comment on some of the points raised in the amendment.

The effect of the amendment would appear to empower the Director of Consumer Affairs——

Mr. Coghlan: That is correct.

Mr. Martin: Yes, but the preamble of the amendment speaks of the Central Bank and Financial Services Authority of Ireland Act 2003. In any event, the effect of the amendment would appear to empower the Director of Consumer Affairs to conduct price surveys for the various reasons stated in the amendment. I would advise Senator Coghlan that the Office of Director of Consumer Affairs will cease to exist once the National Consumer Agency comes into being. Therefore, the question of assigning powers to that Office simply does not arise.

If it is Senator Coghlan's intention that the powers proposed in the amendment should be assigned to the consumer director of the Financial Regulator, I would advise that the Financial Regulator already has powers under the Central Bank and Financial Services Authority of Ireland Act 2003 to conduct consumer information and awareness campaigns on financial services. The House will be aware of the regulator's activities in this area, especially its regular price surveys of different financial services. The Act of 2003 empowers the consumer director to issue statutory codes on regulated entities providing financial services.

Section 8 of this Bill, which sets out the functions of the new national consumer agency, already includes specific provisions obliging the agency to conduct, commission and research studies and analysis relating to its functions and to publish the findings of such research as it considers appropriate. Section 8 also obliges the agency to promote public awareness and conduct public information campaigns for the purpose of educating and advising consumers.

3 o'clock

I am satisfied, therefore, that the Bill already contains sufficient provision to ensure the agency can carry out the sort of price surveying proposed in the Senator's amendment. The inclusion of a power to compile and publish codes of conduct for service providers seems to mirror what is already included in the Bill at section 87, which gives the agency power to prepare, issue and publish guidelines for traders on any matters related to consumer protection or welfare. Traders who agree to be bound by such guidelines would be free to advertise that fact.

Regarding the proposed provision to create a good practice provider quality mark, I am of the view that such a provision may have some merit and, therefore, intend to insert a provision in section 8 which sets out the functions of the agency and will enable the agency to award provider quality marks, should it consider it appropriate, as suggested by the Senator.

Some of what is in this amendment is already catered for in the Bill and the agency can already carry out price surveys and so on, even without statutory underpinning. The Financial Regulator has powers to do this also in terms of its consumer obligations. In terms of the quality mark issue raised in the amendment, I am prepared to strengthen the Bill in section 8 and include an amendment to this effect.

Mr. Coghlan: I am happy to accept the assurance of the Minister for Enterprise, Trade and Employment that this power already exists for the director of the new agency and that, without the legislative underpinning, it is happening already with price surveys. I also accept his assurance that he will have an amendment to the appropriate section on the issue of provider quality marks.

Mr. Quinn: I appreciate the Minister's response to Senator Coghlan's proposal and I believe the idea of the good practice provider quality mark should be encouraged and taken into account.

Senator Coghlan's amendment states: "The Director shall not be limited by national or currency boundaries in carrying out a price survey". It has concerned me in the past that taxes that apply in Ireland and that do not apply elsewhere, on alcohol and so on, give the impression that the retailer is overcharging. I am sure there is no easy way in law to have attention drawn to the fact that such price differences are due to taxes imposed by the State. When considering Senator Coghlan's amendment, could the Minister find a way to relieve the concerns of those who feel aggrieved when there is publicity relating to perceived overcharging by retailers when very often such overcharging occurs due to a Government tax? I am not suggesting this could be included in the amendment but it could be taken into account.

Mr. Martin: This indicates a problem relating to public commentary on surveys generally because different countries have different taxes. The State would reply that analyses of the cost competitiveness of the Irish economy rarely mention the fact that corporation tax is 12.5%, far lower than every other corporation tax in Europe.

The most recent discussions on the grocery trade, where appalling, deliberate inaccuracies have been circulated, provide a case in point. Goods covered by the groceries order have been deliberately mixed with those not covered by the groceries order and headlines today suggested food prices are up 16%. Statistics from the Central Statistics Office, CSO, show that goods covered by the groceries order have fallen in price by 1.6% since April 2006 and are at the lowest level since December 2002. Anyone can do a survey showing the price of fish is up 16% in supermarkets but fish was never covered by the groceries order. Articles suggest that, despite the abolition of the groceries order, fish is up 16%, but this is a false and misleading statement because it does not compare like with like. However, three months before a general election anything goes, I suppose.

The Senator was not trying to raise these issues but was suggesting that comparing the price of, for example, beer in Ireland with the price in other countries is not comparing like with like as our excise duty on alcohol is higher. That is a fair comment and we will talk to the agency about its responsibility to ensure it draws distinctions. The problem is that there are so many different benchmarks internationally. The Organisation for Economic Co-operation and Development, OECD, might conduct a survey, the European Commission might conduct one, people use gross domestic product, GDP, rather than gross national product, GNP, and sometimes it is hard to get a common framework. I will consider the matter of seeking to place a general obligation on the agency to make every effort to ensure surveys compare like with like to promote accuracy.

The other side of my argument about the groceries order is that those opposed to it may feel that certain surveys were skewed in support of it. I do not know if this is the case but that argument has been made to me. The difficulty is in legislatively placing an obligation on an agency to ensure surveys compare like with like. A general exhortation could be included legislatively that the agency should have due regard for objective data sources and comparing like with like. I will consider this matter in the context of Report Stage as I think Deputy Quinn has made a valid point and, for the sake of good debate and legislation, we desperately need neutral, objective and cold analysis of facts. There are many interest groups on all sides that are anxious to spin issues this way and that but for good, informed public policy and decision making, one needs a cold, analytical approach. In this regard the CSO provides some of the best data possible.

Mr. Quinn: I accept what the Minister has said and did not mean to suggest that such an amendment would be easy but the exhortation mentioned might be sufficient. It may be that the onus is on the media to draw the public's attention to this matter, in which case responsibility lies with the retailers. The Minister may be a little unwise to raise the question of the groceries order in the House as he may initiate a debate between Senator Coghlan and me. One of us supported the Minister in abolishing the groceries order and the other was not enthusiastic in this regard.

Mr. Coghlan: The jury is still out and Senator Quinn is very diplomatic. In view of the Minister's assurances, I will withdraw the amendment.

Amendment, by leave, withdrawn.

Section 61 agreed to.

SECTION 62.

Acting Chairman (Mr. J. Walsh): Amendments Nos. 16 and 20 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 16:

In page 52, subsection (1), to delete lines 5 to 7 and substitute the following:

"scheme,

(*b*) knowingly participate in such a scheme, or

(*c*) induce or attempt to induce another person to participate in such a scheme.".

Mr. Martin: This is an interesting amendment. With the exception of the Pyramid Selling Act 1980, the criminal enforcement provisions of consumer legislation are based on a model of strict liability offences, that is, offences in respect of which there is no requirement to show intention or negligence on the part of the accused person, balanced by a due diligence defence. Again, with the exception of pyramid promotion schemes, this is the approach taken by this Bill and section 75 provides for a due diligence defence along the lines now well established in regulatory legislation.

The Pyramid Selling Act 1980 provided only for transitional defence for persons charged with offences relating to schemes in operation before the commencement of the Act. Unlike that Act, which essentially prohibits only the promotion of such schemes, section 62 of this Bill makes it an offence to participate in a pyramid scheme. While it is difficult to conceive of circumstances in which a person could innocently establish, operate or promote a pyramid scheme, a person could, conceivably, be an unwitting participant in such a scheme. The amendment proposed to section 62(1)(*b*) introduces a mental element to the participation offence by specifying that a person must knowingly participate in such a scheme for an offence to be committed. The amendment to section 75 proposes the exemption of offences relating to pyramid schemes from the due diligence defence provided in this section. It was never my intention to apply such a defence to pyramid scheme offences. This amendment effectively restores the position under existing legislation. Since the penalties are very severe, amounting to five years' imprisonment in other sections of the Bill, the approach adopted in respect of participation in pyramid schemes, rather than their promotion or organisation, is sensible and balanced.

Amendment agreed to.

Section 62, as amended, agreed to.

Sections 63 to 67, inclusive, agreed to.

Acting Chairman: Amendments Nos. 17 and 18 are related and may be discussed together, by agreement.

Government amendment No. 17:

In page 55, subsection (7), line 7, to delete "appropriate." and substitute the following:

"appropriate, including a requirement that the trader or person publish a corrective statement, at the trader's or person's own expense and in any manner the court considers appropriate, in respect of the matters the subject of the order.".

Mr. Martin: Article 11.2 of the unfair commercial practices directive gives member states discretion to empower courts that have ordered the cessation of a commercial practice by a final decision to require, in addition, the publication of a corrective statement by the trader concerned. A provision along these lines was included in the general scheme of the Bill published in August 2006. Although the publication of a corrective statement presumably would be covered by the general reference in section 68(7) to terms and conditions that the court may impose in making a prohibition order, it is desirable that section 68 make an express reference to a corrective statement. Section 79 provides for such a statement in the context of criminal proceedings and it would be inconsistent not to make similar provision in the civil context. As I stated in my Second Stage speech, I regard the naming and shaming of offenders as an important element in the enforcement of this Bill. The amendment proposed to section 68(7) is complementary to this objective.

The amendment proposed to section 70(4)(*d*), concerning corrective statements published as part of an undertaking given by a trader to the National Consumer Agency, is largely technical in nature. A corrective statement cannot really be said to "remedy the prohibited act or practice". Such wording is not used in section 79 and the amendment proposes that it be substituted with the more neutral wording, "relating to the prohibited act or practice". Section 79 also refers to "corrective statement" in the singular. In the interest of consistency, section 70(4)(*d*) has been amended to do so also.

Amendment agreed to.

Section 68, as amended, agreed to.

Section 69 agreed to.

SECTION 70.

Government amendment No. 18:

In page 57, subsection (4)(*d*), lines 6 and 7, to delete all words from and including "corrective" in line 6 down to and including "practice" in line substitute the following:

"a corrective statement relating to the prohibited act or practice".

Amendment agreed to.

Section 70, as amended, agreed to.

Section 71 agreed to.

NEW SECTION.

Mr. Coghlan: I move amendment No. 19:

In page 58, before section 72, but in Chapter 2, to insert the following new section:

"72.—Order 53A of the District Court Rules, 1997 (S.I. No. 410 of 2001) is amended—

(*a*) in Rule 1, by the substitution in the definition of "small claim" of "€10,000" for "€1,269.74",

(*b*) in Rule 3, by the substitution of "€10.00" for "€9.00", and

(*c*) in Rule 7, by the substitution of "€10.00" for "€9.00".".

This is a simple measure. In view of increased costs resulting from inflation, etc., it is necessary to increase the claim of €1,269.74, which is now regarded as very small. It should be increased considerably to relieve the clogging up of courts. It is very reasonable and I am sure the Minister will agree.

Mr. Quinn: I support Senator Coghlan, whose amendment seems very reasonable. It makes a lot of sense to substitute the small claim, which was originally £1,000 and now €1,269.74, with €10,000.

Mr. Martin: We are talking about the small claims court. The limit for small claims is €2,000 and not €1,269.74, as referred to in the amendment. The regulations increasing the limit to this level, the District Court (Small Claims) (Amendment) Rules 2006, came into effect early in 2006 under the aegis of the Department of Justice, Equality and Law Reform. The Senator's amendment, which proposes to raise the small claims limit to €10,000, would increase the small claims jurisdictional limit beyond the civil jurisdictional limit of the District Court, which is currently €6,250.

I consider it important that the consumer-friendly ethos underlying the small claims court procedures be maintained. Increasing the limit disproportionately, as proposed in the Senator's amendment, will clearly increase the likelihood that retailers will engage lawyers to defend small claims initiated against them. This would be a retrograde step and contrary to the entire basis of the court of this nature. I share the view of the Consumer Strategy Group that the ready access afforded to the ordinary consumer by the small claims court procedure in seeking redress in small civil cases must be protected. Notwithstanding the foregoing, I agree the jurisdictional limit of the small claims procedure should reflect the instances of ordinary consumer transactions when purchasing goods or services. In this regard, I supported the decision to increase the jurisdictional limit to €2,000 last year. I understand the Courts Service intends to review the limit on a periodic basis and I expect the National Consumer Agency, once it is up and running, will be included in any consultation by the Courts Service on future reviews of the limit.

I may forward the content of this debate to the Courts Service and the Department of Justice, Equality and Law Reform. A limit between €2,000 and €6,000 may be appropriate but a limit of €10,000 would be obviously too high. One does not want the small claims court to become too adversarial and involve lawyers as this would defeat the purpose of the exercise. The limit of €2,000 is low.

Mr. Coghlan: It is too low.

Mr. Martin: I accept that.

Mr. Coghlan: The higher courts are being clogged as a consequence. The limit badly needs to be increased.

Mr. Martin: The District Court limit is €6,000 and a limit somewhere between €2,000 and €6,000 probably would be suitable.

Mr. Coghlan: Will the Minister refer the matter to the Courts Service or appropriate authority?

Mr. Martin: I will write to it.

Mr. Coghlan: Does the Minister accept my argument?

Mr. Martin: I accept the spirit of the Senator's point.

Mr. Coghlan: Of course.

Mr. Martin: A limit of €10,000 would be too high.

Mr. Coghlan: Perhaps we will be able to compromise.

Mr. Martin: I know what the Senator intends and have no difficulty with the principle of what he is advocating. I will articulate it to the powers that be.

Mr. Coghlan: In view of that, I will withdraw the amendment.

Amendment, by leave, withdrawn.

Section 72 agreed to.

Sections 73 and 74 agreed to.

SECTION 75.

Government amendment No. 20:

In page 61, subsection (1), line 7, after "Act," to insert the following:

"other than an offence under section 62(2),".

Amendment agreed to.

Section 75, as amended, agreed to.

Sections 76 and 77 agreed to.

SECTION 78.

Acting Chairman: Amendments Nos. 21 to 23, inclusive, are related and may be discussed together, by agreement.

Government amendment No. 21:

In page 63, subsection (6), line 36, after "Court" to insert "or, as appropriate, the Circuit Court".

Mr. Martin: This is reasonably straightforward. As the Bill provides for criminal proceedings on indictment as well as summary proceedings, this and the related amendment to section 78(6) are necessary to permit consumers to enter judgment for non-compliance with compensation orders with the Circuit Court as well as the District Court. Similarly, it is necessary to amend section 78(7) to make reference to the Circuit Court in addition to the District Court.

Amendment agreed to.

Government amendment No. 22:

In page 63, subsection (6), line 37, to delete "district" and substitute the following:

"District Court district or, as appropriate, the circuit".

Amendment agreed to.

Government amendment No. 23:

In page 63, subsection (7), line 39, to delete "District Court" and substitute "the District Court or the Circuit Court".

Amendment agreed to.

Section 78, as amended, agreed to.

Sections 79 to 82, inclusive, agreed to.

NEW SECTIONS.

Mr. Coghlan: I move amendment No. 24:

In page 66, before section 83, but in Chapter 5, to insert the following new section:

"83.—Section 42 of the Competition Act 2002 is amended—

(*a*) by the insertion of the following after subsection (2):

"(3) Within 2 months of the publication of a report under subsection (1), the Authority shall issue a report on the implications of State action for competition, including the identification of how the State has inhibited or prevented competition.

(4) All Government Departments and Agencies shall be obliged to respond to a report under subsection (3) within 30 days.,

and

(*b*) in subsection (3), by the substitution of "this section" for "subsection (1).".

In keeping with the intention of the Bill, it is important that the authority be empowered or instructed to issue a report on the implications of State action for competition. We need to know if competition is inhibited or prevented. I am interested in hearing the Minister's views on this proposal.

Mr. Martin: This amendment would affect the Competition Authority whereas we are dealing with the National Consumer Agency and consumer issues. I am not satisfied it is appropriate to this Bill.

Mr. Coghlan: It is very much tied in.

Mr. Martin: The first part of the amendment is unnecessary because the authority is already empowered under section 3(1)(*f*) of the Competition Act 2002 "to identify and comment on constraints imposed by an enactment or administrative practice on the operation of competition in the economy". Where any legislation is proposed, the views of the Competition Authority are advanced and received by all the sponsoring Departments. As we know, in the recent past the Competition Authority has commented on a wide range of issues which would be encompassed by this amendment. A perfect example is its contribution to the public debate on the groceries order, for which it was roundly taken to task by Senator Coghlan and his colleagues. We can have more of these types of debates in the House if the Competition Authority is given more powers in this regard. In essence, it has these powers in any event because the 2002 Act was structured to allow the Competition Authority to be an advocate for greater competition in the economy. It has ample powers to comment on practices in both the public and private sectors. It can comment and advise on anything it sees as inhibiting competition.

The amendment would make it compulsory on the authority to report on this issue each year and I am not satisfied this would be beneficial. It might be better if the power were discretionary,

as currently framed. As for placing an obligation on Departments to respond, although no such statutory requirement exists at present, it is practice to pursue such issues with the appropriate authorities. I regard it as good practice that public policy makers justify their actions in public debate. I am not in a position to accept the Senator's amendment.

Having said that, my Department will be reviewing the operation of the Competition Act 2002 during the current year and will bring forward proposals for legislative change when that is considered warranted. I will ask that the Senator's proposal be borne in mind in the context of that review. If the Senator wishes to make a submission to that review, it will be gratefully received. We believe that aspects of the proposal, which has merit, are better included as part of the comprehensive review of the Competition Act rather than in a piecemeal fashion through the Consumer Protection Bill. The bulk of it is unnecessary apart from that one area concerned with Departments having obligations and so on. However, Government is the policy maker as well and it is a question of balance.

Mr. Coghlan: I shall withdraw the amendment on this occasion and reconsider it for Report Stage in the light of the Minister's remarks.

Amendment, by leave, withdrawn.

Mr. Coghlan: I move amendment No. 25:

In page 66, before section 83, but in Chapter 5, to insert the following new section:

"CHAPTER 6

Accounts of Large Multiples

"83.—The Competition Act 2002 is amended in Part 4 by the insertion of the following before section 32:

31A.—(1) The Minister may, by regulation, provide for the power of the Authority to audit the accounts of such multiple retailers as it sees fit for the purposes of ensuring full transparency of the competition in the retail grocery market.

(2) The Authority shall be empowered to publish or part-publish such financial information pertaining to multiple retailers as it may, from time to time, deem appropriate for the purposes of comparison and the assessment of competitiveness or practices of such multiple retailers in terms of sections 4 and 5 of this Act.

(3) In this section—

'multiple retailer' means a grocery retailer with at least 3 distinct trading locations within the State, and shall not include a supplier or wholesaler;

'retailer' means any person who resells grocery goods to the public;

'supplier' means a manufacturer or importer of grocery goods for sale to wholesalers or retailers and includes any person who processes, blends, cans, packs or otherwise prepares grocery goods for sale to wholesalers or retailers and also includes any person who acts as the sole distributor of such goods to wholesalers or retailers;

'wholesaler' means any person who purchases from a supplier grocery goods for resale to retailers.".".

We have heard a good deal about the accounts of large multiples and I look forward to hearing the Minister on this. Given the growth of the larger multiples and their power in this country, we believe it is important that there must be a figure above which accounts should be made public in the interests of the consumer and in the public interest generally. We heard about this during hearings of the Joint Committee on Enterprise and Small Business concerning reports we received and the alleged abuses by large multiples of suppliers, producers, etc. I do not want to labour the point but it is important there is a certain degree of transparency. Before commenting further I would like to hear the views of the Minister on this.

Mr. Quinn: I would like to hear the Minister's views on this as well, although I certainly do not support Senator Coghlan in this instance. It is interesting that he has limited his amendment to grocery goods only, so that if one is not a grocer, it does not apply to one. I do not quite understand that.

Another concern I have is about the degree of envy that is evident if some successful retailer has managed to open two stores so that when he or she opens a third, in effect the figures must be disclosed. However, if the business is limited to two stores, the figures will not have to be disclosed. Perhaps the Minister will say this could always be changed to a different figure, but it seems to be most inappropriate to differentiate in this manner between large and small. One of the reasons I am sure Senator Coghlan wants to do this is to see the performances of those businesses whose headquarters are based outside Ireland. One of my problems with the groceries order — which I fear to mention lest it upsets the Minister or Senator Coghlan — is that it was not enforceable precisely because of those companies with headquarters outside this jurisdiction. It was almost impossible to determine exactly what they were paying for goods and therefore what their figures were. I believe it is not capable of being enforced and therefore I urge the Minister to give serious thought before accepting Senator Coghlan's amendment.

Mr. Martin: We need to be very clear about overall macroeconomic policy and what we are about in Ireland in terms of the general mix, foreign direct investment and so on. Any regulation has wider effects than perhaps was initially intended and we need to keep this in perspective. All companies operating in Ireland are free to establish and organise themselves in the most suitable form for promoting and running their businesses provided they comply with national and European Union legislation.

On the issue of reporting and disclosure of accounts as referred to in the Senator's amendment, the requirements regarding company accounts reflect those of the fourth and seventh EU company law directives. These requirements were given expression in the Companies (Amendment) Act 1986 and the European Community (Companies: Group Account) Regulations 1992, as amended. These essentially provide that multinational companies with Irish subsidiaries may file annual returns with audited accounts for the financial affairs of the parent and subsidiary undertakings as a whole. It would be inappropriate to compel one specific sector, as Senator Quinn has said, to disclose commercially sensitive information publicly. If such disclosure were required generally in the economy, it might discourage foreign direct investment, as many multinationals might want to establish elsewhere. I am sure Senator Coghlan would not want to do that.

Many concerns operating in Ireland at present choose to register as unlimited companies which, depending on whether they are public or private enterprises, have fewer disclosure requirements. The Senator's amendment seeks to depart from these principles by allowing the Competition Authority to decide unilaterally to audit and then publish, or part publish, the accounts of multiple retailers in the grocery sector. It would be highly inappropriate to include such an amendment. The Competition Authority already has extensive powers to acquire information to exercise its enforcement functions under the Competition Acts. This extends to requiring relevant financial information from firms in all sectors. However, the authority is not permitted — nor should it be — to publish or disclose commercially sensitive information. The function of the Competition Authority is to ensure that competition is in place and that nothing is inhibiting it. The publication of commercially sensitive information by the authority would undermine its relationship with business and compromise its powers and ability to enforce competition law.

Interestingly, the Senator's amendment makes a distinction not just between firms in different sectors but also between companies within the same sector of the economy. If one reads the amendment carefully, especially its definitions of multiple retailer, retailer, supplier and wholesaler, any grocery retailer operating more than three outlets could have its accounts published by the authority. However, franchise operators such as ADM Londis, BWG or Musgraves, which operate hundreds of stores, in essence would be exempt. That is somewhat glaring and I do not believe the Oireachtas could pass an amendment that, in essence, is a discriminatory provision and, as such, is difficult to justify. For those reasons I cannot accept the amendment. Some of the broader issues require reflection as well.

The main concern of the Small Business Forum, SBF, was that payments should issue more quickly from larger companies. We are still looking at that recommendation from the SBF to see whether it might be accommodated. Legislation has been passed to facilitate this, although the SBF people argue that this has not been effective. However, this particular amendment as tabled by the Senator does not meet that requirement and could do damage.

Mr. Coghlan: I emphasise that the intention is not to be discriminatory in any way — I take on board the Minister's point in that regard — rather it is to ensure full transparency of competition in the retail grocery market. The wording will have to be looked at again. I will withdraw it and perhaps table one with tighter provisions on Report Stage.

Amendment, by leave, withdrawn.

Section 83 agreed to.

Acting Chairman: Amendments Nos. 26 to 34, inclusive, have been ruled out of order on the basis that they pose a charge on the Exchequer.

Amendments Nos. 26 to 34, inclusive, not moved.

NEW SECTION.

Mr. Coghlan: I move amendment No. 35:

In page 67, before section 84, but in Part 6, to insert the following new section:

"84.—Section 30 of the Competition Act 2002 is amended—

(*a*) in subsection (1)(*b*) by the insertion of the following after "occurred":

", and the Authority shall keep any complainant regularly informed of the progress of any investigation under this paragraph",

and

(*b*) by the insertion of the following subsection after subsection (2):

"(3) The Minister shall introduce regulations to introduce defined time limits for different stages of investigations by the Authority, to address concerns about the length of time of investigations.".".

Is this an amendment to page 67 of the Bill?

Mr. Martin: Yes, before section 84.

Mr. Coghlan: The amendment provides that the regulator shall consist of a board comprising the members listed.

Mr. Martin: That is not the amendment with which we are dealing.

Mr. Coghlan: No.

Mr. Martin: The Senator has proposed an amendment to a section of the Competition Act. The amendment proposes that section 30 of the Competition Act 2002 be amended.

Mr. Coghlan: I am looking for my notes on it.

Acting Chairman: The amendment is at the bottom of page 9 of the list of amendments and it is an amendment to page 67 of the Bill.

Mr. Coghlan: I might hear the Minister's response to it first.

Mr. Martin: It is best practice on the part of enforcement agencies to cultivate complaints and make it clear, to inspire confidence, that complaints will be pursued vigorously. This is clearly the intention behind the amendment. However, I am of the view that a mandatory requirement on the Competition Authority of this kind is unsuitable for inclusion in legislation. It may be inappropriate, counterproductive and might cause a disclosure of unauthorised information or cause jeopardy to an ongoing investigation. In criminal investigations, for example, it would not be good practice to keep the complainant apprised of the status of the investigation beyond letting him or her know that the matter is being pursued. This is in keeping with the notion that a person is innocent until proven guilty.

This amendment relates to an amendment to the Competition Authority Act, even though we are dealing with the Consumer Protection Bill. As a general principle, I do not favour amending other Acts through this legislation.

On the specifics of the Senator's amendment, the enforcement agencies must be at pains to make certain that specific details about a criminal investigation are kept confidential. While two recent convictions were obtained by the Competition Authority, if it had been keeping people apprised of the information in regard to them that could have jeopardised the success of those convictions.

It seems unwise to set up some expectation in legislation that might suggest some requirement to share anything with a complainant beyond the fact that the matter is under investigation. Moreover, the authority, in common with other enforcement agencies, is required to take an investigation in whatever direction is in the interests of enforcement of the law, which might at some point diverge from the interests of a complainant who had brought the matter to its attention.

With regard to paragraph (*b*) of the proposed amendment, the Minister already has the power under section 30(2) of the Competition Act 2002 to request the authority to carry out studies and analysis and to specify deadlines within which such studies and analysis must be completed. For the information of the Senator, section 30(2) of the Competition Act 2002 states:

> The Minister may request the Authority to carry out a study or analysis of any practice or method of competition affecting the supply and distribution of goods or the provision of services or any other matter relating to competition and submit a report to the Minister in relation to the study or analysis; the Authority shall comply with such a request within such period as the Minister may specify in the request.

Having said that, I repeat my earlier comment to the Senator regarding a review of the operation of the 2002 Competition Act on which my Department will embark during the current year. I will request again that the Senator's proposal be borne in mind in the context of that review. In so far as the suggested change might be warranted, it would be preferable to include it as part of that comprehensive review rather than to amend the 2002 Act piecemeal through this legislation.

The best route for the Deputy to take in terms of amendments to the Competition Act would be to make a submission, embracing some of the amendments he tabled to this Bill, to the Department for consideration as part of that review. That would be a better way to deal with this proposal and it might also be useful from our point of view. I want to keep the Consumer Protection Act pure in so far as I can.

Mr. Coghlan: I accept there is a slight conflict in our interests in this regard. The Minister said that the provision in the second part of this amendment is covered under existing legislation.

Mr. Martin: Yes.

Mr. Coghlan: I accept that. I assure the Minister that the intention of the provision in the first part of the amendment in keeping the complainant regularly informed is to do so without in any way breaching confidentiality. In the interests of the consumer, I believe I must press the amendment. I respect what the Minister said, but it is important in the interests of natural justice and equity that we do that.

Mr. Martin: A fear in this respect arises in terms of what do we mean by keeping people regularly informed of progress.

Mr. Coghlan: It is accepted that it would be done without in any way breaching confidentiality.

Mr. Martin: In the case of a criminal investigation——

Mr. Coghlan: Where it would be unwise to do so.

Mr. Martin: ——if evidence was inadvertently leaked to the complainant which found its way back to the person being pursued the investigation could simply be terminated there and then. That is the problem. I know that is not the Senator's intention.

Mr. Coghlan: No, it is not.

Mr. Martin: However, it could be the effect of the inclusion of this amendment. We might consider the Senator's proposal in general terms. It is not our intention that there should be no communication with the complainant. We might discuss this with the authority, which would have experience of pursuing complaints to establish if there is mechanism by which certain milestones could be articulated to the complainant, such as communicating that the authority is close to prosecuting or in general terms that it is making process. However, beyond that it cannot, by definition, go into much detail, otherwise it would compromise the investigation.

Mr. Coghlan: With respect, I do not believe there is anything in the detail of this proposal that would have the effect of what the Minister is warning me to be fearful.

Acting Chairman: Is the amendment being pressed?

Mr. Coghlan: Yes.

Amendment put.

The Committee divided: Tá, 19; Níl, 26.

Tá

Bradford, Paul.
Browne, Fergal.
Burke, Paddy.
Burke, Ulick.
Coghlan, Paul.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.
Hayes, Brian.
Henry, Mary.
McHugh, Joe.
Norris, David.
O'Toole, Joe.
Phelan, John.
Quinn, Feargal.
Ross, Shane.
Ryan, Brendan.
Terry, Sheila.
Tuffy, Joanna.

Níl

Bohan, Eddie.
Brennan, Michael.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Morrissey, Tom.
Moylan, Pat.
O'Brien, Francis.
O'Rourke, Mary.
Ormonde, Ann.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.

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

Amendment declared lost.

Sections 84 to 92, inclusive, agreed to.

SECTION 93.

Government amendment No. 36:

In page 71, line 10, to delete "of the Industrial Development Act 1993".

Mr. Martin: This is a technical amendment. The Office of the Chief Parliamentary Counsel has advised that the words "of the Industrial Development Act 1993" should be deleted because they are unnecessary.

Amendment agreed to.

Section 93, as amended, agreed to.

NEW SECTIONS.

Government amendment No. 37:

In page 71, before Schedule 1, to insert the following new section:

"94.—The following section is inserted after section 6 of the Casual Trading Act 1995:

"6A.—(1) The Minister may prepare and issue to local authorities guidelines, in writing, regarding the performance by them of their functions under section 6 in relation to bye-laws.

(2) Without prejudice to the generality of subsection (1), guidelines under this section may include guidelines as to the particular provision that a local authority should make by bye-laws under section 6 in relation to each of the matters mentioned in subsection (2) of that section.

(3) Local authorities shall have regard to guidelines for the time being in force under this section in performing their functions under section 6 in relation to bye-laws.

(4) The Minister may amend or revoke, in writing, guidelines issued under this section.

(5) The Minister shall cause a copy of any guidelines issued under this section and of any amendment or revocation of them to be laid before each House of the Oireachtas.".".

Mr. Martin: We indicated on Second Stage and in public commentary that we would consider the issue being addressed in this amendment and introduce an amendment on Committee Stage. The Casual Trading Act 1995 requires those engaging in casual trading to hold a licence granted for that purpose by the local authority in the area where the trader operates. When the Competition Authority and the Consumer Strategy Group studied how the 1995 Act was being implemented by local authorities, they found there was a lack of consistency in the implementation of the legislation. They pointed out considerable variations in the fees being charged for licences by local authorities, for example, as well as differences in the facilities being provided.

The Consumer Strategy Group was strongly of the view that the lack of consistency was significantly inhibiting the growth of casual trading, thereby restricting consumer choice, in effect. The group recommended in its report that the Minister should be empowered to issue statutory guidelines obliging local authorities to apply a consistent approach when granting casual trading licences. This amendment, which proposes to include a new section 6A in the Casual Trading Act 1995, will allow the Minister to issue statutory guidelines, as recommended by the Consumer Strategy Group. The Department of Enterprise, Trade and Employment issued non-statutory guidelines in this regard to local authorities in July 2005 and again in July 2006, with a view to their being implemented on a voluntary basis. If the voluntary guidelines do not result in a more consistent approach on the part of local authorities I will use the powers provided for in this amendment to make the necessary regulations to introduce statutory guidelines in this area.

Mr. Leyden: I compliment the Minister for introducing this new section. The Minister will issue specific guidelines to local authorities to ensure there is total consistency throughout the country. The trading regulations are currently implemented in an inconsistent manner. I refer to the long acre of sales, for example — the new phenomenon of selling cars on the side of the road. I am not sure whether this matter needs to be brought to the attention of the Department of Transport or the Department of Enterprise, Trade and Employment.

There used to be legislation that prohibited trading along main carriageways, such as national primary and secondary routes. A significant proportion of the legislation that has been passed by these Houses over the years has to be enforced by the Department of Enterprise, Trade and Employment. I presume the Department sometimes finds it difficult to keep abreast of the various regulations. I recall the introduction of a Bill some years ago — I am not sure whether I was in this House at the time — to prohibit a form of trading that was being quite extensively pursued. Trading is taking place in home produce, which is fair enough, but I am not sure whether cars should be sold in the same way.

When I was coming to Dublin yesterday, I saw three or four cars being sold at various areas of greenery. Nobody controls the ownership of such cars. If one wants to buy one of these cars, one has to telephone a number displayed on it. When the person selling the car arrives, one does not get any background information about the car — one does not learn about regulations or the condition of the car. One does not even know if the person selling the car is genuine. While I have not been contacted by legitimate traders about this matter, I imagine their business is being affected by it.

When the Minister travels around the country he probably sees cars being sold at dangerous corners. When he gets a chance to examine the regulations on Report Stage perhaps he can deal with the problem in this new section, which deals with casual trading. Local authorities should be able, by means of by-laws or otherwise, to control the use of sidings and sections of roundabouts for the sale of cars. I even came across the sale of a large cruiser boat on the side of the road in County Mayo. We do not want to be too prohibitive — I have no objection to people selling their cars in front of their own houses, or near their own property, because they have an entitlement to do so. In such circumstances, at least one knows who is selling the product one is buying and one can contact that person if there is a problem.

I do not want to further complicate this legislation. The Minister and his officials are doing an excellent job of tweaking this comprehensive Bill to see how far they can develop it. I ask the Minister to examine the older legislation which relates to trading on major roads in advance of Report Stage. Perhaps some of the existing regulations can be strengthened to empower the local authorities to control the ongoing problem of trading on national roads.

Mr. Martin: As I mentioned earlier, some of the amendments I have agreed to consider will be dealt with in the Dáil. I will return to the Seanad to update it on what has been agreed in the Dáil. The sale of cars on roadsides is essentially a matter for the local authorities in the first instance. The Garda has a specific role in implementing the Road Traffic Acts if road safety issues arise in this context. This amendment is giving us the statutory power to issue guidelines to local authorities in respect of casual trading.

Mr. Leyden: Yes.

Mr. Martin: It is not beyond our capacity to ensure that the guidelines reflect the issues which have been raised by Senator Leyden.

Mr. Leyden: That is excellent. I thank the Minister.

Mr. Martin: We are trying to provide for uniformity throughout the country.

Mr. Leyden: Yes, that is good.

Mr. Coghlan: It is very important.

Amendment agreed to.

Government amendment No. 38:

In page 71, before Schedule 1, to insert the following new section:

"95.—The following sections are substituted for sections 5 and 6 of the Hallmarking Act 1981:

"5.—(1) Subject to section 6 of this Act, a commercial practice that involves a representation that an article which is not of precious metal is made wholly or partly of gold, silver or platinum is a misleading commercial practice under *section 42(1)* and *(2)* of the *Consumer Protection Act 2007*.

(2) A trader who engages in any misleading commercial practice described in subsection (1) is guilty of an offence under *section 46* of the *Consumer Protection Act 2007*.

6.—(1) Section 5 of this Act does not apply to a representation which is permissible under this Act.

(2) A representation is permissible under this Act if it complies with the following conditions:

(*a*) it is confined either expressly or by implication to the colour of the article;

(*b*) if it consists of or includes the word 'gold', that word is qualified by the word 'plated' or the word 'rolled';

(*c*) if it consists of or includes the word 'silver' or the word 'platinum', whichever of those words is used is qualified by the word 'plated';

(*d*) where the representation is in writing and the word 'plated' or 'rolled' is used, that word is at least as large as the rest of the representation.

(3) Subsection (2) of this section does not apply if the representation is false or is applied to an article for which the representation is inappropriate.

6A.—In sections 5 and 6 of this Act, 'commercial practice', 'representation' and 'trader' have the same meaning as they have in the *Consumer Protection Act 2007*."."

Amendment agreed to.

Government amendment No. 39:

In page 71, before Schedule 1, to insert the following new section:

"96.—For the purpose of facilitating the performance by the Agency of any functions conferred on it by any of the relevant statutory provisions relating to the safety of products, an officer of customs and excise , when authorised to do so by the Revenue Commissioners following a written request in that behalf by the Agency, may detain any goods being imported for such period as is reasonably necessary for the Agency to examine the goods, or arrange to have the goods examined, which period shall not in any case exceed 72 hours from the time when the goods concerned are detained.".

Mr. Martin: I indicated on Second Stage that I would introduce this amendment on Committee Stage. This new section, which is based on section 87 of the Safety, Health and Welfare at Work Act 2005, relates to the powers of the National Consumer Agency regarding product safety. Power to enforce product safety regulations is already vested in the Office of the Director of Consumer Affairs and will transfer to the agency on establishment day.

The amendment is designed to give power to the agency to request the Revenue Commissioners to detain any product for a period not longer than 72 hours so that it can be examined by the agency. While widespread use of this provision is not envisaged, it provides a useful precautionary power should the agency wish to intervene as regards the importation of an unsafe product from any country. The section covers products imported from any country, not limited to third countries, but any request to the Revenue Commissioners would necessarily have to take account of legislation related to the free movement of goods. In this regard the section limits itself to the action necessary to detain a product. Any action to be taken following examination of a detained product would be carried out in accordance with the powers contained in the relevant statutory provisions.

4 o'clock

The section is intended to also include products which do not comply with European Union or national rules in force on product safety, including the rules and laws relating to documentation or marking. We cannot be too careful when it comes to issues pertaining to product safety and this is a useful provision in that regard.

Mr. Leyden: I commend the Minister and the Department for bringing forward this worthwhile Bill. Would the Revenue Commissioners not alert the Department as opposed to the Department alerting the Revenue Commissioners? If material is coming through, would our sources of information be the licensed importer of the goods? How would the *modus operandi* work?

Mr. Martin: It is often when the consumer item is on the shelf or perhaps another country may have had experience of a certain product and the consumer agency may be alerted to the unsafe nature of a particular product. Other jurisdictions might alert our agency. There will be some degree of international co-operation between agencies. It is often the case, particularly at Christmas, that a particular product could be on the shelves. Word will come through that the product is unsafe and this is a way of nipping things in the bud and preventing any further distribution into the market place. Very often the agency would have the authority to inform the Revenue Commissioners and ask them to detain the product.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 40, 46 and 47 are related and may be discussed together by agreement.

Government amendment No. 40:

In page 71, before Schedule 1, to insert the following new section:

"97.—(1) A certificate in writing purporting to be signed by a person employed in a relevant laboratory and stating the results of one or more tests carried out in that laboratory with respect to a product of a specified type shall, without proof of the signature of that person or that he or she is employed in the relevant laboratory, be admissible as evidence of the results of the test or tests in the following proceedings taken in relation to that type of product.

(2) Those proceedings are proceedings under any of the statutory instruments specified in *Schedule 6*.

(3) In this section 'relevant laboratory' means a laboratory the competence of which to carry out tests in relation to products is recognised by an authority performing functions under the laws, regulations or administrative provisions adopted by a Member State for the purposes of any of the Directives specified in *Schedule 7*.

(4) Where a certificate referred to in *subsection (1)* is produced in proceedings referred to in *subsection (2)*, it shall be presumed, until the contrary is shown, that the laboratory referred to in the certificate as a relevant laboratory is such a laboratory.".

Mr. Martin: This amendment relates to the powers of the national consumer agency with regard to product safety. The intention of this new section is to allow for the purposes of any proceedings under any of the statutory instruments specified in Schedule 6 the admissibility in evidence of the results of tests carried out by any laboratory recognised by any designated authority. The designated authorities in question are those specified under any of the European Union directives listed in Schedule 7. The section provides that the national consumer agency, in determining whether any product is unsafe or poses a serious risk to consumers, may have regard to a test carried out on the product by a laboratory recognised by any competent authority in any of the member states of the European Community. It is a straightforward amendment.

Amendment agreed to.

SCHEDULE 1.

An Leas-Chathaoirleach: Amendments Nos. 41 and 42 are related and may be taken together by agreement.

Government amendment No. 41:

In page 71, to delete lines 40 and 41.

Mr. Martin: The Director of Consumer Affairs exercises no functions under the Central Bank and Financial Services Authority of Ireland Act 2003. There is no need, consequently, for this Act to feature in the list of enactments in Part 1 of the Schedule for which the national consumer agency will assume responsibility for functions now exercised by the director. The Director of Consumer Affairs exercises functions, however, under the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 and it is consequently necessary to include this instrument in the list of enactments in Part 2 of this Schedule.

Amendment agreed to.

Government amendment No. 42:

In page 73, between lines 46 and 47, to insert the following:

“

S.I. No. 853 of 2004	European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004

”.

Amendment agreed to.

Schedule 1, as amended, agreed to.

NEW SCHEDULES.

An Leas-Chathaoirleach: Amendment No. 43 has already been discussed with amendment No. 4. Acceptance of this amendment involves the deletion of Schedule 2.

Government amendment No. 43:

In page 74, before Schedule 2, to insert the following new Schedule:

SCHEDULE 2

Repeals

Session and Chapter or Number and Year	Short Title	Extent of Repeal
(1)	(2)	(3)
50 & 51 Vic., c. 28	Merchandise Marks Act 1887	The whole Act
54 & 55 Vic., c. 15	Merchandise Marks Act 1891	The whole Act
1 & 2 Geo. 5., c. 31	Merchandise Marks Act 1911	The whole Act
5 & 6 Geo. 5., c. 1	Anglo-Portuguese Commercial Treaty Act 1914	The whole Act
6 & 7 Geo. 5., c. 39	Anglo-Portuguese Commercial Treaty Act 1916	The whole Act
No. 10 of 1930	Agricultural Produce (Fresh Meat) Act 1930	Section 27(4) and (5)
No. 35 of 1930	Portuguese Treaty Act 1930	The whole Act
No. 26 of 1931	Agricultural Produce (Potatoes) Act 1931	Section 19(4) and (5)
No. 48 of 1931	Merchandise Marks Act 1931	The whole Act
No. 6 of 1936	Spanish Trade Agreement Act 1936	The whole Act
No. 14 of 1955	Seed Production Act 1955	Section 22(3)
No. 4 of 1958	Prices Act 1958	The whole Act, except to the extent specified in section 89
No. 25 of 1968	Road Traffic Act 1968	Section 14(1), (2) and (3)
No. 20 of 1972	Prices (Amendment) Act 1972	The whole Act
No. 1 of 1978	Consumer Information Act 1978	The whole Act
No. 11 of 1980	Packaged Goods (Quantity Control) Act 1980	Section 12(1)
No. 27 of 1980	Pyramid Selling Act 1980	The whole Act
No. 31 of 1987	Restrictive Practices (Amendment) Act 1987	The whole Act
No. 28 of 1996	National Standards Authority of Ireland Act 1996	Section 19(3) and 21(7)

”.

Amendment agreed to.

Schedule 2 deleted.

Government amendment No 44:

In page 74, before Schedule 3, to insert the following new Schedule:

SCHEDULE 3

References in Certain Acts and Instruments to Director or Office of Director

PART 1

References in Certain Acts to Director of Consumer Affairs or Office of the Director of Consumer Affairs

Short Title, Number and Year	Provision affected	Amendment
(1)	(2)	(3)
Ombudsman Act 1980 (No. 26 of 1980)	First Schedule Second Schedule	In Part II, delete “the Director of Consumer Affairs”.Insert “National Consumer Agency”.
National Archives Act 1986 (No. 11 of 1986)	Schedule	Substitute “National Consumer Agency” for “Office of the Director of Consumer Affairs”.

Short Title, Number and Year	Provision affected	Amendment
(1)	(2)	(3)
Prompt Payment of Accounts Act 1997 (No. 31 of 1997)	Schedule	Substitute "National Consumer Agency" for "the Office of the Director of Consumer Affairs".
Taxes Consolidation Act 1997 (No. 39 of 1997)	Schedule 13	Substitute the following for paragraph 112 (inserted by section 14 of the Finance Act 2001):"112. National ConsumerAgency.".
Electronic Commerce Act 2000 (No. 27 of 2000)	Section 15	Substitute "role of the National Consumer Agency" for "role of the Director of Consumer Affairs".
Competition Act 2002 (No. 14 of 2002)	Schedule 1 (as amended by the Competition Act 2002 (Section 34(11)) (Director of Consumer Affairs) Order 2003 (S.I. No. 130 of 2003)	In column (1), substitute "National Consumer Agency" for "Director of Consumer Affairs".
Ombudsman for Children Act 2002 (No. 22 of 2002)	Schedule 1	In Part 2, substitute "National Consumer Agency" for "Director of Consumer Affairs".
Personal Injuries Assessment Board Act 2003 (No. 46 of 2003)	Section 56(6)	Substitute "the chief executive of the National Consumer Agency" for "the Director of Consumer Affairs".
Official Languages Act 2003 (No. 32 of 2003)	First Schedule	In paragraph 1—(a) in subparagraph (1), delete "Office of the Director ofConsumer Affairs", and (b) in subparagraph (2), insert "National Consumer Agency".
Veterinary Practice Act 2005 (No. 22 of 2005)	Section 16(1)	Substitute the following for paragraph (g): "(g) one person who is nominated for such appointment by the National Consumer Agency,".

Short Title, Number and Year	Provision affected	Amendment
(1)	(2)	(3)

PART 2

References in Certain Instruments to Director of Consumer Affairs or Office of the Director of Consumer Affairs

Citation, Number and Year	Provision affected	Amendment
(1)	(2)	(3)
Air Quality Standards Regulations 2002 (S.I. No. 271 of 2002)	Schedule 14	Substitute the following for paragraph (6): "(6) National ConsumerAgency".
Genetically Modified Organisms (Deliberate Release) Regulations 2003 (S.I. No. 500 of 2003)	Regulation 62(1)	(a) Substitute the following for paragraph (g): "(g) the National ConsumerAgency,". (b) In paragraph (j), substitute "the National Consumer Agency" for the Office of the Directorof Consumer Affairs".
Ozone in Ambient Air Regulations 2004 (S.I. No. 53 of 2004)	Schedule 10	Substitute the following for paragraph (6): "(6) National Consumer Agency".
Investor Compensation Act 1998 (Section 18(4)) (Prescription of Bodies and Individuals) Regulations 2004 (S.I. No. 570 of 2004)	Regulation 2	Substitute the following for paragraph (b): "(b) the National Consumer Agency;".
Finance Act 1993 (Section 60) Regulations 2005 (S.I. No. 846 of 2005)	Schedule	Substitute "National Consumer Agency" for "Office of the Director of Consumer Affairs".

".

Amendment agreed to.

SCHEDULE 3.

Government amendment No. 45:

In page 74, column 2, line 24, to Delete "Travel" where it firstly occurs and substitute "Holidays".

Mr. Martin: The purpose of this technical amendment is to correct the title of the Package Holidays and Travel Trade Act 1995 which was incorrectly recorded in Schedule 3.

Amendment agreed to.

Schedule 3, as amended, agreed to.

Schedules 4 and 5 agreed to.

NEW SCHEDULES.

Government amendment No. 46:

In page 77, after line 18, to insert the following new Schedule:

"SCHEDULE 6
Statutory Instruments for the Purposes of section 97 (admissibility of laboratory tests)".

Number and Year	Citation
S.I. No. 32 of 1990	European Communities (Safety of Toys) Regulations 1990
S.I. No. 101 of 1992	European Communities (Appliances Burning Gaseous Fuels) Regulations 1992
S.I. No. 482 of 1992	European Communities (Low Voltage Electrical Equipment) Regulations 1992
S.I. No. 272 of 1993	European Communities (Personal Protective Equipment) Regulations 1993
S.I. No. 199 of 2004	European Communities (General Product Safety) Regulations 2004

".

Amendment agreed to.

Government amendment No. 47:

In page 77, after line 18, to insert the following new Schedule:

SCHEDULE 7

Directives for the purpose of *section 97* (admissibility of laboratory tests)

Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits

Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys

Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment

Council Directive 90/396/EEC of 29 June 1990 on the approximation of the laws of the Member States relating to appliances burning gaseous fuels

Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on the approximation of the laws of the Member States relating to general product safety.".

Amendment agreed to.

Title agreed to.

Bill reported with amendments.

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

Mr. Leyden: Now.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Consumer Protection Bill 2007: Report and Final Stages.

Bill, as amended, received for final consideration.

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

Mr. Coghlan: I thank the Minister for his acceptance of, if not the exact wording, the spirit of so much of what was contained in my amendments. A number of my amendments were not discussed because they were ruled out of order on the grounds that they involve a potential charge on the Revenue. I accept the points made by the Minister with regard to my other amendments.

As this is a Seanad Bill and it will come back to this House I am prepared to allow the battle go to the other place and let its Members table the few amendments I had in mind. I thank the Minister and his officials for acceptance of so many of the points which were spelled out on Committee Stage.

Mr. Leyden: I congratulate the Minister, Deputy Martin, for bringing this Bill to the House and having it passed all Stages today very efficiently. I express my thanks to the Opposition spokesman, Senator Coghlan, who is very co-operative when it comes to issues of consumer protection raised in this House——

Mr. Coghlan: It is a reputation I must not hold up.

Mr. Leyden: He has always been ready to ensure that legislation goes through in a speedy fashion. I commend the senior officials from the Department of Enterprise, Trade and Employment who have put a lot of work into this Bill.

This is a very complex area and Members may not realise that our senior civil servants are extremely competent and capable. It was my experience when I was in the Department that they knew all about consumer affairs. In the complex world of the European Union and international trading it is very important that we have enforceable legislation.

I wish the Bill well in the other House. The Minister is anxious to have it passed before the Easter recess. When it returns to this House, Senator Coghlan will give it his immediate attention and approval as will the Leader of the House. We are conscious that the Bill is vital for consumer protection. The agency has been set up but it is toothless without this legislation.

I thank the Leas-Chathaoirleach and the other spokespersons for their co-operation and assistance.

Minister for Enterprise, Trade and Employment (Mr. Martin): I thank the Leas-Chathaoirleach and Seanad Éireann for their co-operation and for the expeditious passage of the Bill. I assure Senators Coghlan, Leyden and Cox that the Department will advise the other House that amendments will be tabled as a consequence of amendments proposed in this House. The manner in which the Seanad has organised its business leaves time to have suitable amendments ready for the other House. Given that amendments made in the Dáil must be endorsed in this House, Senators will have an opportunity to revisit those amendments I indicated I was willing to consider.

This is comprehensive legislation in which my officials and the consumer strategy group have invested significant work. The Bill establishes a modern edifice under which consumers may genuinely feel protected. I appreciate Senators' contributions to the debate and the co-operation I have received from the House.

Question put and agreed to.

Sitting suspended at 4.12 p.m. and resumed at 5 p.m.

Hospital Infections: Motion.

Acting Chairman (Mr. Moylan): I welcome the Minister for Health and Children to the House and call on Senator Browne to move the motion.

Mr. Browne: I move:

"That Seanad Éireann notes that there were 285 recorded cases of MRSA hospital acquired blood infections in Irish hospitals for the first six months of 2006, that there have been recent findings in coroner's courts that MRSA was the cause of death and a factor in people dying, and that MRSA has reached endemic proportions in our health system; calls on the Government to follow the example set in the Netherlands where they have the lowest percentage rate of MRSA in Europe in their hospitals by:

— reducing the overall use of antibiotics;

— screening and isolation of patients suspected of having MRSA when first admitted to hospitals;

— screening of staff persons who have been in contact with patients who have tested positive for

— MRSA and the taking of appropriate steps thereafter; and

— having proper cleaning techniques and management of hospitals.

Further calls on the Minister for Health and Children to:

— ensure that when patients test positive for MRSA that they and/or their family are informed immediately so that appropriate steps are taken to aid their full recovery;

— indicate how many of the additional fifty two infection control staff announced recently by the HSE have been appointed; and

— explain the reason funding has been given to a research project concerning infection control as announced by the Health Research Board on Friday 18th last considering that lack of knowledge on the subject is not the problem but rather putting the existing knowledge and expertise into practice; and

— inform the Senate on what progress being made to update the 1947 Health Act, as requested recently by the Joint Oireachtas Committee on Health and Children.

I welcome the Minister to the House and apologise in advance if I call her Tánaiste during my speech. Deputy Twomey keeps doing it, so old habits die hard.

This may well be the last time we have a debate on MRSA in the lifetime of this Seanad. It is important to record the large amount of work that has been done by the MRSA in Families group, which first highlighted the issue. I am proud to say that I attended the first public meeting on the matter, approximately two years ago in Kilkenny. I knew the group was being formed and had heard complaints about hospital hygiene and people not being treated as they should be. I was gobsmacked to discover a large crowd at the meeting and was even more surprised when I heard the people's stories there. One that stuck in my head concerned a patient who only realised she had MRSA when the contract cleaners shouted to each other not to use a particular mop

[Mr. Browne.]

because one lady in a four-bed ward had MRSA, so a different mop had to be used. That is how the lady found out she had contracted MRSA and it really brought the situation home to me.

The motion is quite detailed. Last week, I spent a day in Holland, a country that has led by example and now has the lowest rate of MRSA in Europe. That did not come about by coincidence. The Netherlands has been aggressively reducing the use of antibiotics for over 20 years and has a tough policy of screening hospital patients on arrival.

I am not sure if the Minister is aware of the fact that there is a link between pig farmers and MRSA. Anyone involved in the Dutch pig industry will immediately be put into isolation when first admitted to hospital, as well as being screened and tested. If the results are positive, hospital staff who have come into contact with that patient are also screened. If such patients share a ward with others, the other patients are screened as well. The Dutch authorities are constantly managing and monitoring the situation. In addition, Dutch hospitals employ a different system of cleaning. We must re-examine the use of contract cleaners in Irish hospitals. We should introduce the cleaning department as a career route within hospitals, whereby people would be accountable, rather than going in for just a few hours a day with no one feeling part of a team.

Last September, I visited Cardiff and saw at first hand how they reduced MRSA rates by 60%. The message I got from that trip was the idea of collective responsibility — everyone was in it together, there was an atmosphere of teamwork, and no one was trying to blame anyone else. From the hospital manager down to the cleaning staff everyone had a role to play and they were not trying to scapegoat each other. Unfortunately, nobody seems to be in charge here, however, and patients are suffering.

The Minister is correct to refer to the overall use of antibiotics but we have seen no action from the Government on that issue. We need to start reducing the overall use of antibiotics which, doubtless, is affecting people's resistance to infection and leading to the rise in MRSA. We also need to introduce screening for hospital staff. From the outset I have stressed the need not only to care for patients but also to look after hospital staff. This is a health and safety issue. All employees are entitled to work in a safe environment. However, if hospital staff are coming into contact with patients who have MRSA, they in turn are being put at risk. We need to examine the MRSA issue in a collective manner.

Patients should be informed as soon as it is known that they have contracted MRSA. I am fed up hearing that patients only discover later that they have MRSA and are not told when in hospital, although I accept that is changing. At a meeting with the Minister last year, I kept stressing the point that patients should be informed that they have MRSA so that appropriate steps can be taken. I have come across cases of people who only discovered they had MRSA after leaving hospital and their families members were not advised to take extra precautions. That should be done automatically.

It is regrettable that the amendment to the motion contains waffle to the effect that the Government "acknowledges the entitlement of all patients to be informed in a sensitive manner of any diagnosis of MRSA". That procedure should include any other blood infections such as *clostridium difficile* and VRA, which is another bug. The Joint Committee on Health and Children passed a motion about updating the 1947 Health Act, and also called for the appointment of a national director of infection control. It is regrettable that the Minister will announce that only 20 of the proposed 52 infection control staff have been appointed, which shows some tardiness in the Department's viewpoint.

I acknowledge, however, that there has been some progress on this matter. It is great to hear people talking all the time about MRSA. It was mentioned by Seán O'Rourke on "The Week in Politics" programme last week, and it was the number one issue when American pollster, Frank Luntz, did a survey of people's concerns. The *Sunday Independent* recently did a vox pop about MRSA in which people recognised what was involved and expressed their opinions. The matter is coming up continually, which was not the case two years ago. That is mainly due to the voluntary MRSA in Families group, which has been pushing the issue.

MRSA rates vary greatly around the world. For some reason, in Norway and Sweden the rate is less than 1%, while Ireland has rates of 40% in some cases. Bulgaria has MRSA rates of between 7% and 18%. While rates vary geographically, the data show that other countries are getting to grips with the problem and are taking steps to reduce it. While it is terrifying to read newspaper headlines about MRSA, it is good to see that it is receiving the prominence it deserves. Recently, a leading microbiologist, Dr. Maureen Lynch, described MRSA as being endemic in Irish hospitals. We are now beginning to see MRSA listed as a cause of death, whereas until recently it was not even cited on death certificates. I have numerous newspaper clippings which indicate that the situation is changing. When I questioned Professor Drumm with regard to patients being informed about MRSA, his reply was that if we told them about that, we would have to tell them about everything else as well. His answer did not inspire confidence.

I accept that clostridium difficile is probably a bigger killer of people than MRSA and that other infections also occur in hospitals. However, all blood infections can be controlled. It is worth noting that Welsh hospitals have reduced by 60%

the number of MRSA cases. This took much work but it is noteworthy that very few health personnel are required to deal with MRSA in Wales, although I would have thought a large number were involved. This demonstrates it is possible to get excellent results with a few dedicated people.

The most serious problem in Irish hospitals relates to the rate of bed occupancy, which is close to 100%. The Netherlands has a search and destroy policy in which wards are closed down. Our problem is that we could not do this as we have patients on trolleys in accident and emergency units and in corridors. If we were to close wards, it would cause further chaos. I cannot understand why the Minister continues to state we do not need 3,000 extra beds in the health system when it is clear they are needed.

We need far more isolation beds, a point which came across clearly on my trip to Amsterdam. It is not possible to isolate an infection when infected patients are in wards with other patients. The ideal is that 50% of hospital beds should be isolated, whereas just 6% of hospital beds in Ireland are isolated at present. We should aggressively aim to have at least a quarter of beds in single-bed wards in order that hospital staff have some hope of controlling the spread of infection.

I have put down numerous parliamentary questions on this issue and have raised it with the Minister at the Joint Committee on Health and Children. In 2004 there were 553 cases despite €1 million having been spent on vancomycin, which is a drug used to treat MRSA. The Minister acknowledged to me that people with diabetes have a higher rate of MRSA.

Has the Minister asked the Minister for Social and Family Affairs to acknowledge that people with MRSA have a long-term illness? Has she plans to include the condition on the long-term illness list in order that it can be considered for social welfare purposes? I know one person who unfortunately contracted MRSA and was out of work but he had grave difficulty getting social welfare payments. The Minister admitted we have just 44.1 clinical infection nurses in the country at present whereas there are more than 300 in the Netherlands.

The most worrying aspect relates to the Health Act 1947. In some respects that Act is amazingly in-date and accurate, and refers to duty of care, looking after patients and not making a patient worse than when that person entered hospital. However, I discovered through the parliamentary questions system that not one person working in the health system has ever been fined or prosecuted for failure to adhere to proper hygiene standards, which obviously does not reflect the reality given there are so many cases of MRSA in hospitals. This can be contrasted with the area of food hygiene, where one can be fined €15,000 if standards are breached. The health service seems to have fallen behind. We seem to put more emphasis on abattoirs and the production of food than we do on the health of human beings.

I am sure the Minister will refer to hygiene audits. These have not been as successful as they should have been. Patients and staff are still not routinely screened and there is concern that the Health Information and Quality Authority will not be able to audit all hospitals annually. We need an external body to monitor independent external hygiene. There is a data deficit in terms of collecting comparable data on health care associated infections. Professor Drumm admitted at the Joint Committee on Health and Children in March 2006 that to give the figure for how many died from MRSA would be "almost unfair and would frighten people".

Fine Gael has proposed a patient safety authority which would have far more teeth and power than what the Government is planning. The strategy for the control of antimicrobial resistance in Ireland has been launched. I cannot understand why the Minister has not acted on it, although she recently announced a grant of €1.5 million to a multi-disciplinary research team. The question is not the lack of knowledge but rather putting the knowledge into effect.

Mr. Cummins: I second the motion and support the many valid points made by my colleague, Senator Browne. There is no doubt MRSA is reaching proportions of a modern epidemic and is a widespread problem in hospitals throughout the country. It is a pitiful and pathetically sad day when many patients are forced to worry about what infection they will contract during their stay in hospital in addition to the reason behind their hospitalisation in the first place, a point made on the other side of the House just last week. It is an even greater injustice that many people in our hospitals contract MRSA and are not informed about it immediately. The situation in our hospitals is dire, with people exposed to this infection on a widespread basis. This issue needs to be urgently addressed.

The level of the problem of MRSA in Ireland is vast and with 285 recorded cases of MRSA hospital-acquired blood infections during the first half of 2006, the problem is clearly not abating. The situation is particularly stark when compared to other European countries. The European antimicrobial resistance surveillance system, EARSS, is one of the most reliable sources of information on the subject and monitors levels of MRSA in a number of countries across Europe on an annual basis.

A recent report on MRSA examined trends in 30 European countries between 1999 and 2005 and found that Ireland has one of the highest rates of MRSA in Europe, with levels consistently reaching more than 40% during the period. In contrast, countries such as Iceland, Norway, Sweden, Estonia, the Netherlands, Denmark and

[Mr. Cummins.]

Finland reported proportions below 3% during the same timeframe. If it possible for some of our European counterparts to keep proportions of MRSA below 3%, it is outrageous that we are faced with a crisis MRSA situation with levels more than ten times greater than this figure.

Not only are some countries capable of maintaining very low levels of MRSA infections, EARSS has also highlighted that France and Slovenia have shown a consistent decrease in MRSA levels in the past five to six years, and levels in Slovenia have dropped from 21% in 1999 to 10% in 2005. These trends support the conclusion that MRSA is not an irreversible development and may be dealt with effectively by focusing on control efforts.

The Health Research Board recently announced it has awarded a €1.5 million grant to help tackle health care infections such as MRSA, to which reference was made by Senator Browne. The research will examine a number of areas such as enhanced cleaning processes, the clinical usefulness of the rapid detection of MRSA and more intensive efforts to improve hand hygiene. It appears ridiculous to invest time and money in researching the need to improve hygiene and cleaning practices when it is evident that investment would be far better placed in actually implementing strategies in hospitals to bring the situation under control. Surely it would be a better idea to focus efforts elsewhere and examine the practices adopted by countries maintaining low levels of MRSA infections or those countries which have actively brought levels of infection under control in the past five years.

The HSE recently announced it was appointing 52 additional infection control staff. How many of these have been appointed and what kind of impact are they having on the system? We need urgent action to rid hospitals of MRSA, not promises of additional staff. The HSE must adopt an urgent and effective strategy, based on best practice in other European countries, to deal with the MRSA situation.

There is a worrying indication that the high level of MRSA infections in Ireland may be linked to the over-prescribing of antibiotics. Two recent cases of MRSA emerged as a result of a reduced effectiveness of antibiotics. While our overall level of prescription of antibiotics is close to the European average, there are significant regional, seasonal and socioeconomic variations in the prescription of antibiotics. It is thought this contributes to a resistance to MRSA infection. We need to address this urgently and bring about a change in prescription practice to reduce the overall use of antibiotics.

It is clear that a multifaceted approach is urgently required to address the MRSA issue. Not only do we need rapid action from the HSE to bring about a real and effective change in hospital hygiene practices, we need to inform and train those coming into contact with MRSA patients on how to deal with the situation appropriately. We must also tackle the high levels of antibiotic prescribing in the community.

It is unacceptable that patients do not receive an adequate response from the health service in tackling this issue. The HSE must account for its inadequate approach to this crisis and provide patients with some reassurance that the current situation will not continue.

The health system's use of contract cleaners rather than employees who know their job and responsibilities and who are accountable to a manager within the hospital is another contributory factor to the spread of MRSA. When we learn of the personal circumstances of families whose loved ones have died as a result of an MRSA infection, we realise this major problem, which affects so many people, needs urgent action. We must rid our hospitals of this scourge. I look forward to the Minister's response.

Mr. Glynn: I move amendment No. 1:

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

" — welcomes the Government's commitment to promoting patient safety and high-quality health services and in particular to the setting up of the commission on patient safety and quality assurance;

— supports the objective of the commission to develop clear and practical recommendations to ensure that quality and safety of care for patients is paramount within the health care system;

— welcomes the appointment of an assistant national director of health protection as the lead person nationally for MRSA in the HSE supported by senior representatives of the National Hospitals Office, PCCC and Risk Management as well as senior clinicians who have set a number of targeted-national initiatives to reduce the prevalence and impact of HCAIs;

— welcomes the recruitment of key staff including 20 infection control nurses, 20 antibiotic liaison pharmacists and ten surveillance scientists in the coming months as part of a national strategy on HCAIs;

— acknowledges the upcoming television and radio campaigns to increase awareness of the importance of hand hygiene among hospital staff, visitors and patients;

— welcomes the continued education and training of health care workers on HCAIs;

— recognises the problems associated with large influxes of visitors as a complicating factor in maintaining hospital hygiene and controlling HCAIs and supports the HSE in its efforts to enforce its policy on visiting;

— supports the important role of the Irish Health Services Accreditation Board and its work in applying accreditation standards to ensure safety and continuous quality improvement;

— acknowledges that the HSE has put in place management structures at both corporate and hospital level with responsibility for ensuring quality and minimising risk;

— acknowledges that hospital cleanliness is vital in fighting the spread of HCAIs;

— notes the results of the second hygiene audit which showed significant improvement on the first hygiene audit in almost every hospital;

— notes that the Irish Health Services Accreditation Board, IHSAB, is due to carry out a third hygiene audit this year;

— welcomes the development by the IHSAB of the hygiene services assessment scheme at the request of the Department of Health and Children. This scheme is a set of standards which the hospitals assess themselves against;

— welcomes the Bill to establish an independent Health Information and Quality Authority;

— acknowledges the entitlement of all patients to be informed in a sensitive manner of any diagnosis of MRSA;

— welcomes the Health Research Board's study on health care acquired infection. The outcome of this research will be a valuable tool in progressing the fight against health care acquired infections at both strategic and operational level; and

— notes the request of the Oireachtas Committee on Health and Children regarding the updating of the Health Act 1947, which is being considered in the context of the HSE implementing an accompanying reporting system."

I welcome the Minister for Health and Children, Deputy Harney, to the House. The words "methicillin resistant staphylococcus aureus" do not seem to register with many people, but the abbreviation "MRSA" strikes fear into the heart of almost everyone. Difficulties pertaining to MRSA in society and our hospitals are nothing new. Back in 1995 or 1996, the then Minister for Health and Children had to answer questions on the surveillance of these types of infection.

Mr. Browne: The guidelines brought in then were never implemented.

Mr. Glynn: I will be honest that I am firmly on the side of the consumer in this regard. The Minister and the Government are endeavouring to tackle the situation as the current position is unacceptable. I am delighted the Fine Gael motion advocates the control of visitors. I recall a time when my local hospital in Mullingar controlled the number of visitors to a patient. The hospital might have let two visitors visit a close relative, but rarely three and if visitors were not close relatives, they might not have been let in at all, rather the hospital staff would convey the visitors' good wishes to the patient. We have become lax on the issue of visitors.

I have never been convinced that the use of contract cleaning services in hospitals was the right way to go. Hospitals are places where, as expected, we find many sick people with varying degrees of infection, many of which are contagious, whether by droplet infection or direct contact. It is imperative therefore to minimise movement. Formerly, even when training nurses to make beds, minimum movement was advocated to prevent the spread of infection. The disposal of human and other waste such as blood, urine, faeces, pus, etc. was always deemed a nursing duty because these wastes were a source of infection.

We could take the co-operation that existed among Seán and Mary citizen during the last outbreak of foot and mouth disease as an example to follow. We must commend the Minister and Ministers of State at the time, Deputies Walsh, Davern and Brendan Smith, on the manner in which they advanced the need for vigilance. The Government, the Minister and all Members are endeavouring to get the message across that MRSA can only be eradicated or kept to minimum with the co-operation of everybody.

I agree with the suggestion that we introduce a policy to test patients at source. In an effort to reduce the incidence of MRSA, one Galway hospital has introduced a policy of testing all patients for the bug and informing them of the result. Among the first things that should be done in a doctor's surgery is to inform the patient of a definitive diagnosis, since it is a human right to know.

Unfortunately, I have much more to say on this subject but lack the time. I welcome the appointment of nurses with responsibility for infection control, since a single case of MRSA is one too many. I ask the Minister to give sympathetic consideration to those who have contracted MRSA and assist them and their families in any way possible, especially those who contracted the scourge in hospital.

[Mr. Glynn.]

I compliment Senator Henry on stressing the role of antibiotics at a recent meeting of the Oireachtas Joint Committee on Health and Children. It is not rocket science to know that if someone is admitted to hospital with a throat or eye infection or an open, pus-covered wound, a culture should be taken to test sensitivity. Reaching for a prescription pad without knowing the organism that has caused the infection or its sensitivity to a given antibiotic is not the right way to treat a patient. I commend Senator Henry on her remarks in that regard.

Dr. Henry: I thank Senator Glynn for his kind words on exactly the area I wish to address. I welcome the Minister for Health and Children, Deputy Harney, to the House. I have frequently heard her speak on this issue and am well aware that she realises its seriousness. Florence Nightingale said that when the sick enter hospital, they should not become sicker as a result. We have got into an unfortunate situation where people going into hospital are very afraid that they will become infected by antibiotic resistant bacteria and that it will be the end of them. However, thanks to my friend, Dr. Fred Faulkner, the chief microbiologist at St. James's Hospital, I have a report from the standing medical advisory committee to the Department of Health in London. It was written in 1959 and addresses staphylococcal infections in hospitals and antibiotic resistance. We are not dealing with a new problem but with one that has now got seriously out of hand.

If the Minister read this report, she would find that many of the summary conclusions and recommendations are exactly the same as our own. The first is that the control of staphylococcal disease depends largely on the application of aseptic methods, in other words, cleaning up. The use of antibiotics, either for treatment or for prophylaxis, is by itself unreliable. We have a terrible idea nowadays that there is a pill for every ill and that we can solve everything that way. The area I wish to address is the seventh recommendation, namely, that in all suspected cases of staphylococcal disease, it is desirable to confirm the diagnosis by bacteriological investigation. We have not put enough emphasis or exerted enough effort on this situation.

Initially we had bacteria resistant to one antibiotic. MRSA initially stood for methicillin resistant staphylococcus aureus. However, MRSA rapidly became multiply resistant staphylococcus aureus, and the current situation is that we have not just staphylococcus aureus but many other bacteria resistant to the most common antibiotics, with nothing else coming down the line to take over from them.

Bacteria have been here for billions of years. They are far more successful than human beings, who have been around only for a few million years.

Mr. Ryan: They are tougher too.

Dr. Henry: They are a great success, managing to change their little jackets overnight so that whatever affected them yesterday has no effect on them today. New antibiotics are being introduced only to be defeated within a few days. We have not put enough emphasis on the role of the laboratory, which can be the key to diagnosis and surveillance in acute hospitals in particular. We must know what the mechanisms are in these changing bacteria so that we might have some idea of the best way to make progress. Only in the laboratory will we manage to find out anything about suitable prescribing, in the hospital and outside.

I very much regret that 100% of our cervical smear tests now go to Dallas in the United States, since it has a terrible effect on morale in Irish laboratories conducting such screening. What will happen to the training of medical scientists if we outsource all our specimens? The international privatisation of specimens from hospitals would be a terrible mistake and I hope that the Minister can rectify that problem as soon as possible.

The resistance of many bacteria is probably under-diagnosed owing to insufficient surveillance in hospitals, never mind what is happening in the community where we frequently have very little idea what is occurring. There have been cases where we do not know what mechanism caused the bacteria to change and we must know that because genes coded for resistance emerge in one strain only to be transferred to others. That DNA change means that various mechanisms can be used by the bacteria to defeat an antibiotic.

That can make a difference to how one directs one's next line of treatment. For example, if the enzyme b-lactase is produced, it breaks down the b-lactam ring in penicillin, and that is the antibacterial part. If one knows that the bacterium is using that mechanism, one will not try a cephalosporin since the same thing will happen, moving on instead to a different type of antibiotic such as a tetracycline.

This can also happen with gram-negative bacteria, including e.coli, and there are other methods that the bacteria can use, such as altering the penicillin's binding proteins so that it cannot work. One needs to know exactly what they are doing, and our laboratories are not receiving sufficient investment in the area. It must be done countrywide and not just in research laboratories. It is terribly important that we get at it as quickly as possible if the problem of multiple drug resistance is not to worsen further.

It is only if we take such steps that microbiologists will be able to advise surgeons, physicians and junior hospital doctors of the next best antibiotic rather than allowing the scattergun approach seen in far too many hospitals. Part of our problem is that medical scientists are not being

encouraged enough or given enough finance to investigate the area.

Senator Glynn noted that I raise this constantly, and I heard the Minister speak on it on the radio, namely, the education of the public into desiring antibiotics where they are not strictly necessary. I see from the text of the amendment that the Government parties acknowledge the upcoming television and radio campaigns to increase awareness of the importance of hand hygiene among hospital staff, visitors and patients. What about a campaign on expectation and the feeling that if one visits a general practitioner and does not come away with a prescription for an antibiotic, the consultation has been a failure? Most upper respiratory tract infections are viral and many of the pneumococci are resistant to antibiotics, yet 40% of antibiotic prescriptions are for upper respiratory tract infections.

The Government must invest in educating not only the public but GPs and hospital doctors. Pharmaceutical companies are now relied on to hold medical seminars and so forth, but they will hardly suggest that people cut down their use of antibiotics. The Government will have to get involved and carry out trials of different treatments. One would be as well to put one's head over a bowl of friar's balsam and inhaling. The Government must get involved in such trials because no one else will be able to do so. Antibacterial wipes, which are advertised on television, are lethal and should not be allowed at all.

I must refer to the abuse of antibiotics in the food chain, particularly among poultry and pigs who are brought up in factory farms. Although these are called growth enhancers in their food, they are antibiotics. They may not be used by humans, but they are encouraging resistance among animals and poultry. There is far to casual an attitude about this and it should be discouraged.

This is a matter of surveillance and investment in our laboratories, and education of patients and doctors as to the appropriate use of antibiotics.

Minister for Health and Children (Ms Harney): I welcome the opportunity to make a statement in this House on MRSA. I reiterate my commitment to ensuring that high-quality care is made available to all patients and to the further development of our health services and, in particular, the issue of patient safety.

At the outset, I want to assure Senators that the vast majority of patients in Ireland receive effective and safe treatment. However, international studies suggest that a minority of patients can be harmed through their care, either in hospital or in the community. I do not wish to minimise in any way the effect on patients and their families of contracting infections in hospitals and other health care facilities, and I acknowledge and regret the pain caused to patients and their families. It is a problem in all health care systems but one which I am determined to control in the Irish health care system.

MRSA is not a new problem and it is unique to Ireland. Health care associated infections, HCAIs, including MRSA infection, are in many Irish hospitals and MRSA is increasingly being seen in community health care units such as nursing homes. The impact of these infections is considerable. At a human level the impact on patients and their families can be debilitating. It is in everybody's interest to keep infections out of our hospitals, out of nursing homes and out of all settings where people are vulnerable.

The control of health care associated infections, including MRSA, continues to be a priority for the Health Services Executive. Measures to control the emergence and spread of health care associated infections are necessary because there are fewer options available for the treatment of resistant infections, as Senator Henry acknowledged, and because these strains spread among vulnerable at-risk patients.

Acute hospitals collect information on health care associated infections at a local level. It is my intention that this information will be collected, both locally and at a national level. We need to be able to measure data and compare it.

Among the recommendations in the Strategy for Antimicrobial Resistance in Ireland is the appointment of infection control nurses, surveillance scientists and antibiotic pharmacists necessary to commence a national surveillance programme. The HSE is currently in the process of recruiting these staff and they should be in place in the coming weeks and months.

The HSE has appointed a small group, led by an assistant national director of health protection, to take the lead on MRSA. The group has concentrated on a targeted number of issues including the development of a three-year action plan and overseeing its implementation, as well as putting a high quality governance structure in place. It has always been my experience that if everybody is responsible then nobody is ultimately responsible. It is therefore vital that there is clarity around this issue.

There is an increasing body of evidence of what are the best and most effective practices to reduce the impact of HCAIs. The HSE will take measures including: a public education campaign; directed action on specific health care associated infections; initiatives on the appropriate prescribing of antibiotics, particularly working with general practitioners; a national surveillance system for HCAIs; a health care worker educational and training programme; and the implementation of a standardised approach to antimicrobial susceptibility testing.

A number of projects have been continued or started over the last year. These include recruitment of key staff including scientists, infection control nurses, antibiotic liaison pharmacists and surveillance scientists while good practice guide-

[Ms Harney.]

lines on control and prevention of MRSA. A hand-washing poster campaign, "Clean Hands Save Lives", took place in October 2005. I note that this campaign is not in operation in some health care settings I visit and that is a cause of considerable concern.

I acknowledge what has been stated here about other industries. In my previous job, where I had responsibility for visiting many settings including the semi-conductor and pharmaceutical sectors, the standard of hygiene required of visitors included covering hair, covering shoes and covering all clothing by wearing a white coat or other such garment. In vulnerable places in hospitals, particularly intensive care units and such areas, we need to learn quickly from what is happening in other sectors.

The projects to which I referred also include the following: antibiotic stewardship guidance to guide professionals on the appropriate use of antibiotics is being developed; existing systems on data collection on community and hospital antibiotic consumption are being enhanced to provide a more detailed and wider range of information on antibiotic prescribing while the HSE is planning to create a suite of education and training programmes on HCAIs for approximately 4,000 health care workers.

On the development of a public education programme, a two-year national publicity campaign on HCAIs and antibiotic resistance which will use the full range of media, at both national and local levels. On information for patients, the Health Protection Surveillance Centre has information for the public on HCAIs on its website. The HSE will ensure that the availability of this information is brought to the attention of all hospital managers and consultants. It will be made as widely available as possible within the hospital for distribution to patients and members of the public.

The HSE and the Department of Health and Children sponsored the Irish Patients' Association in organising a clean hospital summit in January 2006. This brought together over 200 HSE staff with a key role to play in promoting hospital hygiene in their workplace. A further summit is planned for the spring of this year.

I have met with representatives of the MRSA and Families group. It is a responsible group of citizens who have been badly affected, either directly or through their families, as a result of acquiring infections in a health care setting. The HSE has also held constructive meetings with them and further meetings and discussions are planned.

Visiting hours and associated problems with the influx of visitors has been seen as a possible complicating factor in maintaining hospital hygiene and in controlling infection. A national visiting guidelines document has been produced by the HSE. I would ask all visitors to hospitals, in so far as is possible, to respect hospital visiting times and also to be vigilant in using the facilities available to ensure that their hands are not carrying infection to patients.

A project plan for the development of a GP educational initiative to run from early this year until 2009 has been developed. This will include the recruitment of 20 continuing medical education groups, the establishment of a surveillance system on antibiotic prescribing and the development of guidelines and the education of GPs.

It is difficult to identify the number of fatalities attributable to MRSA as many people also have significant co-morbidity factors. Last year Ireland participated in the Hospital Infection Society's "Prevalence Survey of Health Care Associated Infections" in the United Kingdom and Ireland. The survey provided accurate and comparable data on the prevalence of health care associated infections, including MRSA, in acute hospitals in Ireland and can also be compared with similar data being obtained in England, Scotland, Wales and Northern Ireland. Preliminary results of this study are now available and the final results will be available shortly. The overall prevalence of health care associated infection in the UK and Ireland study — these figures exclude Scotland — is 7.9%. The figures are 8.2% for England, 6.3% for Wales, 5.5% for Northern Ireland, and 4.9% for the Republic of Ireland.

As I mentioned earlier, the prudent use of antibiotics underpins any approach to the control of antibiotic-resistant bacteria, including MRSA. This, together with good professional practice and routine infection control precautions, such as hand hygiene, constitute the major measure in controlling and preventing health care associated infection, including that caused by MRSA, both in hospital and in community health care units.

Hospital cleanliness is also vital in fighting the spread of HCAIs. To date, two national hygiene audits have been carried out in acute hospitals. The first audit was carried out in mid-2005. The second audit was conducted in early 2006. The results of the second audit showed that significant work had been done at hospital and national level. Almost every hospital had increased its overall score since the first audit, with some of the most significant improvements being shown by those hospitals that recorded poor scores in the first audit.

A national cleaning manual has been issued to support hospitals in maintaining good hygiene and the Irish Health Services Accreditation Board, IHSAB, is due to carry out a third hygiene audit this year. Well managed hospitals will be ready at any stage for an audit.

The board also developed the hygiene services assessment scheme at my request. This was officially launched in November 2006 and is a four stage process involving self-assessment, peer review, award and report. The IHSAB initiated the self-assessment process in all acute hospitals

in January with the peer review visits commencing in April and the final report in August 2007. The ethos behind this type of scheme is that for hygiene to become an inherent part of daily operations within a hospital staff must take ownership of the process and self assessment is the driving tool to do this.

All medical practitioners have an ethical responsibility to complete death certificates as accurately as possible and this includes recording methicillin resistant staphylococcus aureus, MRSA, infection. The attending doctor must sign the death certificate and determine cause of death. In November 2006, a coroner's court recorded what is believed to be the State's first verdict of death by MRSA infection. The coroner ordered that deaths due to hospital infections must be reported to the coroner and other reporting bodies so that statistics could be gathered. This is the first time this has occurred in Ireland and members of the central council representing the families involved have welcomed the ruling and I share their response.

Last month, I welcomed the announcement by the Health Research Board, HRB, of the establishment of a multi-disciplinary research team that will investigate and help tackle health care associated infections. The research will look at three specific areas: enhanced cleaning processes and their impact on infections, the clinical usefulness of the rapid detection of MRSA and more intensive efforts to improve hand hygiene to achieve near 100% compliance with best practice.

The HRB funded research team will then use state of the art molecular technology to determine the relationship between environmental contamination with health care associated infections and the incidence of such infections.

The organisation of health services is complex in any country and for any population. As in any large organisation, this complexity challenges us to find a radical simplicity that guides our work and decisions. Many procedures are in place to protect the well-being of patients and to secure the best medical outcome possible, however, as with any system, these safeguards are not completely error proof. I would like all of us in health care to unify around one very basic promise to patients before all else, namely, that they will be safe. I would like this simple promise to drive everything it possibly can in health care — policy, practice, organisation of hospitals, organisation in hospitals, individual and group behaviour, resource allocation, recruitment, training and education. There is virtually no area of health care that a patient safety agenda cannot and will not positively influence.

A modern health care system accepts that each person can play a central role in his or her own treatment and recovery. It recognises that each individual plays a critical and essential role in the assessment of his or her own needs and that quality of care is inextricably linked to the involvement of the user in determining his or her health care.

Patients and their advocates must be also encouraged to play their part in embedding safe care in our systems. Patients, their relatives and carers must be central to our efforts to minimise harm and we must develop mechanisms which empower them to point out any possible errors or care deficiency without fear of the consequences.

To this end I have asked the Health Service Executive, HSE, to set up a national help line which patients and their families can call to report incidents of poor infection control in our hospitals. If, for example, patients are unhappy that a member of the hospital staff is not disinfecting his or her hands between patients, they or a family member can call the helpline if they do not feel in a position to raise the matter directly with staff in the hospital. This is not about blaming people, it is about helping all of us, patients, visitors and health care staff, to play our part in improving patient care.

In addition, I recently established a Commission on Patient Safety and Quality Assurance. Membership of the commission is made up of medical and nursing representatives, management representatives and representatives of patients and carers. The overall objective of the commission is to develop clear and practical recommendations to ensure that quality and safety of care for patients is paramount within the health care system.

The commission will develop proposals for ensuring clear responsibility, among senior management and clinical leaders within the health system, for performance in relation to quality and patient safety. It will also make recommendations on more effective reporting of adverse clinical events and complaints and a clearer role for patients and carers in feeding back on care received. It is intended that the commission will report back within 18 months.

Finally, I would like to refer to the importance of the establishment of the independent health information and quality authority to progress the safety and quality agenda. This is provided for in the Health Bill 2006, which I hope this House will have the opportunity to debate in a matter of weeks.

In 2005 I reaffirmed Ireland's commitment to enhancing the safety of patients by signing up to the Global Patient Safety Challenge. This is a major initiative, undertaken by the World Health Organisation, WHO, which aims to address significant aspects of risk to patients receiving health care. During 2006 and 2007, the Global Patient Safety Challenge will be to identify, develop, test and evaluate strategies for the implementation of the WHO guidelines designed to assist countries in improving patient safety and saving lives by reducing the burden of health care associated infections.

Mr. Ryan: Cuirim fáilte roimh an Aire. Ní rómhinic a chímid anseo í anois, but the Minister for Health and Children, Deputy Harney, visits us fairly regularly and she is very welcome.

Ms Harney: I will be back here next week, I believe.

Mr. Ryan: We are always glad to welcome the Minister. In her early days as a Minister of State the Minister for Health and Children was one of the first to begin the practice of introducing legislation in this House. She had the double burden of introducing major legislation and dealing with a large, significant and domineering senior Minister simultaneously but she did both competently.

Ms O'Rourke: She disposed of him.

Mr. Ryan: This is too serious an issue for me to make the sort of speech I usually make because I could beat the Minister over the head about the delays. I think it is a pity we may well end up trying to reinvent the wheel on this matter. I would have loved to have heard in the Minister's speech why her Department thinks the incidence of MRSA is so much lower in places like the Netherlands and Sweden. Have we sent people there to find out why? Have we identified a list of things which indicate why?

Who could argue with any of the things presented in the Minister's speech? However, what evidence exists indicating that the things presented in her speech are the things we actually need to do? I am sure there is some evidence but are all of these things being implemented in other countries? If so, and if they are successful, why did it take us so long to come to them?

I do not want to go back over other issues to do with the health service, but why are our hospitals not as clean as they should be? I find it astonishing that we must launch a personal hygiene campaign directed at people working in hospitals. When our children were small, and we were dealing with bottles at one end and nappies at the other, every one of us understood, without a huge public campaign, the possibility of infection if we did not operate to high levels of hygiene. I must assume, therefore, that it is not that doctors and nurses do not realise the risks; it is a lack of the necessary time, opportunity and freedom to operate best practice because they are under such pressure. I cannot prove this and I will not launch into a big speech on the matter. I must assume that the things obvious to every parent dealing with children at their most vulnerable are obvious to those working in health care.

6 o'clock

I have heard a great deal of talk about quality assurance in this country and I have seen it in operation in third level education where it focuses entirely on the minions, the teachers. There is no quality assurance system for senior management in third level education. Real quality assurance starts at the top, as any textbook on quality assurance will tell you. It is the example of those at the top that convinces others of the value of quality assurance and changes it from being a weapon of management to make life difficult, as it is perceived, to a necessary part of doing a job as well as it can be done.

There is a great panoply of quality assurance measures relating to academic work and none relating to management. I must assume the same applies to the health service. No process of quality assurance applies to the work of middle managers and those who are somewhat higher in the public health service. If it did, we would know who is responsible, who is being paid a salary to take charge and who has tried to organise the relevant programme. One will never find out who is responsible for what in the hospital system but one will find out a lot about cross-over infections being carried by overworked nurses and doctors. What should be the subject of collective responsibility is turned into an adversarial set of circumstances in which those who deal with the dirty job of hygiene continually feel that what they are being asked to do is not remedying the problem. They are asked to fill out more forms and produce more procedures to which they do not believe those above them are committed.

Let us consider the issue of over-use of antibiotics. I am not a doctor and do not know much about this matter but I know some antibiotics are infection specific and others are broad spectrum. The recommended method of prescription is to identify the particular micro-organism causing the infection and prescribe a specific antibiotic. If my general practitioner, who is very good, wants to do this, he must have the test done in some laboratory. If he takes blood samples or other samples from me, I must bring them to the laboratory myself to have them analysed. There is no procedure whereby a general practitioner in Cork city can send samples to a laboratory to have them analysed. Nobody collects them so the patient must bring them. In the name of heaven, does anybody seriously believe a busy general practitioner like mine will go through the process of sending every sample he takes to the laboratory to have it identified to determine which antibiotic should be used? He will do the simple thing and write a prescription for a broad spectrum antibiotic, which is guaranteed to increase the possibility of the evolution of antibiotic resistant micro-organisms.

I do not know a lot about this matter but it seems that if we want to use antibiotics only when they are needed and use only those that are specific to certain infections, we must have a system that ensures that general practitioners, who are at the front line, can have samples analysed appropriately. Similarly, hospitals with large numbers of old people and public and private nursing homes should have such a system in place. Where an older person has a chest infection, for

example, it is important to know what prescription is appropriate. As Senator Henry stated, there is not much point in prescribing antibiotics for a viral infection. However, if an infection requires an antibiotic, it should be known what type is required.

I am somewhat intrigued by the Health Research Board's research programme but I may well be wrong about it. Some countries have managed to curtail or reduce dramatically the incidence of health care associated infections. The Health Research Board is to research "enhanced cleaning processes and their impact on infections". If one asked the public about this, they would wonder why such research is required. The board is also to examine the "clinical usefulness of the rapid detection of MRSA". Are we suggesting it might not be clinically useful to detect it rapidly? The only reason for doing research is to determine whether an alternative procedure can be adopted. The board is also to consider "more intensive efforts to improve hand hygiene to achieve near 100% compliance with best practice". This means we will get people to use materials of the best quality when washing their hands. This is what everyone wants to do.

Mr. Glynn: If we could get them to wash their hands, we would be on a winner.

Mr. Ryan: When we were changing babies' nappies and preparing their bottles, we knew about enhanced hand hygiene. The Health Research Board's press release states it "will then use state-of-the-art molecular technology". What has this to do with washing one's hands. Somebody fed a good bit of jargon to the Minister who is, incidentally, a very intelligent woman. I am not sure what any of this means and I am more than a little confused by it, to put it mildly.

I have the good fortune to work in an area that trains people to work in the pharmaceutical industry. Most, but not all, of the pharmaceutical companies in Cork produce a range of drugs. Between the production of one drug and the next, a process of cleaning is required so there is no possibility of a drug being contaminated. The companies do this efficiently and successfully. Contrary to what the Minister says, it appears one can be 100% successful in this regard. In the 25 years in which there has been a pharmaceutical industry in Cork, I have never heard of a product becoming contaminated by another that was produced previously.

Let us not set our standards by saying something will always go wrong. The pharmaceutical industry, with all its faults, can do what I have described. It does so by employing a steady methodology and because it is utterly terrified of the US Food and Drug Administration. It is afraid because it knows it must meet high standards. Management is responsible for the achievement of high standards. It teaches others and is responsible and accountable. When this principle is injected into the health service, not just in respect of MRSA but more broadly, we will make progress.

The problems that exist are not the fault of doctors or nurses. They arise because there is a layer of management that has never accepted that the job of management is to take responsibility, which is what it is paid for.

Ms Ormonde: I welcome the Minister of State, Deputy Seán Power, and thank the Minister, Deputy Harney, for attending to listen to the first half of this debate.

I seldom agree with Senator Ryan but I was nodding quite a lot regarding points he made. He made practical suggestions, which I thought about making myself, on how best to overcome the problem of MRSA. It is a serious problem and our task is to determine how it can be kept out of hospitals. This is a fundamental question.

In a way I am glad Fine Gael tabled this motion but I hope it will acknowledge that every effort is being made to tackle the problem. It is a matter of how best we can come together to solve it. We need joined-up thinking rather than having everyone separated into little boxes, each doing his own thing. We have enormous numbers of staff in hospitals, all stretched to their potential to try to give a service. At the same time there is this awful infection that seems to be creeping into hospitals, nursing homes and other vulnerable areas in society. What can we do to alleviate this?

I welcome the Minister. I also welcome the range of initiatives she has introduced towards preventing the spread of MRSA in hospitals and vulnerable areas. The task of the new commission will be to put forward clean, clear and practical recommendations on performance, the reporting of adverse clinical events and complaints, a clearer role for patients and carers concerning feedback on care received, ways to ensure health care practice based on what has been seen to work in other countries and a statutory system for licensing public and private providers of health care. The last is especially interesting and I would welcome a prompt move on that.

The Minister has appointed the assistant national director of health protection within the HSE to lead this campaign against MRSA. She needs to have the support of all the interested bodies that work in hospitals, the joined-up thinking I referred to, because without an integrated workmanship style to counteract MRSA, we will not get it right. It will mean one body overlooking others and nothing effective will be done to clear up the mess.

I was very interested in the Minister's reference to a public awareness campaign. At that point I began to reflect on whether this bug existed in hospitals 20 years ago. As we know, there were hospital matrons in the past, particularly nuns, and I wonder whether they had a style of man-

[Ms Ormonde.]

agement which ensured everything was meticulously clean and there were no suggestions of slovenly workmanship in any shape or form. As a result of such management norms being replaced over time, workmanship, administration and so on has become slovenly.

Should there be better screening systems for visitors? I have visited patients in hospitals, wandering in outside visiting times, and very seldom have I been stopped. I do not want to compare the incidence of MRSA with the threatened onset of foot and mouth disease in the country some years ago. However, one can learn from the way that crisis was managed and how the screening process was so meticulous that the disease was wiped out before it ever caught hold. Perhaps the list which the Minister has itemised is the way forward. I repeat what she said about national visiting guidance:

> Visiting hours and associated problems with the influx of visitors has been seen as a possible complicating factor in maintaining hospital hygiene and controlling [HCAIs]. A national visiting guidelines document has been produced by the HSE. I would ask all visitors to hospitals, in so far as is possible, to respect hospital visiting times and also to be vigilant in using the facilities available to ensure that their hands are not carrying infection to patients.

There is a significant problem of how to stop this infection. Very often infection is brought in from outside rather than emanating from within the hospital. I am more concerned about this rather than what is happening within the hospital. Perhaps sufficient attention is not being paid to hand washing and how professionals administer their duties to patients.

The Minister has started to introduce measures, however. I welcome the fact that Fine Gael tabled the motion to highlight what is being done and how important it is for the public at large to be made aware of the problem. People do not realise the danger until they have a patient from within their own family and are confronted with the horrors of MRSA. The might think it all emanates from inside the institutions and blame everybody, the consultants, the doctors, or nurses, when it might come from a vulnerable area within the community. Everyone has a responsibility in this. Nobody is to blame. It needs a collective approach as the only way to introduce proper hygiene measures and standards within hospitals and the community.

I welcome the Minister. She has given us a list and guidelines on how she proposes to move forward. She has started it and I know that she will be successful. However, we all have a role to play. If everyone addresses their responsibilities in this regard, we will achieve the necessary standards in hospitals.

Mr. Feighan: I welcome the Minister to the House on a very emotive issue. I wonder whether we ever get matters right in Ireland. Many years ago we had probably the most lax hygiene standards in Europe. From a food viewpoint we did not know what a health worker was. In pubs the standard of cleanliness in toilets, behind the counter and in restaurant areas was very poor. Not that many people died, however.

In any event, we have introduced what is perhaps the most draconian legislation in Europe. There are 37 different offences under food legislation with health officers closing pubs, restaurants, abattoirs, small businesses and butchers. It is quite clear that matters have gone over the top but in Ireland, we do not do things by half. We must go over the top regardless of what is being introduced. If the same standards were introduced in public sector hospitals or nursing homes, I have no doubt we would not be having this debate about MRSA in the House.

Mr. Browne: Hear, hear.

Mr. Feighan: This Government has always stooped to facilitate vested interests. When we had the opportunity under benchmarking to ensure that people did the work for which they were responsible, we shirked the responsibility. I attribute the incidence of MRSA to the fact that despite doctors, nurses and hospital staff working very hard, nobody is responsible, no one has been sacked and nor will they be even though people are dying from this disease. That is the problem we face in this country.

I first encountered MRSA when a woman came to my office. She had to go into hospital and she was genuinely concerned. She was afraid to go in case she contracted MRSA. I was not too sure what MRSA was at the time and neither was anyone else. Neither were we too sure how the disease could be contracted.

Mr. Glynn: It was discovered 32 years ago.

Mr. Browne: How many years ago?

Mr. Glynn: It was discovered in 1975.

Mr. Feighan: Not all of us have worked in the health service. Many people have died from having contracted MRSA. I am sure there has been a cover-up in that the death certificates of people who have died from MRSA record that they died from other diseases. People have called to my constituency office expressing their concern about contracting this virus. The Government has done nothing to allay the fears of the public about the spread of this virus or to implement the necessary measures to contain it. I do not want to be political but something must be done now.

Hospital staff are very busy individuals and the staff simply leave work to go home, at which point there is no hygiene supervision in place. If

they have a baby at home or cook at home, they will probably take more care sterilising a bottle or cleaning around a cooker than they take in what they do in the hospital. That is not a reflection on the hard-working staff in the hospital but on the health service. Money is being thrown at it. The attitude is there is no need to worry because nobody will pay.

If I had a shop in which there was an ice cream machine and the environmental health officer, on inspecting the premises, found hygiene standards were not being met in terms of the area around the sink, the ice cream machine or the water quality, that shop would be closed. A court injunction would be taken to close it. The prevalence of MRSA has been discussed for many years but has anybody in a senior position been sacked?

Mr. Browne: No.

Mr. Feighan: No senior worker or administrative staff member who is responsible for the running of a hospital has been sacked. We can talk all we want about this problem but we have not yet tackled it in the way we should have.

A total of 8,000 patients tested positive for superbugs in Irish hospitals in 2005 and 6,000 patients in more than 30 hospitals were infected by MRSA. That is incredible. Between 1999 and 2002 the incidence of MRSA increased steadily from 38.8% to 42.7%. What are people working in the hospitals and nursing homes doing in this respect?

Mr. U. Burke: What is the Minister responsible doing?

An Leas-Chathaoirleach: I wish interrupt the Senator to welcome a former distinguished Leader of the House, Deputy Cassidy, and the Mullingar west delegation to the Visitors Gallery.

Mr. Glynn: Hear, hear.

Mr. Feighan: I also welcome the delegation. There is one rule for the private sector and no rule for the public sector. The sooner we get our act together the better. People must take responsibility and to achieve this, a benchmarking measure should be included. Otherwise, we will continue to fight a losing battle against the problem of MRSA. We are all involved in tackling this. Senator Ormonde rightly pointed out that it is a serious problem and it must be addressed. People in administrative posts must take responsibility in this respect. The Government has thrown vast sums of money at the health service.

We have all attended conferences and I am sure some Members have visited Holland. There they searched for and destroyed MRSA. It now has the lowest incidence of MRSA in Europe. We should learn from its experience. We can learn all we want about it but we know what causes it and how to stop the spread of it. If we and administrative staff in all the hospitals and nursing homes do not have the will to tackle it, we will lose the battle.

Superbugs are spread through poor hygiene and the failure to implement proper cleaning and sterilising practices. Such bugs are largely preventable. Effective cleaning procedures and good hygiene practices can eliminate the spread of almost all of them. What is required is not rocket science but simply proper cleaning and housekeeping practices.

It is incredible that we are debating the serious problem of the incidence of MRSA which has been prevalent for many years.

Mr. U. Burke: Hear, hear.

Mr. Feighan: We should be ashamed of the fact that we oversaw it but we must do everything now to address it. I do not want any person who has to go hospital for an investigative procedure to call to my constituency office in the coming years expressing concern that he or she may contract MRSA. This virus has caused huge anxiety among the public and we must now address this problem.

Ms Cox: I wish to speak about my experience when I was a member of the former Western Health Board. A number of the hospitals in the Western Health Board region which are old and have poor facilities are open territory to allowing the spread of MRSA or encouraging it to develop even further. Merlin Park Regional Hospital, the acute orthopaedic hospital for the region, was built in the early 1930s or 1940s at which time it treated TB patients. The facilities have not been improved since the hospital was built. Private and semi-private rooms and wards in the hospital do not have ensuite bathroom facilities. In the long wards or even private rooms, where patients are isolated if MRSA is detected, patients have to use the toilet facilities available or a commode, in which case they have to wait for it to be taken away, emptied and disinfected. To tackle the problem of MRSA, it is vital to identify the accident blackspots in terms of facilities in our hospitals and to put in place a radical plan immediately to address these needs.

While I am only familiar with the facilities in Merlin Park Regional Hospital, I am sure there are many other hospitals with similar facilities where commodes are used and a cleaning and disinfectant regime is in place. The facilities in such hospitals need to be upgraded as a matter of urgency and from a health and safety perspective not only for the staff but most especially for the patients. The Minister said it is important to ensure that people do not go into a hospital and become sicker in hospital than they were before they went in. It is within our remit to deal with that and to ensure patients are treated properly and this bug is contained.

[Ms Cox.]

Examples of best practice in other places on the Continent and in the UK were mentioned and there are many lessons to be learned. I had a conversation only yesterday evening with a person who is working at the coalface in a hospital. This person spoke about the difficulty of dealing with MRSA, managing cleaning and, importantly, the huge burden on staff of paperwork involved in the carrying out of hospital audits. Staff spend increasingly more time dealing with paperwork. There is more paperwork, plans and fancy words but hospitals are not any cleaner and we are not eradicating the bug. Therefore, we are not solving the problem.

From a cost point of view, the focus in hospitals over the past ten to 15 years has been on outsourcing non-essential and non-core activities. Cleaning has been outsourced to cleaning companies. We are attracting many non-nationals, many of whom do not have good English, and many of them work for contract cleaning companies where the rate of pay is quite low. This is the only type of work many of them can find to survive. These people often do not understand the instructions they are given, the importance of the work they must do and the fact that they are operating in a life-threatening environment if they do not do their work properly.

The Patient Focus website provided some advice on MRSA. It stated that if there is dust or dirt under a person's bed, that person should ask for the area to be cleaned. The problem is that patients are dependent on the people around them and they can feel very vulnerable. It is very difficult for them or their visitors to request that areas be cleaned around them. They do not want to be seen as moaners by the nursing staff. It is difficult to have the courage to say to the nurse that the area around one's bed is filthy and disgusting or that the bathroom is just not clean enough. It is difficult to deal with that situation and we must push the responsibility back to the providers of the service, be they the internal management or the contractors if it is outsourced. They are responsible for the quality and they must ensure it is 100% all of the time.

It will also be necessary for the Health Service Executive to provide a central training budget for the training and education of people working in this area, especially those who provide the service and clean the floors. Nobody can work on a building site without a FÁS Safe Pass. No cleaning contractor or staff employed directly by the HSE should be allowed to provide a cleaning and hygiene service in a hospital without having undergone a certified training course similar to the Safe Pass. In this way, they would understand the implications of not doing the job properly. If people knew that not doing their job properly could cause the death of a person, they would recognise their responsibility. If we do not show people their responsibility, we cannot expect them to understand how important it is that they do their job to the highest standards.

As the Minister said, the focus must be on education but also on training and development for those doing the job. We all agree it is about hygiene and cleanliness. I was recently in the Mater Hospital and there were gel containers everywhere for cleaning one's hands. However, I felt at one stage that I was the only person using them as I went from one department to another. It certainly did not seem as if they were being used by the porter staff, the nursing staff, the contractors or the people delivering the food. I spent up to three hours sitting in the outpatients department with someone, and this opened my eyes to the inattention that people displayed to the possibility of cross-infection.

We have a big job to educate the public, patients and management within hospitals. We also need to give them resources because they cannot do anything otherwise. Providing resources is vital in controlling and limiting this disease. If lessons are to be learned from best practice abroad, we need to learn them. There is no point in re-inventing the wheel.

Mr. U. Burke: It is unfortunate that the Minister for Health and Children came to the House and delivered the usual jargon. However, it is clear from what she said that the Government has abdicated its responsibility in tackling this urgent and infectious outbreak in our hospitals. The Minister said she reaffirmed Ireland's commitment to enhancing the safety of patients by signing a global patient safety challenge. That indicates her complete misunderstanding of the reality. There is something wrong in the hospitals and she has failed to take action. She must take responsibility because the HSE is not doing its work.

To blame nurses for the lack of cleanliness in hospitals is wrong. The nurses have a professional duty and they carry that out to the highest standards possible. She spoke about national initiatives in her speech. What are they? She mentioned a public education programme, initiatives in appropriate prescribing of antibiotics, national surveillance and health care worker education and training programmes. That would be fine if we were not dealing with something that needs immediate action. She also failed to point out that she is not providing the funding for the cleaning of hospitals. If we had clean hospitals like those of 30 or 40 years ago when we did not have this problem, it might then be fine to suggest those initiatives to deal with problems that may occur in the future. However, she has failed to realise that the infection is rampant in our hospitals. Many patients who leave hospital go to other care facilities such as nursing homes and they are now being infected.

As long as this Minister believes that training programmes can solve the problem without an

urgent cleaning of hospitals, then the infections will continue. I could show Members of this House a photograph of a ward in University College Hospital in Galway. This 26-bed ward has a chain and a padlock on the door from Friday evening to Monday morning, yet we are still told there are no facilities for the isolation of patients with the MRSA infection. This is occurring all year round. I monitored the situation for six weeks as I was visiting someone regularly in the hospital. Each Friday evening, a lock and a chain was put on that facility. I was told it was locked because there are six day care beds in that facility. That is not the case.

We were always told that when the nuns ran the hospitals there was never a dirty ward, which is true to some extent. When a matron went around the wards every day, we did not have these problems. Practical steps are needed, as are resources.

I am sure the Minister is getting consultants to prepare a glossy magazine that will outline the HSE's new initiatives in the western region and other areas. The glossy magazine will provide details of the HSE's initiatives. Hundreds of thousands of euro will be used to pay consultants and to produce the glossy magazine that will lie on a shelf or be dumped in a bin, without any notice being taken of it. If such resources were used to do certain jobs, we would have a better service.

My colleagues have cited figures which underline the increases in the incidence of MRSA. The tragedy is that many people have died. A support group has been established to help the families who have been affected by MRSA. The group is begging the Minister to acknowledge the extent of this crisis. Her comments in this House indicate clearly that she does not understand the problem. She does not want to interfere other than to express her sentiments in the form of jargon.

It seems that no individual is ultimately responsible for the hygiene level in a given hospital. We will not make progress until somebody with the appropriate responsibility gets somebody in to solve the problem. We have heard on many occasions about the problems in one of the main hospitals in Dublin. We have seen headlines to that effect in the national newspapers. A patient in that hospital had to take the initiative to highlight what she encountered there. She spoke about the dirt and grime in the hospital's toilets and other facilities. There is no need for me to say anything further about it.

Who will take responsibility for this problem? I do not think it is the duty of nurses because they are professional people who need to concentrate on bringing patients to good health once more. Somebody else needs to be responsible. Some officials from the HSE's western division spoke this morning about what they intend to do. They gave a list of people with responsibilities in various areas. The same sentiments were expressed by public representatives across the board, without political distinction. It was agreed that nobody was taking responsibility for the delivery of the service.

I am sure Senators Glynn and Leyden, as former members of health boards, will agree that if these problems had been encountered when the health board structure was still in place, the public representatives who were members of the boards would have taken the initiative and highlighted the matter at local level. That opportunity is now gone, however. This problem would not have deteriorated to the current extent if the health boards were still in existence. Somebody within that structure was always prepared to take responsibility at local level.

Mr. Glynn: The Senator's party could not get rid of the health boards quickly enough.

Mr. U. Burke: Who actually got rid of them? Who set up the present system? Is Senator Glynn blind to reality? The House encountered a case of ministeritis when the——

Mr. Glynn: The Senator is suffering from convenient amnesia.

Mr. U. Burke: If the Senator's party carries on in that manner, the public will give it the answer it deserves in due course.

Mr. Glynn: Facts are facts.

Mr. U. Burke: When the health boards were in place, there was some local responsibility. Somebody could be identified as being responsible for any given matter. That is no longer the case, however. If the Government is disappointed with what is happening, the Minister needs to take action. We have a national MRSA crisis in our hospitals because she has failed to take action. I am sad to say that the Minister and the HSE are aware of the ongoing problems. People are suffering extensively — some families are grieving as a consequence of bereavements — but nobody is taking responsibility for this problem. The Minister listed the initiatives she proposes to take in areas such as education and training and spoke about global responses to patient care. How much more out of touch with reality will she go? The Minister's proposals are not sufficient to address the urgent crisis in our hospitals.

Mr. Leyden: I welcome the Minister of State, Deputy Brian Lenihan, back to the House. The worthwhile and well-worded motion before the House highlights the MRSA crisis in this country without making any election promises.

Mr. U. Burke: That would have given Government Senators an excuse.

Mr. Leyden: It does not say that MRSA will be eliminated if the rainbow coalition gets back into power. It is clear that this problem cannot be eliminated with a simple sleight of hand. There is no magical solution to it.

Mr. U. Burke: That is precisely what we are saying.

Mr. Glynn: Some 32 years have passed since MRSA was discovered in our hospitals.

Mr. Leyden: I agree there is a need to reduce the overall use of antibiotics. That would be very worthwhile.

Mr. U. Burke: There is a need to clean the hospitals.

Mr. Glynn: When Deputy Michael Noonan was Minister for Health in 1995, he announced that MRSA had been discovered here 20 years earlier.

Mr. U. Burke: I am concerned about the hospitals.

Mr. Glynn: It is true. I have documentary evidence of it if Senator Ulick Burke would like to see it.

Mr. Leyden: I agree that patients who are suspected of having MRSA should be screened in isolation when they are first admitted to hospitals. Staff who have been in contact with patients who have tested positive for MRSA should also be screened and appropriate steps should be taken thereafter. Proper cleaning techniques should be introduced by the management of hospitals. The points which have been made in the motion before the House are quite commendable and reasonable. This debate gave the Minister, Deputy Harney, an opportunity to come to the House to express her concerns in this regard.

There was a detailed discussion of MRSA on a recent edition of the "The Late Late Show" with Mr. Pat Kenny. I was concerned by the lack of impatience and urgency shown by the HSE representative on that programme.

Mr. U. Burke: Hear, hear.

Mr. Leyden: The man's lackadaisical approach — he said the HSE intended to deal with this now and that then — did not reassure me that he was doing very much about the issue. I understand there is a way of detecting the presence of MRSA in hospitals. A piece of equipment can be used to ascertain the level and extent of the infection within a hospital.

We should use this debate to remind the Minister, the Department and the HSE that, rightly or wrongly, there is widespread concern about MRSA throughout the community. When people go into hospital for procedures such as hip operations which require serious involvement with surgeons, they worry about MRSA. We all have a role in this regard. It is clear that the standard of hygiene in our hospitals must be maintained at the highest possible level. While I have some regard for contract cleaners, the standard of hygiene was much higher some years ago when matrons were responsible for the cleaning system in county hospitals. The results of the use of modern techniques such as contract cleaning, which have not improved hygiene in hospitals, are starting to become evident.

I would like to speak about the methods which have been proposed, the issue of hand washing and the provision of facilities in our hospitals. I am not sure that the hand washing guidelines are being adhered to in hospitals. When I visited a ward in the Sacred Heart hospital in Roscommon recently, I was told by a nurse that I should be very careful because the hospital had MRSA. I was told to wash my hands, which was fair enough. I question the decision that was made to transfer large numbers of vulnerable and elderly patients to the hospital in question from the county hospital. When MRSA is detected, patients should be placed in isolation. They should not be transferred to another institution because that might cause the infection to be spread. This is something with which people in management positions should concern themselves.

The question of allowing visitors to hospitals is a serious one. I suggest that the presence of MRSA should lead to a curtailment of visitor numbers. Visitors should be made aware that they can carry MRSA without suffering from it. One should avoid visiting vulnerable patients, in particular, unless one is absolutely sure one is not carrying MRSA. I am not sure whether there is any technique or procedure for testing people for MRSA.

We all feel we have a duty to visit family members, friends and political contacts when they are in hospital, but we might not be doing them any great favours by doing that. I have spoken to constituents, including a member of a local authority who is in the Mater Hospital, about this issue. I told the man in question I would not feel comfortable going to visit him while he was laid up if I were worried I would contribute to his illness in any way.

People should bear in mind the danger that they may bring MRSA into a hospital and infect a vulnerable patient. I was a member of a health board and I know of instances where patients may have had ten visitors at a time. Patients would be worn out trying to explain their illness and how they were. Everyone was having a party and eating the grapes but they were not doing the patient much good. This was the case with very vulnerable patients. It led to a situation where visitors were not especially welcome, could only come by arrangement and visiting was confined

to family members. This is one of the recommendations made by the Minister on the control of visitors.

The control system in hospitals is very lax. People do not go to the reception desk, do not visit by appointment and wander through the hospital without any great control. The HSE and the management of hospitals need to impose control so that areas where vulnerable patients are accommodated such as near operating theatres should not be open to visitors. Patients recovering from serious operations should only be permitted visits from close relations. These might seem draconian measures but we are fighting a serious and unseen enemy in MRSA.

Senator Ormonde and others referred to the fight against foot and mouth disease and the action taken by our Government which prevented the spread of the disease from North to South. This was a very successful campaign. Foot baths were positioned at the entrances to all buildings and this campaign was led by the then Minister, Deputy Walsh, and the Minister of State, Deputy Davern. I commend them and their co-operation with the Northern Ireland Minister.

It may not be a comparison of like with like but foot and mouth was a very infectious disease, as is MRSA. The Minister referred to the recruitment and training of key staff, including scientific infection control nurses, antibiotics liaison pharmacists and surveillance scientists. There has been an over-prescription of antibiotics which has resulted in MRSA defeating some of the strongest antibiotics. People have been fed antibiotics as they are present in chicken, pork and other food products in the food chain. In the case where medical practices also own a pharmacy, it is beneficial to the medical practitioner to keep prescribing as much antibiotics as possible because they have a share in the pharmacy. They do not prescribe generic drugs which are cheaper.

This is a combined effort of all parties, public representatives and health care workers because we are in this together. Nobody has any magic wand. This is a serious fight and we should endeavour to allay public fears. When members of the HSE or their public relations advisers are in discussions on radio programmes, they should be able to express the urgency of the situation. The best spokespersons who can explain the actions being taken by the HSE and hospital management to eliminate MRSA, if it can be eliminated, should speak on programmes such as the "The Late Late Show".

I do not think any hospital in the western world has eliminated MRSA. The Netherlands seems to have a great success story and its success should be studied in detail by the HSE. We should all be united in our approach. I hope that the combined motion and amendment to it would be agreed. The Government amendment to the motion is positive and it should be agreed without division in the House. A division is of no use in the fight against MRSA.

Mr. Browne: I welcome the Minister of State, Deputy Brian Lenihan, to the House. In my closing contribution on the motion, I refer to points made by Senator Leyden about the elimination of MRSA. I do not think it is a question of eliminating MRSA but, instead, recognising we have it, that we can reduce the incidence of it as other countries have done, and that it must be managed, which is key. MRSA will stay with us because, as Senator Henry pointed out, bacteria have been here for a lot longer than we have and will be here for a lot longer after we have gone. People are over-using antibiotics, doctors may be over-prescribing them and the bacteria are building up an immunity to the antibiotics.

The US Food and Drug Administration, FDA, has approved a rapid 24-hour test for MRSA. This test has been approved by Canada. We should be researching the benefits of this test instead of reinventing the wheel. My colleague, Senator Feighan, raised the issue of the food industry. The fines in the food industry can be up to €1,500 per offence and six months in jail. A total of 37 offences are listed under the legislation governing food. Why is the health system so backward and why is more emphasis put on food and animal welfare than on patients in hospitals? There seems to be no accountability and no modern management techniques. This issue has been raised by many people.

Private hospitals are far from clean and they can be worse than public hospitals. The issue of nursing homes is significant. Last week my colleagues visited a nursing home in Amsterdam. Patients in nursing homes are elderly, they may have Alzheimer's disease and can be more difficult to control and keep in isolation rooms. These issues should be examined.

Senator Ormonde referred to hand washing. It is not necessarily a question of hand washing as this can be a means of spreading the infection. It is a question of using alcohol gel. This was brought home to me during our trip to Holland.

The Department of Agriculture and Food has 30 information websites available with regard to avian flu, yet no bird has tested positive for this infection. However, 600 people have MRSA and there are no comparable websites in the health system. We seem to be well able to provide information about foot and mouth disease, avian flu and food hygiene but we fail miserably on the issue of patient safety in hospitals.

There is an issue about compensation due to patients. I recommend that anyone going into hospital should insist on being swabbed on admission and tested for MRSA and they should be tested and swabbed again on their departure. If the tests prove that they did not have MRSA on admission to hospital but had the infection when leaving the hospital, they should be compensated.

[Mr. Browne.]

It is unfortunate but it will take litigation and compensation before the authorities sit up and take notice. That is the history of our country and it is regrettable that this is what it will take.

In Holland hospital uniforms are cleaned in the hospital. There is no such practice of staff going home with them on and wearing them while feeding babies and going shopping. The staff undressed at the hospital and the uniforms were all cleaned. This is another method for eliminating the spread of MRSA. The sum of €1.5 million given last January to help tackle MRSA is mind-boggling. We are reinventing the wheel. All it takes is a visit to Dr. Hussein in Cardiff or to Deventer in Holland where best practice can be observed and which can be replicated quite easily.

While much in the Minister's contribution was welcome, she spoke mainly in the future tense. For example, she indicated that the commission on patient safety and quality assurance would report back in 18 months.

7 o'clock

A new Government and, in all likelihood, a new Minister for Health and Children will be in office at that stage. As Senator Leyden, a Government Member, noted, the lack of urgency is worrying.

The amendment is disappointing, especially its lack of clarity regarding the simple, basic right of patients to be informed if they have MRSA. While it acknowledges that patients have such an entitlement, it does not state they should be informed.

Any of us could end up in hospital tomorrow. I know of a 16 year old who broke his leg playing rugby and contracted MRSA while in hospital for treatment. If patients contract MRSA, so be it, but it is not asking too much to require that they be informed in order that they, their families and members of staff can take precautions.

Considerable work has been done on the MRSA problem over the past two years. I compliment the MRSA and family group on its work on the issue, including the public meetings it held, and my local radio station, the first media outlet to allow someone to air a view on the issue. The widespread coverage of MRSA since the programme in question was broadcast shows the power of local radio, without which the national media may not have provided a forum for discussing the issue.

I also compliment some members of the press who have consistently written about MRSA. While it is good that the issue has received prominence in newspapers and on television recently — it has been discussed twice on "The Late Late Show" and was covered in an episode of the "Prime Time Investigates" programme — it is worrying that it is still a topic for discussion and little progress has been made in addressing it. Much more work needs to be done. My party will vote against the Government amendment because it is disingenuous and does not treat the MRSA problem with the urgency it demands.

Amendment put.

The Seanad divided: Tá, 27; Níl, 19.

Tá

Bohan, Eddie.
Brady, Cyprian.
Brennan, Michael.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.
Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Morrissey, Tom.
Moylan, Pat.
O'Brien, Francis.
O'Rourke, Mary.
Ormonde, Ann.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.

Níl

Bradford, Paul.
Browne, Fergal.
Burke, Paddy.
Burke, Ulick.
Coghlan, Paul.
Coonan, Noel.
Cummins, Maurice.
Feighan, Frank.
Finucane, Michael.
Hayes, Brian.
Henry, Mary.
McHugh, Joe.
Norris, David.
O'Toole, Joe.
Phelan, John.
Ross, Shane.
Ryan, Brendan.
Terry, Sheila.
Tuffy, Joanna.

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

Amendment declared carried.

Motion, as amended, put and declared carried.

Statute Law Revision Bill 2007: Committee Stage.

SECTION 1.

Question proposed: "That section 1 stand part of the Bill."

Mr. Ryan: Is there a precedent for this sort of legislation? Is language such as "by virtue of its antiquity and having been granted or otherwise made before or during the development of the parliamentary system" normal in other jurisdictions, or is it something entirely new and innovative? Although there are no amendments to the Bill, I am curious and the Oireachtas ought to understand what it is doing. I want to understand what I am doing, at least.

Minister of State at the Department of the Taoiseach (Mr. T. Kitt): To answer the Senator's question, it is new and innovative. It was generally welcomed here on the last occasion. I asked my officials to study the various pieces of legislation that were mentioned by Members and we have explained in the circulated list why some measures were retained and others repealed. I hope the list will be of some help to Members.

Ms O'Rourke: The dossier is very helpful.

Dr. Mansergh: I do not think this is the first such Bill the House has dealt with.

Mr. B. Hayes: No. There have been two.

Dr. Mansergh: We have considered a couple at least.

Mr. T. Kitt: I brought the last such Bill through the House. The process is innovative in that sense.

Dr. Mansergh: On a point of information, at what stage in the debate will we discuss the particular statutes?

Mr. T. Kitt: On the Schedule.

Question put and agreed to.

SECTION 2.

Question proposed: "That section 2 stand part of the Bill."

Mr. B. Hayes: I hope I am not encroaching on the point just referred to by Senator Mansergh. We are giving clear and express power to put redundant legislation to one side before 6 December 2002, on two specific lists. One is a list of measures to be retained, and we are clear about that. The very last mention of a statute was the reference in the last Schedule to the 1922 Irish Free State Constitution. I noticed it after making my contribution on Second Stage. The Minister may wish to wait until we get to that section before informing the House. This Act, in effect, brought in what some of us might describe as a much more liberal and tolerant Constitution in 1922 than ever occurred in 1937. I had to get a political dig in there. How is it possible that we are repealing it? I presume, given our dominion status at the time, it would have had to be recognised at Westminster. Why is that Act the last one referred to in the Schedule to the Bill?

Dr. Mansergh: My understanding of the history is that the Free State Constitution was enacted both in Westminster and Dáil Éireann. The point is that technically we only became independent in the full sovereign sense on 6 December 1922, although there are qualifications about this also, whereas the British Act would have been passed before that date, and, therefore would have had force in this jurisdiction before that date, given that, in international law, Britain was the sovereign power up to 6 December 1922. However, it was also passed when we declared ourselves sovereign.

I do not know what happened when the Constitution was enacted in 1937 — it probably involved the repeal of the Free State Constitution. One could say it is probably a fairly redundant declaration of sovereignty. The debate at that time concerned whether our sovereignty or the Constitution depended on some British Act. Even the Senator's political ancestors in Cumann na nGaedheal would have seen it as primarily deriving from what was enacted in Dáil Éireann rather than what was enacted in the Houses of Parliament across the water.

Mr. B. Hayes: Of course. That is the point.

Acting Chairman (Senator Dardis): I thank Senator Mansergh for his expertise.

Mr. T. Kitt: I thank Senator Mansergh for his clarification. The 1922 Act bringing into force the Free State Constitution is a matter of UK law. This Act is obsolete following the enactment of the 1937 Constitution, which also repealed the Irish Act that enacted the Free State Constitution. Therefore, the Act is suitable for repeal. We can deal with these matters towards the end of the debate.

Mr. B. Hayes: It is worth pointing out that this lacuna has existed since the enactment of Bunreacht na hÉireann in 1938, which effectively brought to an end the 1922 Free State Constitution. The British have had this on their Statute Book since 1922. There must be similar examples. I raised the constitutional issue because it was the only Act cited in the Schedule which referred to a constitution. The vast majority of the other Acts related to either royal prerogatives or ordnance, charter or similar documents.

It is interesting to note that we are repealing an Act the British have not repealed, even though

[Mr. B. Hayes.]

we effectively repealed the 1922 Free State Constitution in 1938.

Dr. Mansergh: With respect to Senator Brian Hayes, we are only repealing it as it has force in this jurisdiction. For all I know, it may still be on the British Statute Book. It is not within our power to repeal that.

Acting Chairman: We will deal with our legislation and leave it to Westminster to deal with British legislation.

Mr. Ryan: Perhaps inappropriately, I wish to mention that a distinguished Member of the British House of Commons is present in the Visitors Gallery. It is appropriate he is present, given the debate we are dealing with and because he is a great friend of Ireland.

Dr. Mansergh: This is the sort of discussion he loves.

Acting Chairman: We will resist the temptation to introduce him to the debate.

Mr. Ryan: With a Member of the House of Commons, it seems the further back a debate goes, the more he likes it.

I am intrigued by the unpublished private Acts referred to in the memorandum and covered by section 2(2)(*b*). These Acts sound like something from a novel written before the time of D.H. Lawrence. What is meant by "unpublished private Acts"? I do not want to be awkward. There are private Acts which refer to people being divorced and similar issues. However, it is as if there is a range of issues about which we do not know.

Dr. Mansergh: Where does the Bill refer to unpublished Acts?

Mr. Ryan: They are referred to in the explanatory memorandum.

Acting Chairman: We should deal with the Bill.

Mr. Ryan: The memorandum states: "The reference to Acts" enacted as "private acts is intended to cover unpublished private Acts". While I do not wish to be awkward, I would like to know precisely what we are discussing. I am also aware that a group of eminent and able lawyers, who have done all the work on this legislation, are present in the Visitors Gallery. They deserve enormous credit for the struggle to bring us into the 21st century — perhaps we have only got to the 19th century but we are getting there.

Ms O'Rourke: As I understand it, there were published private Acts and unpublished private Acts. We dealt last week with one such Act concerning the Wilson's Hospital School in Multyfarnham. The school avidly did not want the Act repealed and has been showering thanks on the Minister of State, myself and the world in general because it was not repealed. Its trust status is secured.

Mr. Ryan: They did not get as far as Cork, but that is alright.

Acting Chairman: This is getting surreal, Senator Ryan.

Mr. Ryan: I am sorry. Legislation ought to be accessible. I want to know what is meant by unpublished private Acts. How do we know how many there are? How do we know they exist if they are unpublished? That is all I want to know.

Mr. T. Kitt: I understand they were passed by the Parliament but not sent to the royal publisher at the time. I will provide Members with some interesting facts in this regard. The volume of old legislation is so great that the only way to approach the question of statute law revision is to proceed in stages. We have already dealt with some of the legislation in an earlier stage of our discussions. Repeal of the pre-1922 public Acts is the obvious first stage. Other Acts will be dealt with in later stages, as will the repeal of the Acts in Schedule 1 — the white list.

The most interesting figure I want to share with the House is that there are more than 33,000 local, personal and private statutes which must be assessed, in addition to the 26,730 public and general statutes which have already been assessed. It was thought appropriate to preserve these statutes as an entire category at this time. They will be assessed at a future stage and will be the subject of further statute law revision measures. Also, over 3,000 statutes passed since independence will need to be examined. Local, personal and private statutes relate to particular people, places and institutions and do not affect the community generally. Revision of these laws is less urgent. That is our position on the legislation.

Ms O'Rourke: How many did not get published?

Mr. T. Kitt: I will have to find that figure for the Senator.

Dr. Mansergh: By way of clarification, at a certain stage in parliamentary history, divorce proceedings happened by way of a private Bill in Parliament. I think it more than likely, except where notorious persons were concerned, whose identity might be published in the tabloids of the day——

Ms O'Rourke: The *Hello* magazine of the day.

Dr. Mansergh: ——that these would not have been published. It raises the interesting question of whether, if one repeals, say, a private divorce Bill from 1830 to 1834, one would have any effect on the subsequent succession.

Mr. T. Kitt: We do not know how many such Acts were unpublished. Much work has been done. Senator Ryan rightly referred to those who have undertaken commendable research on the legislation.

Ms O'Rourke: It will be a separate project.

Mr. B. Hayes: Senator Mansergh is correct. Even under the Free State Constitution from 1922 to 1937, each divorce had to involve a petition to the Oireachtas.

Dr. Mansergh: Divorce was ended by Cumann na nGaedheal in the 1920s, long before 1937.

Mr. B. Hayes: We can be blamed for many things but not that. My understanding is that every application for divorce had to be accepted by the then President of the Executive Council.

My question relates to section 2(3) in particular where reference is made to the Bill Of Rights 1688. The approach taken by the Minister and his colleagues is to put to one side and to repeal sections or parts of the Bill of Rights, but to leave other parts in place. Will the Minister of State inform the House why this approach is being taken as there are two reasons one would think it should be otherwise. First, one would think that if a Bill of Rights is being repealed, it should be repealed *in toto*. Second — Senator Mansergh made this point in the course of Second Stage — given the connection of the Bill of Rights 1688 to one particular tradition on this island, would it not be more sensible to approach this from the perspective of repealing it *in toto* or section by section? What is the rationale for the proposed way of doing it?

Ms O'Rourke: We waxed lyrical about the Bill of Rights 1688 last week. As I understand it, part of the Bill refers to the impunity granted to people going to and from Parliament, allowing them travel even if intoxicated or whatever, and there is a fear that parts of the Bill are still needed today. I picked that up and thought it very interesting. I remember a particular case some time ago when people going home from the Houses pleaded they were on parliamentary business and should be able to travel with impunity.

Acting Chairman: That saved them from the Tower, no doubt.

Dr. Mansergh: I support the approach taken by ——

Mr. Ryan: Senator Mansergh will lose his right to bear arms.

Dr. Mansergh: These are my arms.

Mr. Ryan: Senator Ryan is the only Member of the House who would be entitled to bear arms.

Dr. Mansergh: The proposal is appropriate for more than one reason. It is obviously correct that sectarian aspects of fundamental constitutional legislation be repealed. Senator Brian Hayes said the Bill of Rights relates to one tradition. It does mainly, but not exclusively. We would do well to compare notes with our American cousins in this regard. Both of us fought and won struggles for independence.

The Bill of Rights is one of the foundations of representative Government. There is a sharp distinction to be drawn between representative and democratic Government. As we know, in the 17th century, representative Government was confined to small elites. Nonetheless, what came out of that led eventually towards democratic Government. As individuals we have many ancestors and, arguably, among these are those who fought on both sides at the Battle of the Boyne.

Acting Chairman: That is going back a bit.

Dr. Mansergh: To the best of my knowledge Magna Carta and the Bill of Rights are special. There is a kind of constitutional shrine in the Library of Congress which goes back to Magna Carta. Obviously, the highlights of this shrine are the Declaration of Independence and the American Constitution.

The Bill of Rights should be treated in an entirely different manner to the other pieces of legislation under discussion, because it is one of the foundation stones to our legislation. We must think about the future as well as the past and in this context we are thinking of both. I would be inclined to stay the hand in the manner proposed by the Minister.

Mr. Ryan: The explanatory memorandum states:

> *Subsection (3)* is a partial repeal of the Bill of Rights. While the main provisions of the Bill of Rights are proposed to be retained for the time being,——

Ms O'Rourke: That is the one about travelling with impunity.

Mr. Ryan: No. The reference here is to the exclusive right of Protestants to bear arms. That is the reason I pointed out that if we do not repeal it, Senator Mansergh is the only one of the Members here who would have that right. I would feel it was unfair if Senator Mansergh could bear arms and I could not. I would really feel threatened.

Dr. Mansergh: We are repealing that as far as I know.

Ms O'Rourke: His arms have gone rusty.

Mr. Ryan: May I make my point. The year 1688 is one year before 1689, which was a significant year. Perhaps we should reconsider the decision to repeal some of these provisions. "For the time being" is mentioned in the Bill. I accept we have constitutional guarantees that are probably of

[Mr. Ryan.]

greater significance, but I am not sure, given the different traditions on this island and the significance of the Bill of Rights to one tradition, that we should rush into a decision to repeal something which perhaps has far more significance to others on the island than to anybody in the House.

Mr. T. Kitt: Senators have touched on the relevant reasons for doing what we are doing. Subsection (3) has the effect of repealing a part of the Bill of Rights 1688. This is the only partial appeal contained in the Bill. It arises because some provisions of the Bill of Rights may be of continuing legal relevance and, therefore, the entire Bill cannot be repealed. However, as certain elements of the Bill of Rights discriminate as between different religions, these elements are being removed. Senator Ryan is correct that it gets rid of the right of Protestants to bear arms. The Act deals with the rights of subjects and, in particular, makes provision — this will be of interest to Members — for parliamentary privilege.

Ms O'Rourke: I said that.

Mr. T. Kitt: The Act is not suitable for repeal at this time, primarily because it may be relevant to the law regarding parliamentary privilege. Therefore, it has a relevance in that sense.

Ms O'Rourke: Does that mean we can travel with impunity?

Question put and agreed to.

SECTION 3.

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

Mr. B. Hayes: Section 3(3) states:

> The inclusion of a statute in *Schedule 2* shall not be taken as evidence that the statute, or any provision of it, was of full force and effect immediately before the passing of this Act.

Does this suggest, even if it had been repealed and we were not aware of it through research, that we are providing for having got it wrong? I do not understand the reason for this subsection.

Dr. Mansergh: There is an accepted legal term, "desuetude", which means that something has fallen out of use. Many of these Acts of Parliament clearly have no relevance at the present time and have long since ceased to be enforced. I suspect the saving clause makes in section 3(3) makes sense in that it does not assume that Acts repealed are in full force or in any force whatsoever.

Mr. Ryan: How does the legal, judicial and parliamentary system decide that legislation has fallen out of full force and effect? I am not trying to be troublesome, but I was of the impression that if laws existed and had been enacted, they were the law. That may have been in practice, but is there a way in which laws fall out of use?

Dr. Mansergh: Surely it is when courts cease to enforce them.

Mr. T. Kitt: Perhaps I might take Senators through this section and try to clear up this matter.

Section 3(1) provides for the setting out in Schedule 2 of those statutes specifically repealed by the Bill. Some 3,188 statutes listed in the Bill for appeal have been found to be unnecessary or to have ceased to be in force. That list does not include those Acts that clearly never applied to Ireland. The section follows the terms of the Statute Law Revision (Pre-Union Irish Statutes) Act 1962, in that it does not refer to Acts of specific parliaments.

Subsection (2) is designed to make clear that the omission of an Act from Schedule 2 does not preserve it in force for any purpose, except where, as provided for in subsection (2)(*c*), the Act has been already repealed but saving transitional or continuing provisions have been made in regard thereto. Subsection (3) is designed to make clear that the inclusion of an Act in Schedule 2 should not be taken to mean it is currently in force or has any effect. For example, some of the Acts in Schedule 2, while never repealed, may have been of questionable constitutional application to Ireland. Nonetheless, they are being included in the list of Acts for repeal for the sake of legal certainty.

The Long Title makes clear that the Bill, like previous Statute Law Revision Acts, addresses itself to two categories of Acts, those that have ceased to have effect but never been formally repealed, and those that are unnecessary although technically still in force. Many of the 3,188 Acts listed in Schedule 2 fall within the first category and are being formally repealed by the Bill for the sake of certainty and clarity, even though they have ceased to have any practical effect.

Regarding Senator Brian Hayes's point, we do not have copies of all the old Acts. As Senator Mansergh said, if we miss something and it is lost to history, it is gone. That is my best layman's response to those valid points.

Acting Chairman: Is Senator Ryan suggesting the Liberty of Meath be restored? I see it is here declared void.

Mr. B. Hayes: Are the Government and the Minister admitting that in the Schedule we are repealing Acts that may not have had any effect in this jurisdiction?

Ms O'Rourke: We must do something with them. They must be declared obsolete and got rid of. I am sure many Acts were passed that were not of obvious importance.

Dr. Mansergh: As I suppose occasionally happens even today, there were probably some Acts that were never enforced, even from the outset.

Mr. B. Hayes: They were either on the Statute Book or not.

Mr. T. Kitt: In dealing with this legislation, we aimed at certainty with the white list and Schedules 1 and 2. There clearly will be various Acts that we will miss in such a situation, and if they are lost, they are gone. However, I remind Members that we will be conducting further work on this ongoing process.

Mr. B. Hayes: I do not wish to detain the House on this matter. A great deal of credit is due to the research team in the Office of the Attorney General for this work.

Dr. Mansergh: Hear, hear.

Mr. Ryan: Hear, hear.

Mr. B. Hayes: However, when it was made known that the process of statute law revision was under way, and a green flag was raised regarding a Bill in which some organisation, group or individual took an interest, was that statute put to one side? Was it decided to deal with it on another occasion or immediately? I am interested in the process, since after any group in the State had placed a question mark over any pre-1922 statute and it was put to one side, did the Government intend to deal with it all at some stage? Was there disagreement regarding the legislation until it appeared in this Schedule?

Mr. T. Kitt: I am told that, after the consultation with the Taoiseach was launched, if anyone made a submission regarding legislation, it was set aside in Schedule 1.

Ms O'Rourke: They will be attended to later, since there might well be a short clause or provision in an Act that is still relevant today.

Question put and agreed to.

SECTION 4.

Question proposed: "That section 4 stand part of the Bill."

Mr. Ryan: The significance of assigning Short Titles escapes me. The Bill's basic thrust makes perfect sense; we are getting rid of a great deal of legislation. However, what is the legal or other significance of the decision to go through a great deal of arcane legislation and assign new Short Titles?

Mr. T. Kitt: It is very simple. Section 4 assigns Short Titles to all public general Acts that are not being repealed but that do not currently have a Short Title. The section is based on section 1(1) of the Short Titles Act 1962. For the sake of consistency, we are giving a similar structure to the legislation with which we are dealing.

Mr. B. Hayes: And for future ease of reference, I presume.

Question put and agreed to.

SECTION 5.

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

Mr. Ryan: I want to ask the dumb question why, particularly regarding the reference to the Bill of Rights. I do not believe the Government is about to deprive us of all our liberties, but constitutional evolution, albeit on the part of a foreign government, is of great significance. The evolution of rights in the English parliamentary system is part of the evolution of world democracy. I do not know why we must make specific reference. I will not even go into the Act passed in the first year of William and Mary's reign, since it would be too difficult.

Dr. Mansergh: I agree with Senator Ryan, but until quite recently the question of bills of rights was raised in this jurisdiction and Northern Ireland. I suppose the Bill refers to 1688 to distinguish it from bills of rights that we may establish in future.

Mr. T. Kitt: Section 5 amends the Short Titles Act 1896, which provided Short Titles for a large number of English, British and United Kingdom statutes. The section will correct two unconventional Short Titles conferred by that Act, one being "1 Will. & Mary, Sess. 2. c. 2". Senators can see what we are doing: we are obviously trying to use standardised terminology.

Ms O'Rourke: It makes our next task easier.

Question put and agreed to.

SECTION 6.

Question proposed: "That section 6 stand part of the Bill."

Mr. Ryan: I know I sometimes test the Acting Chairman's patience when I inquire into matters. Section 6(*b*)(i)(I) mentions "Estatuz del Eschekere". Is that Middle English?

Mr. T. Kitt: It is Latin.

Mr. Ryan: That is not Latin.

Mr. T. Kitt: That is what I am told.

Mr. Ryan: I am absolutely certain it is not Latin.

Mr. T. Kitt: I studied Latin, and I do not think it is Latin.

Ms O'Rourke: Deputy Tom Kitt may have studied it, but I taught it.

Dr. Mansergh: It may be Spanish or Italian.

Mr. B. Hayes: We need the Interpretation Act again.

Mr. Ryan: I am not being awkward, but Members of the Oireachtas ought to know what they are passing, and I am curious about this. However, if we do not know, perhaps we should leave it.

Acting Chairman: I do not think there are many Ks in Latin.

Ms O'Rourke: It might be like *Beowulf*.

Mr. Ryan: There were so many Ks in the sentence that I thought it was Basque.

Mr. T. Kitt: It may be Norman French, but it is not Latin, which I studied. There is definitely no "Estatuz del" in Latin. I can get back to the Senator on the question.

Mr. Ryan: I may be pedantic, but I am interested. I did not ask in order to be unhelpful, and I am not trying to catch out the Minister. I presume he has advisers. Like everyone else from our background, I noted the reference to Magna Carta in subsection (*b*)(iii)(I) and (*b*)(iii)(II). Is its significance purely to do with drafting?

Ms O'Rourke: It was the first bill of rights.

Dr. Mansergh: This is the Magna Carta of Edward I, whereas, as we know, the Magna Carta of history was that of King John in 1215.

Mr. Ryan: Some of us do not know.

Mr. T. Kitt: It is to standardise our references and terminology with the British ones.

Mr. Ryan: The reference to "Statute de Conspiratoribus" has real echoes of Harry Potter.

Acting Chairman: Senator Ryan has now got to the Latin.

Mr. Ryan: This stuff is interesting.

Section 6 agreed to.

Section 7 agreed to.

SECTION 8.

Question proposed: "That section 8 stand part of the Bill."

Mr. B. Hayes: This section deals with evidence relating to the original statutes and, it is fair to say, many of those were lost in the fire in 1922. Could the Minister of State outline to the House how it was possible to verify the existence of these documents and statutes referred to in the various Schedules? In the section there is reference to the calendars of documents relating to various periods as a means of verifying their existence, but that was clearly not the position in all such cases. How was he able to establish one from the other where there was no documentary evidence of that Act?

Mr. Ryan: I have a succession of questions and I will not ask them altogether, partly because it might confuse me apart from anybody else. I like the delicate reference in the explanatory memorandum that the originals of many of these early statutes are either in London or were lost in the destruction in 1922. It makes one feel that there are two equal horrors — one is destruction and the other is being in London. We know what happened in 1922.

I do not dispute the principle that there must be some basis for all this ancient legislation. How is the Minister of State sure there are no conflicts between records of this early legislation in all of these sources? Have the experts searched and found or what? It seems that these are the records of 800 years done by people who had limited skills or access. What happens if there are conflicts?

Dr. Mansergh: We should not underestimate Victorian legal, archival and historical scholarship.

Mr. Ryan: I take Senator Mansergh's word for it.

Dr. Mansergh: If one goes next door to the National Library one will see shelf after shelf of these calendars of documents which were carefully copied out and edited. If one had the originals, they would be on a practically illegible scroll at this stage and probably in another language or interpreted. Sometimes the calendars of documents are written in the original Latin, but probably in a kind of modernised or standardised form. We simply must rely on the work they did then.

Having done a little research on different matters, my instinct is that while the losses in 1922 were terrible, a great many documents, especially Government and legal ones, would have been copied. The fact that documents were destroyed does not mean that there is not a copy of them somewhere else and of course there were copyists employed. Although I do not want to digress, for example, family history genealogists copied out extracts of documents such as wills and marriage contracts. Therefore, the net loss was somewhat less than is imagined. In any case, the majority of the work to make accessible to scholars all these vast calendars of documents which are involved in this legislation was done before 1922.

Mr. T. Kitt: We have covered all of the issues. Section 8 formally enables certain early statutes that are being retained to be proved in court and

other legal proceedings by production of a copy of it as reproduced in certain official publications. This may also be done by the production of a copy from those official publications and by having a copy certified by the National Library of Ireland or such other libraries or archives as may be designated. This provision is necessary as many of the originals of these early statutes are either held, as Senator Ryan and others stated, in London or were lost with the destruction of the Public Record Office in Dublin in 1922.

The official publications referred to in this section include the Historic and Municipal Documents of Ireland, HMDI, the Calendar of Documents relating to Ireland, CDI, and the Public Record Office, PRO, volumes, and as Senator Mansergh stated, these are reliable sources. Such volumes, while officially published, were not all published by Her Majesty's Stationery Office or the Stationery Office. As a result, the various Documentary Evidence Acts passed between 1845 and 1925 do not appear to apply to these publications. Subsections (1)(*b*) and (2) allow a procedure for proof of copy extracts from such volumes and subsection (3) permits specified institutions, in our case the National Library, to impose a charge for providing such copy extracts. The National Library was consulted in the drafting of this section and its views have been taken into account.

Mr. B. Hayes: Section 8(2) states:

> "[S]pecified institution" means the National Library of Ireland or such other library or archive as may be designated in writing by the Taoiseach under *paragraph (b)*.

This gives power to the Taoiseach to designate an institution as a body where information can be taken and that information can be regarded as factual information pertaining to any of these statutes. Why was the decision taken that the designation would come from the Department of the Taoiseach? Is it because the Bill comes from the Attorney General's office?

8 o'clock

Mr. T. Kitt: Yes.

Mr. B. Hayes: The libraries of Ireland fall within the remit of another Department. Why was the decision taken that designation would issue from the Department of the Taoiseach?

Ms O'Rourke: They were within the remit of the then Department of Education in the time of former Minister, Gemma Hussey, and they were taken into the remit of the Department of the Taoiseach.

Dr. Mansergh: The former leader of Senator Hayes's party, Dr. Garret FitzGerald, as Taoiseach, took personal charge of introducing national archives legislation. I happen to know this owing to certain issues in which I was involved in 1992-93 to do with whether any reference to discussions at Cabinet, even if they were about the Cork Milk Marketing Board, were allowed or disallowed as a result of the Hamilton judgment in the beef tribunal. The net point is that the national archives have been under the Department of the Taoiseach since the time of Dr. FitzGerald, if not earlier.

Ms O'Rourke: I can throw light on that. Gemma went into a huff about it.

Mr. Ryan: I do not want to delay the House. Both sections 8(1)(*a*)(i) and (ii), for instance, cover the same period. Is there some degree of certainty that there would be no conflict between the records in sections 8(1)(*a*)(i) and (ii)? While I have a number of other questions on other matters, that is my only question on this issue. Is there some certainty or what is the process if it turns out there are somewhat different records in both of those, which are now effectively the nearest thing to primary sources?

Mr. T. Kitt: I understand they are simply two different publications. There would be some duplication between the two but, as I stated earlier, I am assured they are very reliable sources.

Dr. Mansergh: I assume if one were repealing the Statutes of Kilkenny of 1366, which we probably have done already, and there were two or three versions, the repeal would be deemed to apply to all of them and not just one.

Mr. B. Hayes: Will the Minister of State indicate roughly what percentage of the white list gives direct, corroborative evidence of the existence of the Act.

Mr. Kitt: My officials tell me the figure is 100% in terms of the existence of the Act.

Mr. Ryan: Is there any possibility of digitising these records? There is a provision, to come later, allowing for the imposition of charges and these are records of huge historical and legal significance. It seems a pity that such important and fundamental references would be based in one place when Google is about to digitise half of the books on Earth. I was merely wondering about this matter, at the risk of testing the Acting Chairman's patience.

Dr. Mansergh: I would have thought this is not a project to concern us, particularly if Acts of the English Parliament are in question. There is a dictionary of parliament which goes back to about 1385 which has short biographies of every member of parliament since that date. It is possible they intend to digitise their legislation but much of this is peripheral from our point of view. We already have the calendars to consult and it must be considered whether such a venture would be a good use of resources and something of pressing importance for historians. I have my doubts.

Mr. Kitt: In short, the question of digitisation is a matter for the National Library.

Question put and agreed to.

SECTION 9.

Question proposed: "That section 9 stand part of the Bill."

Mr. Ryan: Section 9(2)(*b*) states that "nothing in this Act shall be read as affecting section 11(16) of the Local Government Act 2001". I probably could have looked for section 11(16) of the Local Government Act 2001 but I did not and I would love to know why, of the thousands of pieces of legislation passed in the past 80 years, this is mentioned.

Ms O'Rourke: This section is concerned with portions of other Bills which may be of relevance that we must save. It is an important section because it concerns parts of a Bill which may be still relevant today. It is headed "savings", which made me think the Department of Finance has been let loose on savings, but it has nothing to do with that and refers instead to saving portions of Bills that may be still relevant.

Dr. Mansergh: Chains, charters and emblems.

Ms O'Rourke: Senator Ryan wondered about the mention of the Local Government Act 2001 and I can only conclude that a portion of it must be still relevant.

Mr. Mooney: I have been trying to follow this historical debate with as much interest as I can but, I confess, I sometimes lose track as there are so many Acts. In the context of section 9, can the Minister of State clarify the reference to the Government of Ireland Act 1920 not affecting Orders in Council, which I thought were British procedures? It is referred to in 4(*a*) and 4(*b*) refers to the repeal of the Irish Free State (Agreement) Act 1922. Subsections 4(*a*) and 4(*b*) refer to any part of these acts that are still in force. I am also curious as to the meaning of the references to section 11(16) of the Local Government Act 2001. Can the Minister of State clarify these matters?

Dr. Mansergh: This is obviously something that did not occur to us when we were dealing with the constitutional parts of the Good Friday Agreement. Part of that agreement necessitated the repeal of the Government of Ireland Act 1920 by the UK Parliament but, I am afraid, it did not occur to me, nor to the Attorney General, that the Act still subsisted in some way on our Statute Book. It is almost certainly of only academic importance but if it was repealed across the water it should not be on our Statute Book.

Mr. Kitt: Regarding section 9(2)(*b*) which states that "nothing in this Act shall be read as affecting section 11(16) of the Local Government Act 2001", this, as Members have said, ensures we preserve the ceremonial powers and functions of mayors in their offices.

Ms O'Rourke: They have become important.

Mr. B. Hayes: That is because the charters are very historic.

Mr. Kitt: Regarding the question raised by Senator Mooney, specific additional provisions are also included to deal with issues that arose during the drafting process, especially the question of preserving any extant orders under the Government of Ireland Act 1920 and the Irish Free State (Agreement) Act 1922.

In the period during which the State moved towards independence transitional orders were put in place and we are retaining them.

Ms O'Rourke: Can I ask about savings and parts of Acts it is felt must be retained because they are relevant? There must be a huge number of parts of Acts that are being retained because they are relevant today.

Mr. B. Hayes: It is Schedule 1.

Ms O'Rourke: Will the work to do away with these parts of Acts continue as modern life goes on and they become obsolete?

Mr. B. Hayes: Following from what the Leader of the House just said, something has struck me since this process began. Schedule 1 refers to the Acts we are retaining and it categorises them in terms of various periods of history and Schedule 2 refers to the Acts we are repealing. Why was it necessary to state clearly in Schedule 1, parts 1 to 4, inclusive, the reason we are retaining these areas? If this is all about revision and repealing, why are we stating for the record something that is already in place? I understand the rationale behind citing the Acts we are repealing but in Schedule 1, parts 1 to 4, inclusive, the Minister of State has set out all of the Acts that are being retained. I know the question from the Leader of the House is more detailed and relates to the reason this is being done. Why did the Minister of State think it necessary to do this? Was it for the purpose of clarity, pointing out the Acts that are being retained and to which we will return in a few years' time?

Dr. Mansergh: In terms of providing clarity to judges it is important everything be stated explicitly, particularly when one is referring to Victorian legislation that has real relevance in many cases, for example, the Offences Against the Person Act 1861. Judges must be clear as to what statutes are still in force.

Mr. Mooney: I would be grateful if the Minister of State could further clarify his comment on the ceremonial aspect of the Local Government Act 2001. I am assuming it relates to the debate generated at the time regarding boroughs and town

councils. A number of boroughs, Kilkenny and Sligo for example, insisted on retaining borough status. Does the reference in this regard arise on foot of the concession by the then Government?

What does the Minister of State mean by "ceremonial" in respect of the section of the Bill being retained? The word may apply to the robes of office aldermen use in certain of the city boroughs, including Dublin, Waterford, Cork, Galway and Limerick. To the best of my knowledge, the other boroughs, such as Sligo and Kilkenny, do not have ceremonial robes.

My final question relates to Senator Brian Hayes's remarks on Schedule 1, to which I presume he will return. We are retaining a huge volume of statute law and I would be grateful for the guidance of the Chair on whether I can refer to one or two specific elements in Schedule 1.

An Leas-Chathaoirleach: The Senator should await our consideration of Schedule 1.

Mr. B. Hayes: Senator Mansergh asked a very straightforward question and posited the view that this Bill is to ensure legal clarity regarding the Acts subject to revision and the dates of their enactment. If one looks at Parts 3 and 4, one will note that the statutes therein are more recent than the others. I refer to the statutes of the United Kingdom of Great Britain and Ireland, dating from 1801 to 1922. It is not a question of their existence because they exist and are clear, and the period they cover is much more recent than the 12th, 13th or 14th centuries. It is important that the Minister of State outline why we are retaining them — I can understand it in terms of precedent in the courts — and why it is necessary to cite them in such a clear way in the course of Schedule 1.

Mr. T. Kitt: On the broader issue, we are for the first time stating what legislation is in force in Ireland regarding the period in question. Over 1,300 Acts are involved and over time they will be replaced.

Ms O'Rourke: Does the Minister of State mean they will be repealed?

Mr. T. Kitt: They will be replaced. The Bill makes reference to those we are retaining and they will all have to be replaced.

On the Local Government Act 2001, Senator Mooney should note that we are retaining some powers because we are concerned we will not interfere with any of those in existence. I will have to get my officials to revert to him regarding the details of these powers. However, in general terms, we are proceeding so as not to interfere with what the existing legislation allows.

Mr. B. Hayes: In the Statute Law Revision (Pre-1922) Act, which passed through the Houses some years ago and with which we were all involved, I believe there were two Schedules, one containing Acts that were retained and another containing those that were repealed. Were the statutes referred to in Schedule 1 of the Bill before the House not picked up on the last occasion? Is that why we are addressing them in a clear legal sense now? Are we simply repeating what we did in respect of Schedule 1 the last time such legislation was before the House?

Mr. T. Kitt: On the last occasion, we only dealt with repeals. This time we are proceeding differently by way of two Schedules.

Ms O'Rourke: We are doing two parallel exercises, that is, repealing Acts and retaining those Parts of Acts that must be retained. There is surely another parallel exercise taking place in corridors and rooms to determine how we can repeal those sections of Acts we are trying to hold on to because they still have some relevance. Is this happening?

Mr. T. Kitt: It is ongoing.

Mr. B. Hayes: On Schedule 1, it could well be the case that an additional 100 to 300 statutes could be picked up that have not been picked up in the course of Schedule 1 on this occasion, thereby achieving conclusivity.

Mr. T. Kitt: One hundred and sixty-seven Acts are being repealed by other Acts. There is obviously ongoing work taking place.

Dr. Mansergh: On the laudable ambition to replace Acts, particularly Victorian legislation, there is probably an enormous legislative task involved if one is to re-enact the provisions required and modernise legislation that is still in force. I very much doubt that it could be done in half a year, a year or two years. Some of this will take considerable time.

Question put and agreed to.

Section 10 agreed to.

SCHEDULE 1.

Question proposed: "That Schedule 1 be Schedule 1 to the Bill."

Dr. Mansergh: I have a point on what I said during Second Stage, during which I questioned the appropriateness of retaining anti-Whiteboy legislation on the Statute Book. This particularly related to the counties of Cork and Tipperary. I am very grateful that the Office of the Attorney General has since written to the Minister for Justice, Equality and Law Reform passing on the views on the House on this matter. I am very impressed by the depth of knowledge of the research team and its prompt reaction to legitimate queries. It is in command of the information and we are very reliant on its assistance.

The Whiteboys were the first evidence of rural resistance to aspects of an entirely unjust system of land tenure, and they were, to a degree, the precursors of the United Irishmen, the Defenders

[Dr. Mansergh.]

and later movements in the 19th century. The context in which they operated was entirely different from the modern one, in which we have proper democratic constitutional order and rule of law. In the 18th century, when the powers that be referred to "our glorious constitution", they were referring to one that excluded at least 80% to 90% of the people of Ireland and deprived them of any number of basic human and civil rights, including at one period the right to land tenure if one were a Catholic.

Legislation of this kind is a blot on our Statute Book and I find it hard to believe we cannot rely on our own legislation to deal with various forms of street disorder. We should be dealing with such matters using contemporary legislation, not using legislation that would be repugnant to most people if they thought about it.

Ms O'Rourke: The Whiteboys were not just endemic to Tipperary; they were quite prevalent in other areas also. I thank the Office of the Attorney General for writing to the Tánaiste and Minister for Justice, Equality and Law Reform to determine whether he can remove the legislation.

It is very interesting what the Minister of State said to Senator Mansergh about the Whiteboys and Molly Maguires, or whatever name was put on such groups at the time. They represented the early stirrings of a movement of people who were not prepared to put up with their circumstances for much longer. The 19th century saw the enactment of various land Acts, the espousal of the principles of fair rent, free sale and fixity of tenure. Then there were the attempts by the Conservatives to bury Home Rule by kindness and all of that. However, these were the first stirrings in terms of people not being willing to put up with their circumstances.

Mr. B. Hayes: Senator Henry is not present, but she referred to a number of statutes in Schedule 1, such as the Lunacy Regulation (Ireland) Act 1871 and a number of others which encompassed very degrading references to either prisoners or persons with mental illness. The point was made by Senator Henry that a more useful way to resolve these rather Victorian and dated concepts in the law, since most of them still apply in terms of the application of law in this jurisdiction, would be the establishment of a new Bill to remove these offensive phrases and words. I sincerely thank the Minister of State and his team for providing Members on Second Stage with an excellent dossier——

Ms O'Rourke: I agree; it is wonderful.

Mr. B. Hayes: ——of each of the Acts referred to which produced a much more comprehensive synopsis of the Bill. I thank them sincerely for doing that and for giving the rationale why a particular Act should be retained. We either opt to repeal this legislation eventually or we introduce a new law.

Ms O'Rourke: Is this the lunatics one?

Mr. B. Hayes: Yes, it is the Lunacy Regulation (Ireland) 1871. We either repeal all the legislation or we do it in one new Bill which attempts to rephrase some of the more offensive references contained within the legislation.

Mr. Ryan: I do not want to hold up the business of the House, but I have a series of questions, perhaps because I am nosey and curious. I am not going to make an issue of this, but the idea that we should retain the Courts Act 1476 because it provides a statutory basis for the wearing of gowns by the Judiciary is absurd. It is a long time, perhaps 84 years, since we should have got rid of the wearing of gowns by the Judiciary. Will the Minister of State comment on this? I am not trying to be awkward. However, gowns and wigs and all the nonsense of the courts are arcane. The United States has managed to develop a courts system without much of the trappings on display within its Irish counterpart. It might have been wise to drop the Courts Act 1476. This is a slightly different world. I might be Lord whatever and Senator O'Rourke might be Lady somebody else. In fact, Senator O'Rourke would not be a Member of this House because——

Mr. B. Hayes: The Baroness O'Rourke.

Mr. Ryan: ——women would not have been allowed in.

Mr. B. Hayes: No, she would not.

Ms O'Rourke: I am too rude, and crude.

Mr. Ryan: I am very glad that the distinction between Meath and Westmeath has been retained. I am sure the Leader would not be too pleased if it were otherwise.

Ms O'Rourke: Yes, that is correct.

Mr. Ryan: Is it the case that anything that might be trouble is being left in? I am just curious, but it seems funny.

Mr. B. Hayes: Senator Ryan's question needs to be posed in a much more direct manner. Were efforts made by anyone in authority in the courts to keep this particular statute in place?

Mr. Ryan: It never crossed my mind.

Mr. Mooney: I am really very disappointed. It is not the Minister of State's fault and I know it is not the fault of the officials, but there is no reference in this voluminous text to County Leitrim. Is it the case that it could not be found or that we were not in it or whatever?

Mr. B. Hayes: We are retaining it.

Mr. T. Kitt: We are still searching.

Mr. Mooney: I am glad to hear the Minister of State mention that because I would like to be in a position to say we did something that attracted the attention of the law makers between the time of the Magna Carta and 1922. It seems that we do not exist. I notice Athlone and Westmeath figure very prominently.

Ms O'Rourke: We were very important.

Mr. Mooney: I believe the Leader's predecessors were very influential people and managed to get roads fixed around Kinnegad and various other places.

Ms O'Rourke: They paid a shilling for a toll.

Mr. Mooney: I cannot find any reference. The serious nature of the question is whether these are all the statutes or the fruits of a selective search through the various laws enacted from the time of the Magna Carta which have been retained. I am grateful to my colleague, Senator Ryan, who raised the issue of one particular Act, namely, the Irish Musical Fund Act 1794. I am especially interested in this because it is stated in the document that the fund was flourishing as recently as 1927 and therefore this Act is not suitable for repeal. I appreciate that the Minister of State, with something like——

Ms O'Rourke: There is money left in it.

Mr. Mooney: Did anybody count the number of Acts and statutes? I do not expect the Minister of State to be able to single out that specific one and give me further amplification from what we have already received in the document.

Ms O'Rourke: This relates to indigent musicians.

Mr. Mooney: Wearing my other hat, as someone with an interest in the music industry, it seems to have been a capital idea to have provided money for infirm musicians. Perhaps the Minister of State might have some comments whether, in retaining this Act, he might be resurrecting that fund. Knowing his interest in the music industry, his son being an attractive and successful singer-songwriter in his own right, I make my comment as a declaration for both the Minister of State and me as much as anything else. I emphasise this before he answers the question. Perhaps there is a case to be made not only for retaining this particular Irish Musical Fund Act, but for updating it and providing some moneys, as required, for any infirm musicians. I am curious to know whether these are the statutes in their entirety or is this just a select grouping which the Government has decided either to repeal or retain?

Given the historical nature of the process we are undergoing in the House, it is really a journey through hundreds of years of Irish history. There is reference to the confiscation of lands of the Irish rebels and to the millions of acres taken off the native Irish during the Elizabethan and post-Elizabethan wars. This is living history. I will not say I feel a certain degree of nostalgia at their passing because they are being retained for a variety of reasons.

There is an historical dimension to this that should not be lost on the wider educational environment. Has the Minister of State given any thought to perhaps conveying the information contained in this document on DVD or CD for schools purposes? As already alluded to in the House, we have been given a wonderful interpretation of many of the Acts and statutes which were raised specifically by Members. However, there are hundreds of others which were not raised and about which we do not have specific information. Having gone through this process, I am curious to know whether, from an educational viewpoint, the Minister of State might consider making this information available to a younger generation for historical research purposes.

Dr. Mansergh: I have two quick points to make. On Senator Mooney's issue, Edward Bunting's Ancient Irish Airs was published in the early 1790s and the legislation the Senator alluded to may have a reference to it. However, retaining the Courts Act 1476 seems to me to be entirely in keeping with certain traditions of our Judiciary which go back unbroken to the *ancien régime*, however defined. Unfortunately, medieval legislation and our courts are not necessarily as out of kilter as we might like to think.

Mr. T. Kitt: I again thank Senators for their contributions in this debate. It has been marvellous for me to come to the House and it is always enjoyable.

Mr. Ryan: On a point of clarification, are we finishing now?

Ms O'Rourke: I shall just clarify that. The Order of Business provides for this debate to continue up to 8.30 p.m. The Minister of State must go to the Dáil and the Minister of State dealing with Adjournment Matters is outside the Chamber.

Mr. T. Kitt: With regard to the Tumultuous Rising Act 1779 and the issue of the Whiteboys, following the important debate on the matter here, I raised this matter, as was suggested, with the Tánaiste. I wrote to him with a view to ensuring that the Whiteboy Acts are repealed by way of substantive statute law reform.

Ms O'Rourke: They would not be voting for the PDs if they were around.

Mr. T. Kitt: With regard to the Courts Act, I accept the point made about lords wearing their robes in parliament. The Act compels lords to wear their robes in parliament and judges and barons to wear their habits and coifs in term time. It provides a statutory basis for the wearing of gowns by the Judiciary and it is therefore not suit-

[Mr. T. Kitt.]

able for repeal. While we might not like some of these statutes, my job was to retain Acts that are still relevant today.

Dr. Mansergh: They are still relevant.

Mr. T. Kitt: The issues which were raised are important. It is a matter for us perhaps to change in the future.

Ms O'Rourke: Judges wearing their silly wigs.

Mr. T. Kitt: The Irish Music Fund Act deals with the Irish music fund set up in 1787 to support infirm musicians. Through the subscriptions and the profits made therefrom, a capital stock of £1,000 was lodged into the hands of the treasurer. The Act states that all the subscribers to this fund are to be a body corporate and politic and they will have perpetual succession and a common seal. The Act describes the working of the committee. The fund was flourishing as recently as 1927 and therefore this Act is not suitable for repeal.

I wish to make two points about references to terminology such as the "lunacy" etc. The Interpretation Act 2005 updates and simplifies the interpretation of statutes in a way that allows for legislation that uses more precise and accessible language. This is relevant to the point Senator Brian Hayes made about terms such as "lunacy". In regard to the archaic and sometimes offensive language which appears in pre-Independence statutes, this will be eliminated in the programme of repeal and re-enactment which ultimately will see all pre-Independence legislation removed from the Statute Book

I regret that I now have to leave to go to the Dáil. This is a list of Acts applying to Ireland that have not been repealed. I thank the Members for their co-operation and we will continue this work at a future date.

Progress reported; Committee to sit again.

Acting Chairman: When is it proposed to sit again?

Ms O'Rourke: At 10.30 a.m. tomorrow.

Adjournment Matters.

Physical Education Facilities.

Acting Chairman: I extend a warm welcome the Minister of State, Deputy Haughey, as this is my first opportunity as Acting Chairman to do so. I wish him every success in his Ministry.

Mr. Haughey: I thank the Acting Chairman.

Mr. Brennan: I wish to share my time with Senator Finucane.

Acting Chairman: That is agreed.

Mr. Brennan: I welcome the Minister of State, Deputy Haughey, to the House and wish him well in his new portfolio.

I raise the matter of the lack of playground facilities at St. James's national school, Cappagh, Askeaton. I acknowledge the tremendous work carried out in this school in Cappagh as part of the capital programme. A total of €457,000 was provided for classroom extensions together with a local contribution of €53,000, bringing the investment in the school up to more than €500,000.

I and my fellow politicians from west Limerick visited the school and met Mr. Cyril Madigan and five teachers. As a result of the development that has taken place, a very small amount of money is available towards the provision of playground facilities, the lack of which is a serious problem. I understand an appeal was submitted for such funding. The school was not allocated funding under category nine of the summer works programme.

I ask the Minister of State to ensure that the necessary finance is made available to provide playground facilities, which are important and should have been covered under the capital programme. I ask him to keep the line of communications open. The builder is still on site and will be there for some weeks. It would be beneficial if the Department could provide the necessary finance for the these playground facilities, which are necessary as part of the today's school curriculum.

Mr. Finucane: I thank Senator Brennan for sharing his time with me. I, like the Senator, attended the protest parade outside this school in Cappagh last Monday morning. It was sad to see primary school children and their parents walking up and down protesting outside the school because the Department of Education and Science did not grant the school funding under the summer works scheme for the provision of a playground. It is a matter of concern that the children are in the dismal position of not having a playground, especially when there is much talk today about the problem of obesity in children. It was a retrograde step for the Department not to grant aid this project, given that the parents in this small rural community raised more than €50,000 towards the cost of the school extension, which they very much welcomed.

We discussed the Appropriations Bill yesterday and I noted that a total €90 million was handed back from three Departments, namely, the Office of Public Works, Transport and Environment, Heritage and Local Government, to be used as extra funding in 2007 on the basis that it was not spent in 2006. I cannot understand why it is not possible to fund a project of this kind under the summer works scheme.

The school submitted an appeal and I understand from the appeals section of the Department that it has not decided on the date it will discuss projects of this kind. This is a worthwhile project

that deserves assistance. I hope the Minister of State has good news for us.

Minister of State at the Department of Education and Science (Mr. Haughey): I thank Senator Brennan for raising this matter and Senator Finucane for his contribution. It affords me the opportunity to outline to the House the Government's strategy for capital investment in education projects and the position of the Department of Education and Science regarding the provision of a replacement playground at St. James's School in Cappagh, County Limerick.

Modernising facilities in our 3,200 primary and 750 post-primary schools is not an easy task, given the legacy of decades of under-investment in this area and the need to respond to emerging needs in areas of rapid population growth. Nonetheless, since taking office, the Government has shown a focused determination to improve the condition of our school buildings and to ensure that the appropriate facilities are in place to enable the implementation of a broad and balanced curriculum. Under the National Development Plan 2007 to 2013, funding of €4.5 billion will be invested in a modernisation and development programme for first and second level schools. This unprecedented level of investment will allow us to meet the needs of a growing school population, to modernise existing school facilities and to provide for curriculum reform and innovation.

A total of 7,800 individual school building projects were delivered for the €2.6 billion investment under the 2000-06 period of the last national development plan. The completion of building projects under the €4.5 billion investment in the new plan will benefit from recent innovations in delivery mechanisms that have allowed for fast tracking of priority school developments. Activity under the new plan is already under way, with 1,500 school building projects due to be delivered in 2007.

St. James's School in Cappagh is a co-educational primary school with a September 2006 enrolment of 103 pupils. Enrolments at this school have been relatively stable, with a slight increase in recent years from 86 pupils in 2002 to 103 pupils in 2006. The school originally submitted an application to the Department of Education and Science for major capital investment in its existing buildings. Having considered the school's accommodation needs, the school authorities were offered and accepted funding under the small schools initiative in 2005 to provide accommodation suitable to that of a four-teacher school. This building project is currently under construction.

Earlier this year, the Department of Education and Science announced over 1,100 modernisation projects to improve facilities at schools under the 2007 summer works scheme. The school authority made an application for the provision of a hard-court play area under the scheme. Under the published prioritisation criteria governing this scheme, external environment projects such as the provision of hard play areas fall into category ten. This category was not reached this year. The management authority of the school has appealed the decision and this is currently under consideration in the Department.

I thank the Senator once again for raising this matter and allowing me to outline the progress being made under the school building and modernisation programme and the position regarding the application for the provision of a replacement playground at St. James's School in Cappagh, County Limerick.

Mr. Brennan: I thank the Minister of State for the information given. If the Department had carried out the works under the scheme, it would have saved a lot of money. The amount needed to complete the playground area is less than €50,000. I ask the Minister of State to convey to the Minister that the lines of communication must be kept open, so that we can resolve this problem in the near future.

Mr. Finucane: While I am aware that the appeals committee will meet to discuss this project and others, can the Minister of State get back to us with the date of that meeting?

Mr. Haughey: I will convey the views of the Senators to the Minister and we will keep in touch with them.

Schools Building Projects.

Mr. Kitt: I thank the Cathaoirleach for giving me the opportunity to raise this issue and I welcome the Minister of State to the House. This is my first request to him and I hope he can give me an update on the position of Cahergal National School, near Tuam in County Galway. The board of management, the parents' committee, the teachers and the students of this school have been trying for many years to get a site for a new school. A site has now been purchased and is to be transferred to the Department of Education and Science. Can the Minister of State tell me when this can be done? It is important to get the site transferred so that we can work on the design and planning for a new school.

Cahergal National School has had an increased enrolment over the past few years. It is the only school in the north-east Galway area that has not had some improvements. Numerous schools did not receive any improvement during the last general election campaign, but thanks to the pilot version of the devolved grant scheme, many of those schools have since been improved and are in very good condition. However, Cahergal National School has been sorely neglected because they could not get a site. To compound matters, there was a fire in the school recently that caused further difficulties for the students and teachers. It is a health and safety hazard to allow the school continue in the current building following that fire.

I hope the Minister of State can provide an update on the progress of the school. A new site

[Mr. Kitt.]

has been purchased, so the big issue is to transfer the site to the Department of Education and Science and start work on designing a new primary school in Cahergal.

Mr. Haughey: I thank the Senator for raising this matter, as it affords me the opportunity to outline the Government's strategy for capital investment in education projects and to outline the position of the Department of Education and Science on the development of education provision in Cahergal National School in Tuam.

Modernising facilities in our 3,200 primary and 750 post primary schools is not an easy task, given the legacy of decades of under-investment in this area and the need to respond to emerging needs in areas of rapid population growth. Nonetheless, this Government has shown a focused determination to improve the condition of our school buildings and to ensure that the appropriate facilities are in place to enable the implementation of a broad and balanced curriculum. As evidence of this commitment, over €540 million will be spent in the coming year on building and modernisation projects in primary and post-primary schools. Since 1997, a total of €3 billion has been invested in school buildings and this has delivered over 7,800 school building projects. This further investment of over €540 million will build on these achievements and will focus on the provision of school accommodation in areas where the population is growing at a rapid rate. As further evidence of our commitment, national development plan funding of €4.5 billion will be invested in schools over the coming years. This record level of investment is a positive testament to the priority the Government attaches to ensuring that school accommodation is of the highest standard possible.

In order to reduce red tape and allow projects to move faster, responsibility for smaller projects has been devolved to school level. Standard designs have also been developed for eight and 16 classroom schools to facilitate speedier delivery of projects and save on design fees. The design and build method is also used to expedite delivery where the use of standard designs is not possible. Taken together with the unprecedented level of funding available, these initiatives ensure that building projects are delivered in the fastest timeframe possible.

Cahergal National School in Tuam is a co-educational primary school. Enrolments at the school have decreased slightly from 106 in 2002 to 94 in 2006. Officials in the Department of Education and Science have completed their assessment of projected enrolments and have determined that the long-term projected staffing for Cahergal National School will be for a principal and five mainstream teachers. This has been notified to the school authorities. Furthermore, a decision was taken to provide a new six classroom school as a replacement school. The acquisition of the site adjoining the school has concluded and the transfer of the existing site to the Minister for Education and Science is ongoing. The school building project will be considered for development in the context of the school building and modernisation programme.

I thank the Senator once again for raising the matter and allowing me to outline the progress being made under the school building and modernisation programme and the position of Cahergal National School.

Mr. Kitt: I thank the Minister of State for his reply. Can he inform me when the transfer of the existing site from Cahergal National School to the Department will be completed? That is vital to the development of the school.

Mr. Haughey: The transfer is ongoing, but I will undertake to get the information and inform the Senator.

The Seanad adjourned at 8.50 p.m. until 10.30 a.m. on Thursday, 15 February 2007.